State Finance

§ 163. Purchasing services and commodities. 1. Definitions. For the purposes of this section, the following terms shall have the following meanings unless otherwise specified:

a. "Consortium" means like entities which agree to collectively purchase commodities at a lower price than would be otherwise achievable through purchase by such entities pursuant to other provisions of this article.

b. "Emergency" means an urgent and unexpected requirement where health and public safety or the conservation of public resources is at risk.

c. "Responsible" or "responsibility" means the financial ability, legal capacity, integrity, and past performance of a business entity and as such terms have been interpreted relative to public procurements.

d. "Responsive" means a bidder or other offerer meeting the minimum specifications or requirements as prescribed in a solicitation for commodities or services by a state agency.

e. "Specification" or "requirement" means any description of the physical or functional characteristics or the nature of a commodity or construction item, any description of the work to be performed, the service or products to be provided, the necessary qualifications of the offerer, the capacity and capability of the offerer to successfully carry out the proposed contract, or the process for achieving specific results and/or anticipated outcomes or any other requirement necessary to perform the work. It may include a description of any obligatory testing, inspection or preparation for delivery and use, and may include federally required provisions and conditions where the eligibility for federal funds is conditioned upon the inclusion of such federally required provisions and conditions. Specifications shall be designed to enhance competition, ensuring the commodities or services of any offerer are not given preference except where required by this article.

f. "Procurement record" means documentation of the decisions made and the approach taken in the procurement process.

g. "Sole source" means a procurement in which only one offerer is capable of supplying the required commodities or services.

h. "Single source" means a procurement in which although two or more offerers can supply the required commodities or services, the commissioner or state agency, upon written findings setting forth the material and substantial reasons therefor, may award a contract or non-technical amendment to a contract to one offerer over the other. The commissioner or state agency shall document in the procurement record the circumstances leading to the selection of the vendor, including the alternatives considered, the rationale for selecting the specific vendor and the basis upon which it determined the cost was reasonable.

i. "Lowest price" means the basis for awarding contracts for commodities among responsive and responsible offerers.

j. "Best value" means the basis for awarding contracts for services to the offerer which optimizes quality, cost and efficiency, among responsive and responsible offerers. Such basis shall reflect, wherever possible, objective and quantifiable analysis. Such basis may also identify a quantitative factor for offerers that are small businesses or certified minority- or women-owned business enterprises as defined in subdivisions one, seven, fifteen and twenty of section three hundred ten of the executive law to be used in evaluation of offers for awarding of contracts for services.

k. "Authorized user" or "non-state agency purchaser" means (i) any officer, body or agency of the state or of a political subdivision or a district therein, or fire company or volunteer ambulance service as such
are defined in section one hundred of the general municipal law, to make purchases of commodities, services and technology through the office of
general services' centralized contracts, pursuant to the provisions of section one hundred four of the general municipal law; (ii) any county extension service association as authorized under subdivision eight of section two hundred twenty-four of the county law; (iii) any association or other entity as specified in and in accordance with section one hundred nine-a of the general municipal law; (iv) any association, consortium or group of privately owned or municipal, federal or state owned or operated hospitals, medical schools, other health related facilities or voluntary ambulance services, which have entered into a contract and made mutual arrangements for the joint purchase of commodities, services and technology pursuant to section twenty-eight hundred three-a of the public health law; (v) any institution for the instruction of the deaf or of the blind listed in section forty-two hundred one of the education law; (vi) any qualified non-profit-making agency for the blind approved by the commissioner of the office of children and family services or the office of temporary and disability assistance; (vii) any qualified charitable non-profit-making agency for the severely disabled approved by the commissioner of education; (viii) any hospital or residential health care facility as defined in section twenty-eight hundred one of the public health law; (ix) any private not-for-profit mental hygiene facility as defined in section 1.03 of the mental hygiene law; (x) any public authority or public benefit corporation of the state, including the port authority of New York and New Jersey and the interstate environmental commission; (xi) any public library, association library, library system, cooperative library system, the New York Library Association, and the New York State Association of Library Boards or any other library except those which are operated by for profit entities; (xii) any other association or entity as specified in state law, to make purchases of commodities, services and technology through the office of general services' centralized contracts. Such qualified non-profit-making agencies for the blind and severely disabled may make purchases from the correctional industries program of the department of corrections and community supervision subject to rules pursuant to the correction law.

2. Operating principles. The objective of state procurement is to facilitate each state agency's mission while protecting the interests of the state and its taxpayers and promoting fairness in contracting with the business community. The state's procurement process shall be guided by the following principles:

a. To promote purchasing from responsive and responsible offerers, including small businesses.

b. To be based on clearly articulated procedures which require a clear statement of product specifications, requirements or work to be performed; a documentable process for soliciting bids, proposals or other offers; a balanced and fair method, established in advance of the receipt of offers, for evaluating offers and awarding contracts; contract terms and conditions that protect the state's interests and promote fairness in contracting with the business community; and a regular monitoring of vendor performance.

c. To encourage the investment of the private and not-for-profit sectors in New York state by making reasonable efforts to ensure that offerers are apprised of procurement opportunities; by specifying the elements of a responsive bid and disclosing the process for awarding contracts including, if applicable, the relative importance and/or weight of cost and the overall technical criterion for evaluating offers; and by ensuring the procurement is conducted accordingly.

d. To ensure that contracts are awarded consistent with the best interests of the state.
e. To ensure that officers and employees of state entities do not benefit financially or otherwise from the award of state contracts.

f. To ensure regular and critical review of the efficiency, integrity and effectiveness of the overall process.

3. General provisions for purchasing commodities.

a. State agency procurement practices for commodities shall incorporate the following:
   (i) The purchase of commodities by state agencies including the office of general services shall be conducted in a manner which accords first priority to preferred sources in accordance with the provisions of this article, second priority to centralized contracts, third priority to agency or multi-agency established contracts and fourth priority to other means of contracting.
   (ii) Commodities contracts shall be awarded on the basis of lowest price to a responsive and responsible offerer; or, in the case of multiple awards, in accordance with paragraph c of subdivision ten of this section.
   (iii) The commissioner shall be responsible for the standardization and centralized purchase of commodities required by state agencies in a manner which maximizes the purchasing value of public funds.
   (iv) The commissioner is authorized to permit purchases of commodities and services for authorized users through the office of general services' centralized contracts. Such authorized users so empowered shall accept sole responsibility for any payment due with respect to such purchases.
   (v) Consistent with guidelines issued by the state procurement council, state agencies may competitively purchase commodities procured in accordance with this article in lieu of using centralized contracts when the resultant price is less than the centralized contract price.
   (vi) When justified by price, state agencies, and hospitals and facilities managed and controlled by state agencies eligible pursuant to section twenty-eight hundred three-a of the public health law, shall be eligible to make purchases pursuant to guidelines issued by the state procurement council from a consortium or comparable entity in lieu of using centralized contracts for commodities.
   (vii) The commissioner is authorized to enter into contracts pursuant to the provisions of section twenty-eight hundred three-a of the public health law.

b. The commissioner shall:
   (i) determine, in cooperation with the state procurement council and state agencies, the identity, form, function and utility of those commodities which shall be made available on or through centralized contracts. Criteria may include, but need not be limited to, the availability of a volume discount, prior use of the commodity among state agencies and the relative cost of establishing the contract, its anticipated use and expected actual savings for the state. The commissioner may also act as a broker for state agencies to procure commodities.
   (ii) determine the number and scope of centralized contracts for commodities to be let during any period, including the letting of multiple contracts to ensure the sufficient variety and uninterrupted availability of commodities for state agency use.
   (iii) maintain lists of firms which produce or manufacture or offer for sale commodities in the form, function and utility required by state agencies. The commissioner shall ensure such lists are updated regularly. With the assistance of the department of economic development and other state agencies, beginning on July first, two thousand one, ensure the availability to all authorized purchasers of a centralized
list which identifies commodities offered by New York state's small businesses and a centralized list which identifies commodities and services offered by businesses certified pursuant to article fifteen-A of the executive law. Such lists shall be updated semiannually and designed to enable effective identification of New York state's small businesses and businesses certified pursuant to article fifteen-A of the executive law.

(iv) ensure the specification of commodities for centralized contracts reflect the form, function and utility required by state agencies and conform, wherever possible, to industry standards. Where necessary, the commissioner may develop specifications for commodities. When not otherwise forthcoming from a particular firm or industry, the commissioner may request information from businesses for the purpose of establishing or improving a specification. The office of general services may assist agencies in developing specifications for agency-procured commodity contracts when industry standards are not available or appropriate. In all cases, specifications shall be consistent with the requirements of state agencies.

(v) With the assistance of the department of economic development and other state agencies, provide a training program once per year, in each economic development region, as established in article eleven of the economic development law, beginning January first, two thousand one, for those businesses certified pursuant to article fifteen-A of the executive law and those interested in becoming certified. Such training program shall provide assistance with respect to participation as a vendor in the procurement process, as established in this article, and including without limitation educating minority and women contractors about surety bonding requirements on state contracts, and identifying resources available to such contractors in obtaining their first bond and in increasing their bonding capacity, including but not limited to the federal small business administration bond guarantee program.

(vi) With the assistance of the department of economic development and other state agencies, provide training once per year for staff of each state agency's minority and women business development office, or if an agency does not have such an office, then an agency's representative. Such training program shall consist of a meeting with such agencies' representatives to inform each agency of how to encourage procurement of commodities and services from businesses certified pursuant to article fifteen-A of the executive law.

(vii) maintain a list of contractors which produce or manufacture or offer for sale environmentally-sensitive cleaning and maintenance products in the form, function and utility generally used by elementary and secondary schools in accordance with specifications or guidelines promulgated pursuant to section four hundred nine-i of the education law.

(viii) review and consider prior to issuance of bid solicitations the term of the proposed contract based on factors, including, but not limited to; (A) the nature of the commodity, (B) the complexity of the procurement, (C) the identity and type of purchasers, (D) the suitability of the contract for adding additional contractors during the term, and (E) the estimated contract value. This determination shall be documented in the procurement record.

(ix) reasonably consider aggregate amount of public sales by potential vendors.

(x) review and consider the feasibility of creating regional contracts for commodities being procured by the state.

(xi) maintain a procurement record for each centralized contract procurement identifying, with supporting documentation, decisions made
by the commissioner during the procurement process. The procurement record shall include, but not be limited to, each contract amendment, and the justification for each.

c. When commodities are not available in the form, function and utility required by state agencies through preferred sources or centralized contracts, a state agency may, independently or in conjunction with other state agencies, procure commodities in accordance with the provisions of this section. State agencies may maintain listings of firms, including those certified pursuant to article fifteen-A of the executive law, or may use the office of general services' listing of firms and may request assistance from the office of general services. It shall be the responsibility of state agencies to periodically advise the office of general services of those agency-procured commodities which, due to the frequency of purchase or related factors, should be made available through centralized contracts.

d. The commissioner may make, or cause to be made by a duly authorized representative, any investigation which he or she may deem proper for acquiring the necessary information from a state agency, except state agencies where the head of the agency is not appointed by the governor, including but not limited to the state education department, the department of law, and the department of audit and control, for the exercise of his or her powers and duties under this section. For such purposes the commissioner may subpoena and compel the attendance of witnesses before him or her, or an authorized representative, and may compel the production of books, papers, records or documents. The commissioner or a duly authorized representative may take and hear proofs and testimony and, for that purpose, the commissioner or the duly authorized representative may administer oaths. In addition, the commissioner or the duly authorized representative:

(i) Shall have access at all reasonable times to offices of state agencies;

(ii) May examine all books, papers, records and documents in any such state agency as pertain directly to the purchase, control or distribution of commodities; and

(iii) May require any state agency to furnish such data, information or statement as may be necessary.

4. General provisions for purchasing services. State agency procurement practices for services shall incorporate the following:

a. The purchase of services by state agencies including the office of general services shall be conducted in a manner which accords first priority to preferred sources in accordance with the provisions of this article when the services required are available in the form, function and utility required by state agencies through a preferred source.

b. (i) Centralized contracts for services may be procured by the office of general services at the request of state agencies or as determined by the commissioner. The purchase of services by state agencies, except state agencies where the head of the agency is not appointed by the governor, including but not limited to the state education department, the department of law, and the department of audit and control, shall be conducted in a manner that accords second priority to centralized contracts meeting form, function and utility required by said agency, third priority to agency or multi-agency established contracts and fourth priority to other means of contracting.

(ii) The commissioner shall:

(A) review and consider prior to issuance of bid solicitations the term of the proposed contract based on factors, including, but not limited to, (a) the nature of the service, (b) the complexity of the procurement, (c) the identity and type of purchasers, (d) the
suitability of the contract for adding additional contractors during the
term, and (e) the estimated contract value. This determination shall be
documented in the procurement record.

(B) reasonably consider the aggregate amount of public sales by
potential vendors.

(C) review and consider the feasibility of creating regional contracts
for services being procured by the state.

(D) maintain a procurement record for each centralized contract
procurement identifying with supporting documentation, decisions made by
the commissioner during the procurement process. The procurement records
shall include, but not be limited to, each contract amendment, and the
justification for each.

c. When services are not available from preferred sources consistent
with the provisions of this article in the form, function or utility
required by state agencies, state agencies may procure services
independently or in conjunction with other state agencies in accordance
with the provisions of this section.

d. Service contracts shall be awarded on the basis of best value to a
responsive and responsible offerer; or, in the case of multiple awards,
in accordance with paragraph c of subdivision ten of this section.

e. The commissioner is authorized to permit purchases of services for
authorized users through the office of general services' centralized
contracts. Such authorized users so empowered shall accept sole
responsibility for any payment due with respect to such purchases.

g. All state agencies shall require all contractors, including
sub-contractors, that provide services for state purposes pursuant to a
contract, to submit an annual employment report for each contract for
services that includes for each employment category within the contract
the number of employees employed to provide services under the contract,
the number of hours they work and their total compensation under the
contract. Employment reports shall be submitted to the agency that
awarded the contract, the department of civil service and the department
of audit and control and shall be available for public inspection and
copying pursuant to section eighty-seven of the public officers law
provided that in disclosing such reports pursuant to the public officers
law, the agency making the disclosure shall redact the name or social
security number of any individual employee that is included in such
document.

5. Process for conducting state procurements. The process for
conducting state procurements for services and commodities shall be as
follows:

Determination of need. State agencies shall be responsible for
determining the need for a given service or commodity:

(i) For commodities, upon such determination of need, state agencies
shall ascertain whether the commodity is available in the form, function
and utility consistent with their needs from preferred sources and if so,
shall purchase said commodity from a preferred source in accordance
with the provisions of this article. If not so available, state agencies
shall determine whether the commodity is available in the form, function
and utility consistent with their needs on a centralized contract and if
so, except as provided in subparagraph (v) of paragraph a of subdivision
three of this section, shall purchase said commodity using the
centralized contract. If a commodity is not available in the form,
function and utility consistent with the needs of the state agency from
a preferred source or a centralized contract and as provided for in
subparagraph (v) of paragraph a of subdivision three of this section,
the state agency may procure the commodity independently or in
conjunction with another state agency in accordance with paragraph c of subdivision three of this section.

(ii) For services, upon such determination of need, state agencies shall ascertain whether the service is available in the form, function and utility consistent with their needs from preferred sources and, if so, shall purchase said service through the preferred source in accordance with the provisions of this article. If not so available, state agencies the heads of which are appointed by the governor:

(A) Shall purchase the service if it is available in the form, function and utility consistent with their needs using an established centralized contract procured by either the office of general services or another state agency;

(B) May request that the office of general services procure such a service, particularly with respect to those services having utility and/or benefit to more than one state agency; or

(C) May procure the service independently or in conjunction with another state agency.

6. Discretionary buying thresholds. Pursuant to guidelines established by the state procurement council: the commissioner may purchase services and commodities in an amount not exceeding eighty-five thousand dollars without a formal competitive process; state agencies may purchase services and commodities in an amount not exceeding fifty thousand dollars without a formal competitive process; and state agencies may purchase commodities or services from small business concerns or those certified pursuant to article fifteen-A of the executive law, or commodities or technology that are recycled or remanufactured, in an amount not exceeding two hundred thousand dollars without a formal competitive process.

6-a. Discretionary purchases. Notwithstanding the provisions of subdivision two of section one hundred twelve of this chapter relating to the dollar threshold requiring the state comptroller's approval of contracts, the commissioner of general services may make purchases or enter into contracts for the acquisition of commodities and services having a value not exceeding eighty-five thousand dollars without prior approval by any other state officer or agency in accordance with procedures and requirements set forth in this article. Notwithstanding the provisions of article four-C of the economic development law, the commissioner of general services may make purchases or enter into contracts for the acquisition of commodities and services having a value not exceeding thirty thousand dollars without prior approval by any other state officer or agency in accordance with procedures and requirements set forth in this article.

6-b. Determination of threshold amount. For determination of threshold amount purposes of determining whether a purchase is within the discretionary thresholds established by subdivision six of this section, the commissioner and state agencies shall consider the reasonably expected aggregate amount of all purchases of the same commodities or services to be made within the twelve-month period commencing on the date of purchase. Purchases of services or commodities shall not be artificially divided for the purpose of satisfying the discretionary buying thresholds established by subdivision six of this section. A change to or a renewal of a discretionary purchase shall not be permitted if the change or renewal would bring the reasonably expected aggregate amount of all purchases of the same commodities or services from the same provider within the twelve-month period commencing on the date of the first purchase to an amount greater than the discretionary buying threshold amount.
7. Method of procurement. Consistent with the requirements of subdivisions three and four of this section, state agencies shall select among permissible methods of procurement including, but not limited to, an invitation for bid, request for proposals or other means of solicitation pursuant to guidelines issued by the state procurement council. State agencies may accept bids electronically including submission of the statement of non-collusion required by section one hundred thirty-nine-d of this chapter and, starting April first, two thousand twelve, and ending March thirty-first, two thousand fifteen, may, for commodity, service and technology contracts require electronic submission as the sole method for the submission of bids for the solicitation. State agencies shall undertake no more than eighty-five such electronic bid solicitations, none of which shall be reverse auctions, prior to April first, two thousand fifteen. In addition, state agencies may conduct up to twenty reverse auctions through electronic means, prior to April first, two thousand fifteen. Prior to requiring the electronic submission of bids, the agency shall make a determination, which shall be documented in the procurement record, that electronic submission affords a fair and equal opportunity for offerers to submit responsive offers. Within thirty days of the completion of the eighty-fifth electronic bid solicitation, or by April first, two thousand fifteen, whichever is earlier, the commissioner shall prepare a report assessing the use of electronic submissions and make recommendations regarding future use of this procurement method. In addition, within thirty days of the completion of the twentieth reverse auction through electronic means, or by April first, two thousand fifteen, whichever is earlier, the commissioner shall prepare a report assessing the use of reverse auctions through electronic means and make recommendations regarding future use of this procurement method. Such reports shall be published on the website of the office of general services. Except where otherwise provided by law, procurements shall be competitive, and state agencies shall conduct formal competitive procurements to the maximum extent practicable. State agencies shall document the determination of the method of procurement and the basis of award in the procurement record. Where the basis for award is the best value offer, the state agency shall document, in the procurement record and in advance of the initial receipt of offers, the determination of the evaluation criteria, which whenever possible, shall be quantifiable, and the process to be used in the determination of best value and the manner in which the evaluation process and selection shall be conducted.

7-a. On or before February first, two thousand twelve, the commissioner of the office of general services shall submit to the speaker of the assembly and the temporary president of the senate a report describing:
   (a) the number of times the office of general services required electronic submission as the sole method by which bids could be submitted for the period from July first, two thousand ten through December thirty-first, two thousand eleven;
   (b) the estimated savings to the state as a result of the office of general services requiring electronic submission as the sole method by which bids could be submitted in response to a solicitation and the basis on which the estimate is made;
   (c) to the extent practicable, the size, minority- and women-owned business enterprise composition and geographic distribution of those vendors that submitted bids in response to an office of general services solicitation where electronic submission was the sole method by which bids could be submitted for the period from July first, two thousand ten to December thirty-first, two thousand eleven; and
(d) to the extent practicable, the size, minority- and women-owned business enterprise composition and geographic distribution of those vendors that submitted bids in response to an office of general services solicitation for those contracts described in subdivision seven of this section for the period from July first, two thousand eight through June thirtieth, two thousand ten.

8. Public notice. All procurements by state agencies, including, without limitation, the state university of New York and the city university of New York, in excess of fifty thousand dollars shall be advertised in the state's procurement opportunities newsletter in accordance with article four-C of the economic development law.

9. Soliciting and accepting offers. For purchases from sources other than preferred sources and for purchases in excess of the discretionary buying threshold established in subdivision six of this section:

a. The commissioner or a state agency shall select a formal competitive procurement process in accordance with guidelines established by the state procurement council and document its determination in the procurement record. The process shall include, but is not limited to, a clear statement of need; a description of the required specifications governing performance and related factors; a reasonable process for ensuring a competitive field; a fair and equal opportunity for offerers to submit responsive offers; and a balanced and fair method of award. Where the basis for the award is best value, documentation in the procurement record shall, where practicable, include a quantification of the application of the criteria to the rating of proposals and the evaluation results, or, where not practicable, such other justification which demonstrates that best value will be achieved.

b. The solicitation shall prescribe the minimum specifications or requirements that must be met in order to be considered responsive and shall describe and disclose the general manner in which the evaluation and selection shall be conducted. Where appropriate, the solicitation shall identify the relative importance and/or weight of cost and the overall technical criterion to be considered by a state agency in its determination of best value.

c. Where provided in the solicitation, state agencies may require clarification from offerers for purposes of assuring a full understanding of responsiveness to the solicitation requirements. Where provided for in the solicitation, revisions may be permitted from all offerers determined to be susceptible of being selected for contract award, prior to award. Offerers shall be accorded fair and equal treatment with respect to their opportunity for discussion and revision of offers. A state agency shall, upon request, provide a debriefing to any unsuccessful offerer that responded to a request for proposal or an invitation for bids, regarding the reasons that the proposal or bid submitted by the unsuccessful offerer was not selected for an award. The opportunity for an unsuccessful offerer to seek a debriefing shall be stated in the solicitation, which shall provide a reasonable time for requesting a debriefing.

d. All offers may be rejected. Where provided in the solicitation, separable portions of offers may be rejected.

e. Every offer shall be firm and not revocable for a period of sixty days from the bid opening, or such other period of time specified in the solicitation to the extent not inconsistent with section 2-205 of the uniform commercial code. Subsequent to such sixty day or other specified period, any offer is subject to withdrawal communicated in a writing signed by the offeror.
f. Prior to making an award of contract, each state agency shall make a determination of responsibility of the proposed contractor which shall supplement, as appropriate, but not supersede the determination of responsibility that may be required pursuant to section one hundred thirty-nine-k of this chapter.

g. A procurement record shall be maintained for each procurement identifying, with supporting documentation, decisions made by the commissioner or state agency during the procurement process. The procurement record shall include, but not be limited to each contract amendment and the justification for each.

10. Letting of contracts. Contracts for commodities shall be awarded on the basis of lowest price to a responsive and responsible offerer. Contracts for services shall be awarded on the basis of best value from a responsive and responsible offerer. Multiple awards for services and commodities shall be conducted in accordance with paragraph c of this subdivision.

a. Selection and award shall be a written determination in the procurement record made by the commissioner or a state agency in a manner consistent with the provisions of the solicitation. In the event two offers are found to be substantially equivalent, price shall be the basis for determining the award recipient or, when price and other factors are found to be substantially equivalent, the determination of the commissioner or agency head to award a contract to one or more of such bidders shall be final. The basis for determining the award shall be documented in the procurement record.

b. (i) Single or sole source procurements for services or commodities, or procurements made to meet emergencies arising from unforeseen causes, may be made without a formal competitive process and shall only be made under unusual circumstances and shall include a determination by the commissioner or the state agency that the specifications or requirements for said purchase have been designed in a fair and equitable manner. The purchasing agency shall document in the procurement record, subject to review by the state comptroller, the bases for a determination to purchase from a single source or sole source, or the nature of the emergency giving rise to the procurement.

(ii) State agencies shall minimize the use of single source procurements and shall use single source procurements only when a formal competitive process is not feasible. State agencies shall document in the procurement record the circumstances and the material and substantial reasons why a formal competitive process is not feasible. The term of a single source procurement contract shall be limited to the minimum period of time necessary to ameliorate the circumstances which created the material and substantial reasons for the single source award. Not later than thirty days after the contract award, state agencies shall, for all single source procurement contracts, make available for public inspection on the agency website, a summary of the circumstances and material and substantial reasons why a competitive procurement is not feasible. Any information which the contracting agency is otherwise prohibited by law from disclosing pursuant to sections eighty-seven and eighty-nine of the public officers law, shall be redacted from the documentation published on the agency website.

c. The commissioner or state agency may elect to award a contract to one or more responsive and responsible offerers provided, however, that the basis for the selection among multiple contracts at the time of purchase shall be the most practical and economical alternative and shall be in the best interests of the state, and further provided that the requirements set forth herein shall not preclude the commissioner from establishing multiple award contracts for reasons including
increased opportunities for small businesses to participate in state contracts.

d. It shall be in the discretion of the commissioner or state agency to require a bond or other guarantee of performance, and to approve the amount, form and sufficiency thereof.

e. The commissioner may authorize purchases required by state agencies or other authorized purchasers by letting a contract pursuant to a written agreement, or by approving the use of a contract let by any department, agency or instrumentality of the United States government and/or any department, agency, office, political subdivision or instrumentality of any state or states. A state agency purchaser shall document in the procurement record its rationale for the use of a contract let by any department, agency or instrumentality of the United States government or any department, agency, office, political subdivision or instrumentality of any other state or states. Such rationale shall include, but need not be limited to, a determination of need, a consideration of the procurement method by which the contract was awarded, an analysis of alternative procurement sources including an explanation why a competitive procurement or the use of a centralized contract let by the commissioner is not in the best interest of the state, and the reasonableness of cost.

f. The commissioner is authorized to let centralized contracts, in accordance with the procedures of this section, for joint purchasing by New York state and any department, agency or instrumentality of the United States government and/or any state including the political subdivisions thereof; provided however that any entity incurring a liability under such contract shall be responsible for discharging said liability.

11. Reasonableness of results. It shall be the responsibility of the head of each state agency to periodically sample the results of the procurement process to test for reasonableness; to ensure that the results withstand public scrutiny and that the quality and the price of the purchase makes sense; and to ensure that purchasing is conducted in a manner consistent with the best interests of the state.

12. Review by the office of the state comptroller. Review by the office of the state comptroller shall be in accordance with section one hundred twelve of this chapter.

13. Technological procurement improvements. The state procurement council may request that the office of general services provide, or recommend to the state comptroller to provide for the utilization of technological advances and efficiencies in the procurement process including, but not limited to, electronic ordering and payment, procurement cards and similar improvements.

14. Reporting. To support prudent procurement management, oversight and policy-making, the department of audit and control shall report annually on a fiscal year basis by July first of the ensuing year to the state procurement council, the governor, and the legislative fiscal committees providing data concerning active procurement contracts above fifteen thousand dollars, including but not limited to:

(i) a listing of individual and centralized contracts, including vendor name, comptroller approval dates, dollar value of such contracts, the state agency which let the contract and/or state agencies which purchased off centralized contracts, expenditures made on each such contract and by which agencies during the fiscal year and life to date, citing contract category codes, source selection method, including "lowest price", "best value", sole source, single source, negotiated and emergency procurement subtotaled by agency and by type of commodity or service;
(ii) frequency of contracts awarded during this fiscal year by number of bids/proposals and source selection method;

(iii) number of contracts disapproved by the department of audit and control during the fiscal year and reasons for disapproval by agency and by source selection method, number and outcome of bid protests; and

(iv) a summary report listing total number and amount of contracts awarded for the prior fiscal year and total year-to-date expenditures for all contracts, with subtotals by agency and major contract category including, but not limited to, consultant, construction, equipment, grants, leases, land claim, miscellaneous services, printing, repayment agreements, revenue agreements, intergovernmental agreements, and commodities; a comparison of centralized and agency contracts by number of contracts, number of agencies purchasing off of centralized contracts or entering into contracts, contract amounts and year-to-date expenditures; comparison of contracts by source selection method by number of contracts, contract amounts, and year-to-date expenditures.

(v) for each contract for services for state purposes: the number of employees, by employment category within the contract, employed to provide services under the contract, the number of hours they work and their total compensation under the contract;

(vi)(a) state agencies shall report annually on a fiscal year basis by July first of the ensuing year to the state procurement council, the governor, the legislative fiscal committees and the state comptroller the total number and total dollar value of single source contracts awarded by the agency during the fiscal year, and the percentage that such contracts represent of the agency's total number and total dollar value of contract awards during the reporting period.

(b) each state agency shall include with its report an assessment by the agency head of the agency's efforts to minimize the award of single source contracts;

(vii) all reports required under this paragraph shall be available for public inspection and copying pursuant to section eighty-seven of the public officers law provided that in disclosing such reports pursuant to the public officers law, the agency making the disclosure shall redact the name or social security number of any individual employee that is included in such document.

* NB Repealed June 30, 2016