

**NEW YORK STATE PROCUREMENT BULLETIN
THE PROCUREMENT RECORD
AND CHECKLIST**

I. Purpose

The purpose of this bulletin is to describe the requirements of the Procurement Record (Record), as mandated by the Procurement Stewardship Act of 1995 (the Act) and amended by Chapter 95 of the Laws of 2000.

Agencies are required to maintain a record of every procurement. As defined in the Act, the Record means the documentation of the decisions made and the approaches taken in the procurement process. In addition, the Record serves as an audit trail of the procurement, as the basis for the Office of the State Comptroller's (OSC) review and final written determination on the contract, and as the principal resource for responding to inquiries and debriefing unsuccessful bidders. The Record serves to protect both the agency conducting the procurement and the vending community, during and after the procurement.

A Procurement Record is required to be maintained for all procurements. To ensure the Record is complete and to achieve greater uniformity among state agency submissions, agencies must submit a Procurement Record Checklist (Checklist) for every procurement that requires OSC approval of the contract. OSC may also require certain agencies to submit a Checklist before processing payments for procurements that did not need prior contract approval.

II. Applicability and Scope

This bulletin applies to all state agencies, boards, commissions, offices and institutions, including the State University of New York and the City University of New York. It covers the acquisition of services and commodities, including technology. The thresholds noted in this bulletin are those that are generally applicable. Where authorized by law for certain agencies, higher thresholds shall apply.

The Record shall be maintained for each procurement identifying, with supporting documentation, decisions made by the agency during the procurement process. 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. State agencies shall document the determination of the method of procurement and the basis of award in the

Record. Where the basis for award is the best value offered, the state agency shall document in the 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.

Contracts entered into pursuant to Article XI-B of the State Finance Law are not governed by the requirements of this Bulletin.

III. The Checklist

The purpose of the Procurement Record Checklist (copy attached) is to assist agencies in preparing, documenting, and submitting the procurement package and record to OSC. It will serve to ensure greater uniformity among agency submittals. It will also assist OSC in streamlining the approval process. In addition, the Checklist will serve as a resource to report specific data, including the number of service and commodity contracts that are competitively solicited, the number of contracts awarded on the basis of “lowest price” or “best value” among responsive and responsible offerers, etc., which is a requirement of the Act.

The Checklist follows the procurement process, from documenting the need and describing the commodity or service being procured to the contract execution. The amount of documentation necessary to support the decisions made by the agency during the procurement process is dependent upon the type and complexity of the procurement.

While the Checklist is generally self-explanatory, the following matrix can be used to assist agencies in completing the checklist correctly. At a minimum, agencies will generally be required to complete sections numbered 1, 2, 3, 4, and 9. The checked (T) sections should be completed for each category of procurement.

Procurement Record Checklist

Method of Procurement	Checklist Section								
	1	2	3	4	5	6	7	8	9
IFB	T	T	T	T			T	T	T
RFP	T	T	T	T	T		T	T	T
RFP (Best Value)	T	T	T	T	T	T	T	T	T
Single Source	T	T	T	T				T	T
Sole Source	T	T	T	T				T	T
Emergency	T	T	T	T			T	T	T
Consortia	T	T	T	T				T	T
Mini-Bid	T	T	T	T			T	T	T

IV. Procurement Record Documentation

The following is a more detailed description of the documentation needed by an agency to support the Record.

Preferred Source Procurement

When purchasing services or commodities from preferred sources, the Record shall include:

1. The voucher, purchase order, or contract and AC 340, and required signature/attachments, as detailed in Section V.
2. Relevant documentation between the agency and the preferred source(s) regarding the prospective procurement. Documentation may include any substantive correspondence which assisted the agency in selecting among preferred sources and/or helped solidify the procurement.

Non Preferred Source Procurements

When an agency chooses not to procure a commodity or service available from a

preferred source, the Record must always include documentation that a preferred source was notified of the prospective purchase, when and as required in the Preferred Source Guidelines, as well as any written objection raised by the preferred source. In addition, the Record must always include the agency's rationale for electing **not** to buy from the preferred source.

A. Agencies Buying From a Centralized Contract

When procuring services or commodities from a centralized contract, the Record shall include a copy of the required purchase order, or an AC 340, as detailed in Section V. The purchase order must include a reference number of the centralized contract.

A Checklist is not required unless an agency uses a statewide, centralized contract that requires a mini-bid process to make an award. For mini-bid procurements, the Record must also include, in addition to the Checklist, all documentation (i.e., the contract or purchase order; the IFB or RFP; and other documentation that would normally be submitted to OSC). If the selected vendor is other than the lowest price vendor, written justification supporting the selection must also be a part of the Record.

B. Agency Procurements Under the Discretionary Buying Thresholds

Procurements under the discretionary buying threshold of \$15,000 (see New York State Procurement Bulletin - Discretionary Purchases) for state agencies (\$50,000 in the case of the recycled or remanufactured commodities and technology, and commodities or services from NYS Small Business and M/WBE), the Record shall include:

1. For procurements under \$15,000, the Record shall include:
 - a. A voucher, purchase order, or contract and AC 340, and required signature/attachments, as detailed in Section V.
 - b. The notification of preferred sources, when applicable, as noted above.
 - c. Evidence:
 - (1) How the vendor was selected; and
 - (2) The price is reasonable and how such a determination was made.
 - d. Checklist, if required by OSC.
2. For purchases between \$15,000 and \$50,000 for commodities or services from NYS small businesses or certified MWBEs, or for remanufactured or recycled commodities or technology, the Record shall include:

- a. A purchase order or contract and AC 340, and required signature/attachments, as detailed in Section V.
- b. Notification of preferred sources, when applicable, as noted above.
- c. Evidence:
 - (1) How the vendor was selected; and
 - (2) The price is reasonable and how such a determination was made.
- d. The Checklist
- e. Proof of advertisement in the Contract Reporter, or an OSC approved exemption.

(NOTE: The Procurement record and Checklist requirements detailed in the following sections C through G apply to all procurements greater than \$15,000. In addition, if an agency **elects** to use one of the methods outlined in sections C through G for procurements valued at less than \$15,000, the detailed record applicable to the particular procurement method utilized must be maintained by the agency and submitted to OSC if requested.)

C. Agency Procurements Using an Invitation for Bid (IFB)

IFBs may be used to procure either commodities or services, so long as commodities are awarded on the basis of lowest price and services on the basis of best value where best value has been interpreted to mean lowest price among responsive and responsible offerers.

For competitive procurements using an IFB for commodities or services, the Record shall include:

1. A purchase order, contract and AC 340, and required signature/attachments, as detailed in Section V.
2. A copy of the Invitation for Bid (see State Procurement Guidelines Section Six for details on IFB's).
3. Notification of preferred sources, when applicable, as noted above.
4. Documentation of a Competitive Field

The IFB should be made available to as many competitors as practical.

The Record must include documentation to substantiate this, using a bidders list of the names and addresses of potential offerers, or some other form as the agency may find appropriate.

Agencies are encouraged to make use of established agency or OGS bidder lists, trade journals, yellow pages, or other reference materials. If an advertisement is placed in a newspaper, a copy of the advertisement must be included in the Record.

5. Certified Bid Tabulation

The certified bid tabulation must be an original, signed, and certified by an authorized representative of the agency. The tabulation should identify the date, time, and place of opening; all bids received, and all no-bids. The tabulation should list bids ranked numerically with the lowest bidder as number one; no bids and no responses should be designated as such. Bid tabs should rank offerers in a manner consistent with the method of award (by item, lot, grand total, etc.)

6. Bid Proposal Forms

All original bids and returned no bids must be included in the Record, together with evidence of any late bids received. (Note: Although all bids and no bids are to be included in the Record, all bids and not bids do not have to be submitted to OSC when OSC approval of the contract is required. See OSC Bulletin G-175 for details on required submissions.)

7. Evidence of How the Winning Bid was Selected

The Record must evidence, in writing, the process by which the agency made the award and its relationship to the method of award as detailed in the IFB. The Record should also include:

- a. Documentation detailing why an offerer is determined to be non-responsible or why the offer is determined to be non-responsive.
- b. Documentation of any negotiations concerning specific terms and conditions.
- c. Any bid protest correspondence, including a copy of the vendor's protest and all agency responses.

Once the agency's rationale for assessing the responsiveness and responsibility of the offerer is applied, the result should be an award to the lowest price responsive and responsible offerer.

Where the contract value exceeds \$15,000, the Record shall also include:

8. Checklist
9. Proof of advertisement in the Contract Reporter, or an OSC approved exemption.

E. Agency Procurements Using a Request for Proposal

An RFP is typically reserved for highly complex procurements. RFPs are used in procurements where factors, in addition to cost, are of equal or greater importance and a comparative evaluation of the proposals is necessary. RFPs generally apply to services, and impose a higher degree of responsibility and accountability on the procuring agency. This is reflected in the composition of the Record.

For competitive procurements using an RFP for services, and in rare circumstances for commodities, the Record shall include:

1. Notification of preferred sources, when applicable, as noted above.
2. The purchase order, contract and AC 340, and required signature/attachments, as detailed in Section V.

In addition, the Record shall include:

1. *A Copy of the Request for Proposals*

The RFP is intended to set forth a detailed description of the agency's requirements for the purchase, to ensure relevant offerers have an equal opportunity to submit responsive proposals, and to provide offerers with a general understanding of how their proposals will be evaluated. (see Procurement Guidelines Section Seven for details on RFPs.)

2. *Documentation of a Competitive Field*

The RFP should be available to as many competitors as possible, and the agency must make reasonable efforts to identify potential offerers. The Record must include documentation to substantiate this, using a bidders list of the names and addresses of potential offerers, or some other form as they agency may find appropriate. Agencies are encouraged to make use of established agency or OGS bidders lists, industry and trade associations, feedback from a Request for Information (if used), and other sources, as applicable. If an advertisement is placed in a newspaper, a copy of the advertisement must be included in the Record.

3. *Evaluation Criteria and Design*

The procuring agency must determine prior to the initial receipt of proposals the evaluation process and the evaluation instrument that will be used to determine the best value solution. The Record must include:

- a. Documentation of the evaluation process (i.e., the organization of the evaluation teams, a description of the evaluation methodology, any prequalification criteria that may apply, the scoring methodology, the procedure or formula for melding technical and financial scores, etc.).
- b. A copy of the evaluation instrument (i.e., qualitative and quantitative measures, cost/benefit or life cycle cost analysis, and other factors affecting the evaluation of the technical and financial proposals).
- c. Any modifications to the process or instrument that were made and the rationale for those modifications.
- d. Any determination that an offerer is not responsible.
- e. A written determination for the basis of award and selection and any bid protest correspondence, to include a copy of the vendor's protest and any agency responses or, for more complex procurements, a management summary of the evaluation results.

4. Tabulation of Proposals

The tabulation of proposals must be an original, signed, and certified by an authorized representative of the agency. The tabulation should identify the date, the time and place received, all proposals received, all no-proposals, and no responses.

5. Successful and Unsuccessful Proposals

All original proposals and returned no proposals must be included in the Record. (Note: Although all proposals and no proposals are to be included in the Record, all bids and not bids do not have to be submitted to OSC when OSC approval of the contract is required. See OSC Bulletin G-175 for details on required submissions.)

Where the contract value exceeds \$15,000, the Record shall also include:

6. Checklist
7. Proof of advertisement in the Contract Reporter, or an OSC approved exemption.

F. Single or Sole Source Procurements

A sole source procurement is defined as one in which only one vendor can provide the commodities or services required by the agency. A single source procurement is defined as one in which two or more vendors can supply the commodity or service required by the agency, but the agency selects one vendor over the other based on a specific rationale. Because these types of procurements represent exceptions to the rule, the documentation required in the Record must fully explain the actions taken by the agency.

For single or sole source procurements for commodities or services, the Record shall include:

1. A purchase order, contract and AC 340, and required signature/attachments, as detailed in Section V.
2. Notification of preferred sources, when applicable, as noted above.
3. A written quotation from the offerer.

Where the contract value exceeds \$15,000, the Record shall also include:

4. Checklist
5. Proof of advertisement in the Contract Reporter, or an OSC approved exemption.

In addition, for sole source purchases, documentation in the Record must include an explanation of:

1. The unique nature of the requirement; including a description of other models, brands, potential offerers, etc., that were considered and explanation of their unacceptability.
2. The basis upon which it was determined that there is only one known vendor able to meet the need (i.e., the steps taken to identify potential competitors).
3. The basis upon which the agency determined the cost to be reasonable (i.e., a "fair market price" that could be anticipated had normal competitive conditions existed, and how that conclusion was reached).

For single source purchases, documentation in the Record must also include an explanation of:

1. The circumstances leading to the selection of the vendor, including the alternatives considered.
2. The rationale for selecting the specific vendor.

3. The basis upon which the agency determined the cost to be reasonable.

G. Emergency Purchases

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 New York State.

For procurements conducted under an emergency situation, the Procurement Package shall include:

1. The purchase order, contract and AC 340, and required signature/attachments, as detailed in Section V.
2. Written explanation of the emergency determination signed by the agency head or designated official;
3. Certified tabulation of quotations received and an explanation of vendor selection if other than the low bidder; and
4. Written quotation from the selected vendor.

Where the contract value exceeds \$15,000, the Record shall also include:

5. Checklist
6. Proof of advertisement in the Contract Reporter, or an OSC approved exemption.

V. OSC Requirements

A. Purchase Order

Purchase orders should be completed in full, including the agency name and code; vendor name and address; the billing address; the shipping instructions, if different than the billing address; a description of what is being purchased, including quantities and unit prices; and any special provisions, including special delivery schedules, shipping terms, if not FOB, special payment provisions, and any inspection requirements that affect the purchase.

The total purchase must be encumbered with the purchase order. When multiple deliveries are required, funds should be encumbered for purchases anticipated during the entire fiscal year. The purchase order must be signed by individual authorized in accordance with OSC authorized signature requirements.

OR

B. Contract

Two original copies of the contract and appropriate number of signature pages, including an agency certification and the contract number (see bulletin G-111) must be submitted. The original copy, once approved, will be filed with OSC while the additional copy will be used for payment purposes. Upon approval, the signature pages will be returned to the agency with the OSC approval stamp. It is the agency's responsibility to attach the signature pages to the proper contract documents; AND,

C. Contract Encumbrance (AC 340)

The Record must include the AC 340 document, signed by the agency finance officer or designee. Also, the signature and telephone number of the preparer should be included. The amount required for payment for the fiscal year must be fully encumbered. The AC 340 document is used to establish a master file of the contract and to encumber the necessary funds for payment; AND

D. Required Signatures/Attachments

The Record must include the signatures of contracting parties, in ink and dated showing the title of the signatory parties. If there are any changes to the text of the original contract prior to OSC's review, they must be dated and initialed by all signatory parties. Agencies must have on file with OSC all individuals authorized to sign contracts. The Record must include the following signatures and/or attachments prior to submission to OSC:

1. Attorney General's approval (not required on commodity contracts).
2. Appendix A.
3. MacBride Principles.
4. An acknowledgment of contractor's signature.
5. Non-collusive bidding certification.
6. Omnibus Procurement Act of 1992 (bid form).
7. Article 15A.

E. OSC Final Written Determination

No contract exceeding \$15,000 shall become effective until OSC approval

is attained. In accordance with the Act, OSC must formally act on each contract within ninety days. The approved document transmittal will serve as OSC's written determination.

*OFFICE OF THE STATE COMPTROLLER
BUREAU OF STATE EXPENDITURES
THE PROCUREMENT RECORD CHECKLIST*

Agency Code/Name: _____

Batch No./Contract No. or Purchase Order No.: _____

Contractor: _____

Contract Period: _____ Renewal Period: _____

1. Description of the Commodity/Service Being Procured: _____

2. Need Statement: _____

3. Procurement Method/Method of Award: (check all that apply)

- | | |
|--|--|
| <input type="checkbox"/> IFB - Lowest bid meeting specifications | <input type="checkbox"/> Single Source |
| <input type="checkbox"/> RFP - Evaluation of technical and cost | <input type="checkbox"/> Sole Source |
| <input type="checkbox"/> RFP - Evaluation of technical and cost (best value specified) | <input type="checkbox"/> Emergency |
| <input type="checkbox"/> Mini Bid | <input type="checkbox"/> Consortia |
| | <input type="checkbox"/> Other _____ |

4. Procurement Opportunities Newsletter (Contract Reporter)

- Advertisement Notice/Agency Certification Attached
- OSC Exemption Attached
- Exempted Per Statute

5. If an RFP was the chosen procurement method, the following information must be completed to meet the requirements of Article 11 of the State Finance Law. (A separate document may be used, or agencies may reference specific documents and/or sections of the RFP.)

a. Explain the process used in ensuring a competitive field: _____

b. Explain the scope of work to be performed under the contract: _____

c. List the evaluation criteria used to evaluate the proposals: _____

d. Explain the manner in which the evaluation was conducted and the selection was made (Detailed Method of Award): _____

e. Explain the basis for the award and selection of the successful offeror: _____

6. If this is a "best value" procurement:

a. List the evaluation criteria used to arrive at best value: _____

b. Explain the process used to determine best value: _____

7. Summary of competitive procurement:

- a. Number of bids solicited: _____
- b. Number of bids received: _____
- c. Number of no-bids received: _____
- d. Number of no replies: _____
- e. Number of rejections: _____
- f. Number of protests: _____

8. OSC documentation required (minimum):

- Competitive Procurement
 - Bidders list
 - RFP/IFB
 - Certified bid tab/evaluation memo
 - All original bids/no bids
- Non Competitive Procurement
 - Justification for Selection
 - Justification of Reasonableness of Price

9. Legal Requirements (check those which apply):

- | | |
|---|---|
| <input type="checkbox"/> Signatures <ul style="list-style-type: none"><input type="checkbox"/> Agency<input type="checkbox"/> Contractor<input type="checkbox"/> Acknowledgment | <input type="checkbox"/> Required Clauses <ul style="list-style-type: none"><input type="checkbox"/> Appendix A<input type="checkbox"/> OPA Language<input type="checkbox"/> MacBride Language<input type="checkbox"/> Article I5-A<input type="checkbox"/> Non-Collusive Bidding Certificate |
| <input type="checkbox"/> Approvals <ul style="list-style-type: none"><input type="checkbox"/> Division of the Budget<input type="checkbox"/> Civil Service<input type="checkbox"/> Attorney General | <input type="checkbox"/> System Documents <ul style="list-style-type: none"><input type="checkbox"/> AC 340 Contract Encumbrance<input type="checkbox"/> Scheduled Contract Payments<input type="checkbox"/> AC 130 Purchase Order |

Agency Signature: _____ Telephone No.: _____

OSC Auditor: _____ Date: _____