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**NYS Procurement Bulletin
Discretionary Purchasing Guidelines**

I. INTRODUCTION

The purpose of this bulletin is to provide guidelines for the use of the discretionary purchasing authority granted by the New York State Finance Law.

This bulletin applies to all State agencies, boards, commissions, offices and institutions. It applies to purchases up to \$50,000 (or up to \$85,000 or \$100,000 as described below) for services and commodities not available in the form, function and utility that meet an agency's needs from Preferred Sources or an Office of General Services (OGS) Centralized Contract.

Agencies should, when practical and appropriate, consider the anticipated annual expenditures for a commodity or service to determine which procurement methodology to use. Aggregate purchases of similar commodities or services within a 60 day period, absent extenuating circumstances, are deemed a single transaction (9 NYCRR §250.2(h)). When an agency can reasonably anticipate repeat purchases are necessary, the agency should select the appropriate procurement process to cover such aggregate needs, which may include a competitive bid.

NOTE: This bulletin applies only to those purchases made under Section 163 of the State Finance Law. It does not apply to procurements governed under other sections of law including, but not limited to construction, architecture, engineering and surveying services, printing, etc.

II. DISCRETIONARY BUYING THRESHOLD

The Discretionary Buying Threshold for services and commodities, not available from Preferred Sources or from the OGS Centralized Contracts, is generally \$50,000 for State agencies and \$85,000 for OGS. The threshold is increased to \$100,000 for purchases from a NYS small business; a firm certified as a Minority and/or Women Owned Business Enterprise (M/WBE) by the New York State Department of Economic Development; *or* for purchases of commodities or technology that are recycled or remanufactured (State Finance Law § 163(6)).

Purchases up to the Discretionary Buying Threshold are not subject to the formal competitive bidding requirements set forth in State Finance Law §163. Agencies must, however, comply with their internal policies and procedures governing discretionary

purchases, which should include an assessment as to whether a formal competitive procurement process, or one that is less formal but still competitive, may best meet the agency's needs. State Finance Law Section 112(2)(a) requires prior approval by the Comptroller for contracts exceeding \$50,000. For OGS, the prior approval limit is \$85,000.

For purchases up to the Discretionary Buying Threshold, each agency must:

- i) ensure that the commodities and services acquired meet its form, function and utility needs;
- ii) document and justify the selection of the vendor;
- iii) document and justify the reasonableness of the price; and
- iv) ensure that the State buys from responsible vendors.

NOTE: Discretionary purchases \$15,000 or over must be advertised in the Contract Reporter (Economic Development Law § 141(3)). Quarterly Contract Reporter ads are required for purchases between \$5,000 and \$15,000. (See NYS Procurement Bulletin - Contract Reporter Quarterly Listings.)

III. "HOW TO" PROCEDURES

Each agency must first review the "List of Preferred Source Offerings" <http://www.ogs.state.ny.us/procurecounc/pdfdoc/pslist.pdf> and determine if the desired commodity or service is available from a Preferred Source in the form, function and utility that meets its needs (see State Finance Law § 163(3)(a)(i) and §163(4)(a); see also NYS Procurement Bulletin – Preferred Source Guidelines.). Similarly, the agency must review OGS Centralized Commodities Contracts and should review OGS Centralized Service Contracts to determine if the desired commodity or service is available to meet the agency's need.

If the above reviews do not meet the agency's needs, the following steps apply:

A. Purchases Under \$15,000.00: Agencies must maintain justification to support both the vendor selection and the reasonableness of the price. Methods for determining reasonableness of price include, but are not limited to:

- Informal quotes (e.g., telephone or written),
- Cost to other governmental entities,
- Historical cost or price comparisons, or
- OGS or Less, where applicable

Document in the Procurement Record the basis for the conclusion that the price is reasonable. "Reasonable" means a "fair market price" based on normal competitive conditions and not necessarily the lowest possible price.

Agencies are required to advertise in the Contract Reporter on a quarterly basis for anticipated purchases between \$5,000 and \$15,000. Agencies are encouraged to consider vendors responding to advertisements in the Quarterly Listings.

B. Purchases from \$15,000.00 to \$50,000.00: In addition to the above, Contract Reporter advertisement documentation is required.

C. Purchases from \$50,000.01 to \$100,000.00: This range applies to procurements from New York State Small Businesses, New York State certified Minority and/or Women Owned Enterprises or for commodities and technology that are recycled or remanufactured. To identify a certified M/WBE, an agency consults the Department of Economic Development's directory of certified minority and women-owned business enterprises (<http://205.232.252.35>). As applicable, obtain vendor certification that the commodity or technology is recycled or remanufactured;

NOTE: A "Small Business Concern" or "small business" means a business which is resident in this state, independently owned and operated, not dominant in its field and employs one hundred or less persons.

In addition to the requirements stated above in A and B, OSC prior approval and a written quote from the selected responsible vendor are required.

IV. PURCHASING GUIDELINES FOR FRESH EGGS, FRUITS AND VEGETABLES

An agency may purchase within a 15-day period, without formal competitive bidding, up to \$10,000 for each of the categories of fresh eggs, fresh fruit, and fresh vegetables from a NYS grower, NYS producer, or NYS association of growers and producers (9 NYCRR § 250.2(i)). An agency must determine the price is reasonable and comparable to current market prices.