Purpose:
The purpose of this bulletin is to update the Office of the State Comptroller's (OSC) requirements for contracts subject to the Procurement Opportunities Newsletter legislation. Chapter 862 of the Laws of 1990 amended Section 144 of the Economic Development Law to provide procedures for state agencies to follow when requesting an exemption from the Contract Reporter. This replaces Bulletin G-107A and contains additional clarifications as a result of the Procurement Stewardship Act (Article 11 of the State Finance Law).

Background:
In 1988, the Economic Development Law was amended by adding a new Article 4-C titled “The Procurement Opportunities Newsletter.” The newsletter, entitled The New York State Contract Reporter, is intended to ensure the integrity of the state procurement process by providing for regular, centralized public notice of state agency and public authority intentions to contract for goods and services in the amount of $5,000 or more.

The statute requires publication of the newsletter on a weekly basis. A minimum of 15 business days must elapse between publication of the notice and the date on which a bid or proposal is due. The statute also provides for exemptions to be granted to the Contract Reporter advertising requirements.

Exemptions:
The statute provides that no agency shall award, and the Comptroller shall not approve, a procurement contract unless notice of that contract first has appeared in the newsletter, or unless it is exempt. The following contracts are exempt under the statute:

1. Procurement contracts:
   a. Awarded on an emergency or critical basis.
   b. For which publication is not feasible.
   c. Exempted pursuant to Section 4, Procedures for Requesting Exemptions, of this bulletin.

   NOTE: No exemption shall be granted for any contracts, except for contracts...
awarded on an emergency or critical basis, for which competitive bidding is required by law.

2. Procurement contracts being rebid or re-solicited for substantially the same goods or services within 45 business days after the date on which bids or proposals were originally due.

3. Procurement contracts awarded pursuant to Section 162 (Preferred Sources) of the State Finance Law. Preferred sources include the Department of Correctional Services - Correctional Industries; Office of Children and Family Services and the Office of Temporary and Disability Assistance approved charitable not-for-profit agency for the blind; Office of Mental Health approved special employment program serving mentally ill persons; Education Department approved charitable not-for-profit agency for other severely disabled persons; U. S. Department of Veterans' Affairs operated workshops for qualified veterans performing work within this state.

4. Procurement contracts in an amount less than $10,000 awarded by the State University of New York or the City University of New York.

5. Procurement contracts awarded to not-for-profit providers of human services pursuant to a non-competitive selection process.

Procedures:

1. **Acceptable Proofs of Procurement Notice in the Newsletter**

   OSC will accept either of the following as proof that a notice appeared in the newsletter:

   a. A copy of the notice that was published in the newsletter submitted with the contract, or

   b. A statement submitted with the contract referencing the date, volume, and page number of the newsletter in which the notice appeared.

2. **Definitions**

   a. **Emergency** - For the purposes of this bulletin, an "emergency" is an unanticipated, sudden, and unexpected occurrence beyond the control of an agency which threatens: (i) the life, health, safety, or welfare of any person, or (ii) the continued public use or function of property of the State of New York.

   b. **Critical** - For the purposes of this bulletin, "critical" is defined as a situation, excluding an emergency, which impacts a significant governmental operation requiring immediate governmental action.

   **NOTE:** An agency's failure to properly and timely plan in advance for all procurements, which then results in a situation in which normal procurement practices cannot be followed, will not constitute a critical basis for an exemption.

   c. **Not Feasible** - For the purposes of this bulletin, "not feasible" is defined as a situation or set of circumstances in which it can be demonstrated and documented that to provide notice in the *Contract Reporter* cannot be undertaken, or would serve no useful purpose.
d. **Single Source** - For the purposes of this bulletin, "single source" means a procurement in which, although two or more contractors can supply the required commodities or services, the agency, with proper justification, selects one contractor over another based upon a written finding setting forth the material and substantive reasons. The circumstances leading to the selection of the contractor, including the alternatives considered and the rationale for selecting the specific contractor, must be included in the *Contract Reporter* exemption request. If available, the method for determining the reasonableness of cost should be included at this time as well. If not available, the reasonableness of cost must be submitted with the contract package.

e. **Sole Source** - For the purposes of this bulletin, "sole source" means a procurement in which only one contractor is capable of providing the required commodities or services. The unique nature of the requirement and the determination of why no other contractor could provide the services must be included in the *Contract Reporter* exemption request. If available, the method of determining the reasonableness of cost should be included at this time as well. If not available, reasonableness of cost must be submitted with the contract package.

**NOTE:** Agencies are reminded to first seek an exemption by OSC from giving notice in the *Contract Reporter* before proceeding to enter into a single or sole source contract.

### Procedures for Requesting Exemptions:

Any agency, other than those public benefit corporations and public authorities whose contracts and payments are not pre-audited and approved by OSC, may request an exemption. Individual requests for exemptions will be handled in accordance with the following procedures:

1. All requests for exemptions shall be in writing (unless an emergency exists), signed by the agency’s chief fiscal officer or agency designee, and shall clearly state the nature of the contract, reasons for the exemption, and estimated value.

2. If an emergency exists, OSC will accept oral requests, provided the agency follows up immediately with a written request clearly stating the nature of the contract and the reasons for the exemption.

3. An exemption may be requested for a single or sole source procurement when a circumstance or situation exists that would render a notice in the *Contract Reporter* to be not feasible.

4. Regardless of the type of exemption requested, OSC will approve or deny the request for the exemption in writing, as soon as practicable.

5. OSC will grant or deny an exemption for each individual request. However, in accordance with Article 4-C, OSC may exempt a specific class of procurement contracts by regulation.

6. Any agency which receives an exemption must still publish a notice of either the letting or award of the contract in the *Contract Reporter*. Prior to approving the contract, agencies which are granted an exemption will be required to provide OSC with proof confirming that they have requested the Department of Economic
Development to publish the notice of the exemption in the newsletter. The notice must state the reason for the exemption and be placed as soon as practicable. Such proof should include a copy of the request form or the actual advertisement. If OSC determines that such a notice would affect the ability of law enforcement agencies to carry out investigations or agencies to protect security operations, notice of such exemption shall not be published.

Agencies granted exemptions will be responsible for maintaining documentation showing they have complied with the statute.

Questions: If you have any questions regarding this bulletin, please contact:
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Bureau of Contracts
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