Procurement Lobbying Act
Procurement Lobbying Act (PLA)

In August 2005, the Legislative Law and the State Finance Law (Sections 169(9)(f), 139-j and 139-k), were amended to include provisions for the regulation of attempts to influence State and other governmental entity procurement contracts. It was titled the Procurement Lobbying Act of 2005 (PLA).

The PLA applies to all contracts that CUNY enters into with a vendor for commodities or services having an estimated value greater than $20,000.

The law requires the procuring entity to make a separate responsibility determination as to whether the offerer has: (1) knowingly and willfully violated the prohibitions against impermissible contacts or certain ethics provisions, or failed to timely disclose accurate and complete information or otherwise failed to cooperate with the procuring agency; or (2) failed to disclose prior determinations of non-responsibility for any of the above reasons within the previous 4 years by any governmental entity.

For each impacted contract, the successful vendor must complete and submit two PLA forms. They are:
- Form 1 (Officer’s Affirmation of Understanding of and Agreement pursuant to SFL §139-j(3) and § 139-j(6)(b))
- Form 2 (Offerer Disclosure of Prior Non-Responsibility Determinations)

Both forms must be submitted by the vendor to CUNY as part of the procurement process and forwarded by CUNY as part of the Procurement Record to OSC with the resultant contract.

On the following pages are documents that provide additional information regarding the actions that CUNY must take to comply with the provisions of the PLA. These include:
- OSC Bulletin G-224 (Procurement Lobbying Act)
- Copies of blank Forms 1 and 2
- Copy of required OSC Governmental Entity Representation Concerning Compliance with the State Finance Law §§139-j and 139-k form
- Termination language that should be in all contracts

Forms and additional information are available by visiting the following websites:

OSC Required Form: http://osc.state.ny.us/agencies/gbull/attachments/g-224att.dot

Guidelines and FAQ’s:  
http://www.ogs.state.ny.us/aboutOgs/regulations/defaultAdvisoryCouncil.html
Procurement and Disbursement Guidelines (G-Bulletins)

**Bulletin Category:** Procurement & Contracting

**Bulletin Number:** g-224

**Date Issued:** 4/4/06  **Date Last Updated:** 5/14/06

**Bulletin Name:** Procurement Lobbying Act

**Purpose of Update:** This bulletin is being updated in order to reflect a change in the form agencies need to submit to OSC as a part of their procurement record, the "Governmental Entity Representation Concerning Compliance with State Finance Law §§139-j and 139-k".

While the Procurement Lobbying Act requires disclosure of prior findings of non-responsibility for violations of State Finance Law (SFL) 139-j and 139-k from all offerers, OSC procurement record requirements are being simplified so that an agency does not have to submit the disclosure documents from the unsuccessful offerors with the contract package. Instead, the form "Governmental Entity Representation Concerning Compliance with State Finance Law §§139-j and 139-k" has been modified to add a place for the agency to note the name(s) of any offerors who disclosed findings of non-responsibility for violations of SFL 139-j and 139-k. Please use the new form effective immediately.

**Background:** On August 23, 2005, the Legislative Law and the State Finance Law (SFL) were amended to include provisions for the regulation of attempts to influence State and other governmental entity procurement contracts. Sections 139-j and 139-k of the SFL impose new procurement record requirements relating to lobbying on procurement contracts. For State agencies and public authorities whose contracts are subject to the Comptroller’s approval, the Office of the State Comptroller (OSC) will examine the contract package to ensure that these new requirements are included in the procurement record.

The purpose of this bulletin is to assist State agencies and public authorities in complying with SFL §§ 139-j and 139-k by outlining the new procurement record requirements of those sections. In addition, this bulletin includes a form that State agencies and public authorities shall complete and submit in order to facilitate the Comptroller’s contract review.

**Contracts Subject to this Bulletin:** Subject to limited exceptions, all contract transactions with estimated annualized expenditures in excess of $15,000 resulting from procurement transactions initiated on or after January 1, 2006 are subject to the new procurement lobbying requirements and

http://osc.state.ny.us/agencies/gbull/g-224.htm  11/21/2008
additional procurement record requirements.

The SFL defines a procurement contract as any contract or other agreement for an article of procurement involving an estimated annualized expenditure in excess of fifteen thousand dollars. Under the new law, grants, SFL Article XI-B contracts, intergovernmental agreements, railroad and utility force accounts, utility relocation project agreements or orders and eminent domain transactions are not deemed to be procurement contracts.

Subject to certain exceptions, an assignment, amendment, renewal or extension of a procurement contract or any material change in a procurement contract resulting in a financial benefit to the offerer is a governmental procurement covered by the provisions of the Act.

The law excludes amendments that are "authorized and payable" under the terms of the original procurement contract as it was finally awarded or approved by the Comptroller. A few examples of amendments that are "authorized and payable" are: a lease agreement that may be extended for a stated period of time at the rent provided for in the original lease or at that rent plus an escalator; or a highway contract that authorizes change orders that are subject to unit pricing.

We note that backdrop contracts, and any contracts resulting from mini-bids pursuant to the backdrop contracts, are also subject to this law.

As stated above, SFL §139-j and SFL §139-k impose additional procurement record requirements. These requirements must be satisfied when submitting contracts to OSC for its approval.

OSC has developed the attached form "Governmental Entity Representation Concerning Compliance with State Finance Law §§139-j and 139-k" which shall be used by contracting entities in providing the representations outlined in numbers 1 through 5 below. The completed and signed form shall be included in the procurement record submitted with contract transactions sent to OSC for review and approval:

"Governmental Entity Representation Concerning Compliance with State Finance Law §§139-j and 139-k" Form - pdf version

"Governmental Entity Representation Concerning Compliance with State Finance Law §§139-j and 139-k" Form - word version

1. Vendor Responsibility Determination

The procurement record for every contract must continue to include a determination that the offerer is responsible in accordance with Comptroller's Bulletin G-221 on Vendor Responsibility. In addition to the general responsibility determination required under SFL §163(9)(f), SFL §139-j and §139-k require that the procuring entity make a separate responsibility determination as to whether the offerer has: (1) knowingly and willfully
violated the prohibitions against impermissible contacts or certain ethics provisions, or failed to timely disclose accurate and complete information or otherwise failed to cooperate with the procuring entity; or (ii) failed to disclose prior determinations of non-responsibility for any of the above reasons within the previous four (4) years by any governmental entity.

2. Offerer Certification; Complete Disclosure

Every procurement record must include a disclosure by offerers with regard to non-responsibility determinations within the past four (4) years based on: (i) impermissible contacts or other violations of SFL §139-j; or (ii) the intentional provision of false or incomplete information to a governmental entity. (Note: To satisfy the requirement regarding offerers’ disclosure, the governmental entity must specifically request information regarding prior findings of non-responsibility for violations of SFL §139-j or SFL §139-k. A general request for prior findings of non-responsibility is not sufficient.) In addition, any procurement contract award shall contain a certification by the offerer that the information provided to the procuring entity was complete, true and accurate.

3. Contract Clause; Termination Provision

All procurement contracts must contain a provision authorizing the agency to terminate the contract if the certification (see preceding paragraph) is found to be intentionally false or intentionally incomplete. (Note: General contract termination provisions, such as the authority to terminate for convenience, will not satisfy this requirement. The contract provision must specifically authorize termination if the certification is subsequently found to be intentionally false or intentionally incomplete.)

4. Agency Policy and Prohibitions Regarding Permissible Contacts; Inclusion in Solicitation/Bid Documents

New SFL §139-j restricts contact1 by offerers2 with any governmental entity3 regarding procurement contracts.4 Subject to certain exceptions set forth in SFL §139-j(3), contacts between offerers and governmental entity personnel, other than the governmental entity’s designated contact person(s), are prohibited during the restricted period5 of the governmental procurement.6

Every governmental entity must incorporate a summary of the entity’s policy and prohibitions regarding permissible contacts during a governmental procurement and a copy of the governmental entity’s procedures into the solicitation or bid documents for all procurement contracts. The policy must provide that if a member, officer, or employee of a governmental entity becomes aware that an offerer has violated the permissible contact provisions of the new law, such person shall immediately notify the Ethics Officer, Inspector General, or other official of the procuring governmental entity responsible for investigation of such violations.

5. Affirmation of Compliance; Written Agency Procedures
All offerers must provide a written affirmation that the offerer understands and agrees to comply with the governmental entity’s procedures relating to permissible contacts during the procurement.

6. Record of Contacts

For each procurement contract, SFL §139-k requires that all contacts between an offerer and a governmental entity during the restricted period be recorded and made a part of the procurement record.

Where to Obtain Assistance with questions regarding OSC’s procurement record requirements is available by contacting the Office of the State Comptroller’s Bureau of Contracts:

Telephone: (518) 474-6494
Fax: (518) 474-8030

For additional information regarding applicability and requirements of SFL §§ 139-j and 139-k, State agencies and public authorities may consult the model guidelines and forms published by the Advisory Council on Procurement Lobbying which are available on the OGS website at:

http://www.ogs.state.ny.us/aboutogs/regulations/defaultAdvisoryCouncil.html

List of Offerers Determined to be Non-responsible bidders Maintained by the Office of General Services under State Finance Law § 139-j(10)(b):

http://www.ogs.state.ny.us/aboutogs/regulations/advisoryCouncil/NonResponsible.htm

List of Debarred Offerers Maintained by the Office of General Services under State Finance Law § 139-j(10)(b):

http://www.ogs.state.ny.us/aboutogs/regulations/advisoryCouncil/Debarred.htm

1 SFL §139-j(1)(c) defines "contacts" as "any oral, written or electronic communication with a governmental entity under circumstances where a reasonable person would infer that the communication was intended to influence the governmental procurement."

2 SFL §139-j(1)(h) defines "offerer" as "the individual or entity, or any employee, agent or consultant or person acting on behalf of such individual or entity, that contacts a governmental entity about a governmental procurement during the restricted period of such governmental procurement."

3 SFL §139-j(1)(a) defines "governmental entity" as "(1) any department, board, bureau, commission, division, office, council, committee or officer of the state, whether permanent or temporary; (2) each house of the state legislature; (3) the unified court system; (4) any public authority, public benefit corporation or commission created by or existing pursuant to the public authorities law; (5) any public authority or public benefit corporation, at least one of whose members is appointed by the governor or who serves as a member by virtue of holding a civil office of the state; (6) a municipal agency, as that term is defined in paragraph (ii) of subdivision (s) of section one-c of the legislative law; or (7) a subsidiary or affiliate of such a public authority."

4 SFL §139-j(1)(g) defines "procurement contract" as "any contract or other agreement for an article of
procurement involving an estimated annualized expenditure in excess of fifteen thousand dollars."

5 SFL §139-j(1)(f) defines "restricted period" as "the period of time commencing with the earliest written notice, advertisement or solicitation of a request for proposal, invitation for bids, or solicitation of proposals, or any other method for soliciting a response from offerers intending to result in a procurement contract with a governmental entity [and terminating] with the final contract award and approval by the governmental entity and, where applicable, the state comptroller."

6 SFL §139-j(1)(e) and §139-k(1)(e) define "governmental procurement" as "(i) the preparation or terms of the specifications, bid documents, request for proposals, or evaluation criteria for a procurement contract, (ii) solicitation for a procurement contract, (iii) evaluation of a procurement contract, (iv) award, approval, denial or disapproval of a procurement contract, or (v) approval or denial of an assignment, amendment (other than amendments that are authorized and payable under the terms of the procurement contract as it was finally awarded or approved by the comptroller, as applicable), renewal or extension of a procurement contract, or any other material change in the procurement contract resulting in a financial benefit to the offerer."
Offerer's Affirmation of Understanding of and Agreement pursuant to State Finance Law §139-j (3) and §139-j (6) (b)

Offerer affirms that it understands and agrees to comply with the procedures of the Government Entity relative to permissible Contacts as required by State Finance Law §139-j (3) and §139-j (6) (b).

<table>
<thead>
<tr>
<th>By: ___________________________</th>
<th>Date: ___________________________</th>
</tr>
</thead>
<tbody>
<tr>
<td>Signature</td>
<td></td>
</tr>
</tbody>
</table>

Contract Procurement Number: ___________________________

Name: ___________________________

Title: ___________________________

Contractor Name: ___________________________

Contractor Address: ___________________________

|                                    |
|                                    |

Form #1
Offerer Disclosure of Prior Non-Responsibility Determinations

Name of Individual or Entity Seeking to Enter into the Procurement Contract:

Address:

Name and Title of Person Submitting this Form:

Contract Procurement Number:

Date:

1. Has any Governmental Entity made a finding of non-responsibility regarding the individual or entity seeking to enter into the Procurement Contract in the previous four years? (Please circle): No
   Yes
   If yes, please answer the next three questions:

2. Was the basis for the finding of non-responsibility due to a violation of State Finance Law §139-j (Please circle): No Yes

3. Was the basis for the finding of non-responsibility due to the intentional provision of false or incomplete information to a Governmental Entity? (Please circle): No Yes

4. If you answered yes to any of the above questions, please provide details regarding the finding of non-responsibility below.
   Governmental Entity: ____________________________
   Date of Finding of Non-responsibility: ________________
   Basis of Finding of Non-Responsibility: ____________________________________________________________
   (Add additional pages as necessary)

5. Has any Governmental Entity or other governmental agency terminated or withheld a Procurement Contract with the above-named individual or entity due to the intentional provision of false or incomplete information? (Please circle): No Yes

6. If yes, please provide details below.
   Governmental Entity: ____________________________
   Date of Termination or Withholding of Contract: ________________
   Basis of Termination or Withholding: ____________________________________________________________
   (Add additional pages as necessary)

Offerer certifies that all information provided to the Governmental Entity with respect to State Finance Law §139-k is complete, true and accurate.

By: ____________________________ Date: ____________________________

Signature

Name: ____________________________
Title: ____________________________

Form #2
OFFICE OF THE STATE COMPTROLLER
BUREAU OF CONTRACTS
GOVERNMENTAL ENTITY REPRESENTATION CONCERNING COMPLIANCE
WITH STATE FINANCE LAW §§139-j AND 139-k

Agency Code: ________________________________
Agency/Authority Name: ________________________________
Contractor Name: ________________________________
Contract No. or P.O. No.: ________________________________
Amendment No.: ________________________________
Batch No.: ________________________________

I am a duly authorized representative of the above governmental entity. To the best of my knowledge, information and belief, pursuant to the requirements of State Finance Law (SFL) §§139-j and 139-k, the governmental entity for this procurement has:

- Issued and complied with its policies and procedures with respect to permissible contacts and any determinations made for violations thereof and has included such policies and procedures as part of the solicitation/bid documents;

- Issued policies and procedures in connection with the recording of all “contacts” received during the “restricted period” as those terms are defined under SFL §§ 139-j and 139-k, and is not aware of any “contacts” that were not recorded as required and included in the procurement record submitted to OSC;

- Received from all offerers the required (i) disclosure regarding prior findings of non-responsibility for violations of SFL §§ 139-j or 139-k; (ii) written affirmation of understanding and agreement to comply with the governmental entity’s policies and procedures relating to permissible contacts;

- If any offerers have disclosed a prior finding of non-responsibility for violations of §§139-j or 139-k, I have noted them below:

- Received from the winning vendor a certification as to the completeness, truth and accuracy of all information provided to the governmental entity and included such documentation in the procurement record submitted to OSC;

- Included in the contract a provision authorizing termination if the certification referenced above is found to be intentionally false or intentionally incomplete;

- Reviewed the New York State Office of General Services published list of non-responsible and debarred vendors for violations of SFL §§139-j and 139-k and
considered such information in its determination of responsibility of the proposed vendor;

- Except as otherwise indicated, found no knowing and willful violations of the requirements regarding permissible contacts or other provisions of SFL §§139-j or 139-k;

- If applicable, documented in the procurement record submitted to OSC (i) the basis for finding the proposed vendor in this procurement non-responsible for violations of SFL §§139-j or 139-k; (ii) the due process afforded such vendor; and (iii) that such finding was reported to OGS, as required;

Based upon the above information and representations, the governmental entity has determined, for purposes of SFL §§139-j and 139-k only that the proposed vendor for the above identified governmental procurement is:

☐ Responsible  ☐ Non-responsible

(This responsibility determination by the governmental entity must also be reported on the Vendor Responsibility Profile, if one is required for this transaction.)

- If applicable, documented in the procurement record submitted to OSC the basis for awarding a contract to the proposed vendor notwithstanding the governmental entity’s determination that the proposed vendor is non-responsible for violations of SFL §§ 139-j or 139-k.

- Documented in the procurement record submitted to OSC (i) the basis for finding any other offerer in this procurement non-responsible for violations of SFL §§139-j or 139-k; (ii) the due process afforded such offerer; and (iii) that such finding was reported to OGS, as required.

Name(s) and Federal Identification number(s) of such Offerer(s)

________________________________________________________________________

________________________________________________________________________

Date _________________________________ Authorized Signatory ____________________________

Name: ____________________________________________ Title ____________________________

(printed or typed) Direct Telephone Number (including area code): ______________________________

E-mail Address: ____________________________________________

Mailing Address: ____________________________________________
d) The STATE reserves the right to terminate this contract in the event it is found that the certification filed by the CONSULTANT in accordance with the requirements contained in State Finance Law §139k was intentionally false or intentionally incomplete. Upon such finding, the STATE may exercise its termination right by providing written notification to the CONSULTANT in accordance with the written notification terms of the contract.
January 23, 2007

To: Presidents
   Provosts
   Vice Presidents of Finance and Administration

From: Frederick P. Schaffer
      Barry Kaufman

Subject: Procurement Lobbying Act - Advisory Memo

In response to concerns about outside influence on the public procurement process and in awarding state contracts, including real estate and construction contracts, New York State enacted the Procurement Lobbying Act (State Finance Law §§ 139-j and 139-k), effective January 1, 2006. Executive Order 127, which also addressed this issue, has been withdrawn. This memo sets forth the obligations of the University, including all colleges, employees, agents, and consultants, in complying with this law.

Summary of the Law

The Procurement Lobbying Act (PLA):

- requires CUNY to direct all communications concerning a potential procurement to a designated contact person during certain periods in the procurement process;

- prohibits vendors from contacting anyone other than a designated contact person during these periods (e.g. during an Invitation for Bids solicitation process);

- requires CUNY and all of its campuses to record and maintain documentation regarding certain communications made by vendors and their representatives during these periods;

- requires CUNY to include such documentation in the related procurement record and be ready to submit same to the State; and

- requires CUNY to include certain provisions of the PLA in its procurement and contract documents.
Key Terms

"Contact" is defined by statute and refers to those communications (written or oral) that a reasonable person would infer are attempts to influence a procurement at the College/University.

"Designated Contact" is a University employee who is responsible for receiving vendor communications permissible under the Procurement Lobbying Act. The name and contact information of the Designated Contact is stated in the solicitation document.

"Restricted Period" is the period during which communication between vendors (and their representatives) and University employees (including consultants and representatives) is prohibited. It begins with the earliest written notice, advertisement, or method of soliciting a response from vendors for a contract through contract registration (or the equivalent) at the City or the State and ends when the subject contract has been signed by the vendor and the University and registered by the City or the State. For CUNY procurements, the Restricted Period will begin when the Purchasing Department has been requested to initiate a solicitation. If the basis of the procurement is a single source contract or a sole source contract, then the Restricted Period will begin with the earliest method used by the University to solicit a response from vendors intending to result in a procurement contract. All communication regarding the intended purchase between University employees (except for the Designated Contact) and any potential vendors should cease as soon as the end users have requested that Purchasing initiate a purchase effort.

"Record of Contact" is the form that must be completed by the University employee for each "Contact" (person or organization) that takes place during a "Restricted Period". The Purchasing Department must include all "Records of Contact" in its purchasing record for each contract.

What does the law require of the business community?

The Procurement Lobbying Act obligates the business community to make only permissible Contacts during the Restricted Period. The business community generally is prohibited from contacting anyone other than the designated contact person during the Restricted Period. Vendors who are seeking an opportunity to sell to the University must disclose whether there has been a finding of non-responsibility (as defined by law) with regard to compliance for the past four years. Vendors will be required to affirm their understanding of and agreement to comply with the University policy, guidelines, and procedures and certify that all information provided to the University regarding Contacts is complete, true, and accurate.

What does the law require of the College/University?

- Any person at the College/University who receives a Contact from a vendor during a Restricted Period must make a written record of such contact and must inquire and record whether the person or organization that made the Contact was a vendor involved in the procurement or was retained, employed, or designated on behalf of a
vendor to appear before or contact the College/University. A copy of a "Record of Contact" form is attached to this memorandum. Should a Contact occur during the Restricted Period, complete the form and send it to your college's Purchasing Director immediately after the Contact occurs.

- The Purchasing Department must include all of the completed “Records of Contact” in its procurement record for each contract.

- The Purchasing Department must designate one individual as the "Designated Contact" for each procurement effort, and all inquiries from the business community to the University must be directed to the Designated Contact.

- The University is obligated to notify the State Comptroller of all determinations of non-responsibility and debarment. The University Controller’s office will make such notifications.

**What triggers the requirements of the Procurement Lobbying Act for the University?**

- a solicitation for proposals or bids from the business community

- mini-bids (in connection with a State contract)

- granting of a concession or franchise where the recipient is required to pay a fee

**The Procurement Lobbying Act generally does not apply to the following situations:**

- inter-governmental agreements ("MOUs")

- solicitations and purchases made with non tax-levy monies

- serial purchases (even exceeding $20,000 within a one-year period) from a state centralized contract that does not require a solicitation resulting in a procurement contract

**Is every communication between a University employee and the business community a "Contact"?**

No, the communication must take place during the Restricted Period and be a communication that a reasonable person would infer are attempts to influence a procurement at the College/University. Communications may be in person, by telephone, by mail, or by electronic mail and may occur in a business or social setting. It is a good idea to assume that all communications that are not ministerial in nature are attempts to influence.

Communications that a reasonable person would infer are not intended to influence a procurement do not have to be recorded. Each situation will depend on its facts, but unsolicited advertisements, emails, or phone calls would not likely be deemed a "Contact".
State Finance Law §§ 139-j and 139-k do not apply to communications between one governmental entity and another regarding requests for information about a potential vendor's performance.

**Are intra-CUNY communications covered by the Procurement Lobbying Law?**

University employees and University consultants may continue business communications previously allowed under existing law. State Finance Law §§ 139-j and 139-k do not apply to communications between University employees regarding information about a potential vendor's performance.

**Does the Procurement Lobbying Act apply to non-tax-levy money purchases?**

No, the Procurement Lobbying Act does not apply to non-tax-levy money purchases; however, the University must still follow sound purchasing practices, and the University has a duty to ensure that all purchases are made with good business judgment and fiscal responsibility. Good business practice requires that all communication with the business community during the solicitation and procurement process must be directed to one designated person, and the designated person should be notified if any other communications with the business community took place during the solicitation and procurement process. Bear in mind that non-tax-levy money purchases may be subject to heightened scrutiny.

**What communications are not affected by the Procurement Lobbying Law?**

Other than communications regarding covered procurements during a Restricted Period, University employees and University consultants may continue business communications previously allowed under existing law. The following communications are allowed at any time and are not subject to the Procurement Lobbying Act:

- communications among University employees and University consultants, or between University employees/University consultants and other state agencies’ employees during the normal conduct of their duties, even if the communication pertains to a covered procurement during a Restricted Period;

- communications between vendors and University employees/University consultants concerning ongoing contract administration of an existing contract, such as for billing inquiries or performance issues;

- communications between University employees/University consultants and the commercial marketplace in the course of doing preliminary research, such as for product demonstrations, prior to the public advertisement or solicitation of a response from one or more vendors; and

- communications between vendors and University employees/University consultants in the course of general marketing outreach, such as when a vendor sends
unsolicited advertising materials to University or a vendor conducts a demonstration of a new product where the vendor describes the product and advocates its use (not related to a specific procurement).

**Can the Designated Person (for a particular procurement) receive a "Contact"?**

Yes, if a vendor contacts the Designated Contact, and the contact is one that a reasonable person would infer is intended to influence a procurement during the Restricted Period, then it is also considered a "Contact" and the Designated Contact must complete a Record of Contact and include it the procurement file.

**What are permissible Contacts during the Restricted Period?**

The following Contacts during the Restricted Period are permissible and there is no need to create a Record of Contact if directed to the Designated Contact:

- submission of a bid, proposal, or response to a solicitation;
- submission of written questions (as part of solicitation process);
- ministerial communications concerning due dates or contact information
- participation in a pre-bid conference or site visit;
- complaints by a vendor to the Office of General Counsel where the Designated Contact fails to respond in a timely matter;
- negotiations with the University after notice of a tentative contract award;
- debriefings about a procurement contract award; and
- filing of written disputes in administrative hearings, judicial proceedings and to the attorney general, inspector general, district attorney or state comptroller.

**What are the consequences/penalties for violating the Procurement Lobbying Act?**

If a vendor knowingly and willfully violates the law, then the vendor and its subsidiaries, related entities, and successor entities will be found "non-responsible" (defined in the law) and may not be awarded the contract. Two such findings within four years will result in debarment, that is, the vendor will be ineligible to respond to any solicitation or be awarded any (New York State) procurement contract for four years from date of second finding of non-responsibility.

It is not yet clear what the consequences might be if the University is found to violate the Act, but it is likely that the subject contract would not be registered (and would therefore be invalid and would not be paid).
If you require additional guidance or if you have any questions, please call Howard Altschuler (212-397-5655) at the Office of the University Controller or Marina Ho (212-794-5382) or Jane Sovern (212-794-5382) at the Office of General Counsel.

Please distribute this Advisory Memorandum as widely as possible on your campus.

Attachment: Record of Contact Form

c: Board of Trustees
   Chancellor Matthew Goldstein
   Cabinet
   Administrative Council
   Internal Audit
   Business Managers
   Purchasing Directors
   Financial Aid Directors
   Campus Facilities Officers
   Environmental Health & Safety Officers
   Labor Designees
   Legal Designees
   Ethics Officers
   Human Resources Directors
   Registrars
   Chief Student Affairs Officers
   Information Technology Directors
   Public Safety Directors
Instructions for Completing **Record of Contact**
under State Finance Law §139-k(4)

The Procurement Lobbying Act prohibits vendors from contacting anyone other than the designated contact person(s) during the Restricted Period and obligates the College/University to make a written record of any Contacts that are made during the Restricted Period. The law also obligates the University to inquire and record whether the person or organization that made the Contact was the Offerer or was retained, employed or designated on behalf of the Offerer to appear before or Contact the College/University.

- “Contact” is defined by statute and refers to those oral, written or electronic communications that a reasonable person would infer are attempts to influence a procurement at the College/University.

- “Restricted Period” means the earliest written notice, advertisement, or method of soliciting a response from vendors for a contract through contract registration (or equivalent) at the City or the State. For practical reasons, as soon as your end users are talking to Purchasing about making a purchase, any communication between the end users and the vendors should cease.

Any person at the University who receives a Contact during a Restricted Period must complete a separate form for each “Contact” (person or organization) that takes place during the restricted period of a procurement pursuant to New York State Finance Law §139-k(4). Purchasing must include all of the completed “Records of Contact” in its procurement record for each contract.

Information and guidance on the “restricted period” and permissible Contacts can be found in the guidelines issued by the New York Temporary Commission on Lobbying which can be found at

http://www.nylobby.state.ny.us/law_guide.html

and the guidelines from the Advisory Council on Procurement Lobbying, which can be found on the OGS website at

http://www ogs.state.ny.us/aboutOgs/regulations/defaultAdvisoryCouncil.html

Call the University's Associate Controller for Procurement or the Office of General Counsel for additional guidance or if you have any questions.
Record of Contact
under State Finance Law §139-k(4)

To: Procurement Record for __________________________
Procurement Contract Number __________________________

From: (name and title of person completing this form)
______________________________ College, City University of New York

Subject: Record of Contact under State Finance Law §139-k(4)

Date: __________________________

I had Contact with the below-named individual regarding the above identified procurement. The term “Contact” is defined in State Finance Law §139-k(1)(c). In accordance with State Finance Law §139-k(4), the following information was obtained.

Name: __________________________________________

Address: _______________________________________

_________________________________________________

Telephone Number: ______________________________

Place of Principal Employment: _____________________

Occupation: ______________________________________

1. Was the person making the contact informed that the contact would be documented?
   (check one) [ ] Yes [ ] No

2. Is the above-named person or organization the bidder or proposer (“Offerer”) in this procurement?
   (check one) [ ] Yes [ ] No

3. If the above-named person or organization is not the Offerer, then was the above-named person or organization retained, employed, or designated by the “Offerer” to:
   a. appear before the College/University about the procurement?
      (check one) [ ] Yes [ ] No
   b. contact the College/University about the procurement?
      (check one) [ ] Yes [ ] No

List date(s) of Contact: ___________________________

(Add additional pages as necessary)

Summarize the form (e.g., email, letter, conversation) and topic of the communication on each date of Contact:

______________________________________________________________________________

______________________________________________________________________________

______________________________________________________________________________

(Add additional pages or copies of written communications as necessary)
Vendor Responsibility Requirements
Vendor Responsibility Requirements

State procurement laws require that State agencies award contracts only to responsible vendors. Additionally, the Comptroller must be satisfied that the submitting business entity is responsible before approving a contract award under Section 112 of the State Finance Law.

Vendor Responsibility (VR) determinations impact any state tax levy funded contract having an **estimated value greater than $100,000** that CUNY enters into with a vendor. The determination is made by reviewing and accepting a vendor responsibility questionnaire (VRQ) as submitted by the selected vendor. The VRQ should be submitted and reviewed prior to designation so that CUNY is confident that the vendor is responsible as defined below. There are VRQ for both for profit and non-profit vendors (see the link below for copies of each).

A responsibility determination includes the evaluation of 4 major aspects of a business:
- Does the business entity possess the integrity to perform the contract?
- Does as the business entity performed at acceptable levels on other government contracts?
- Is the business entity legally capable of performing on this contract?
- Is the business entity financially and organizationally capable of performing the services under this contract?

On the following pages are documents that provide additional information regarding the actions that CUNY must take to determine the responsibility of our vendors. These include:
- OSC Vendor Responsibility Documentation Requirements matrix;
- OSC Bulletin G-221 (Vendor Responsibility: Standards, Procedures and Documentation Requirements)
- FAQ’s re: Vendor Responsibility
- A copy of a Vendor Responsibility Profile (required to be submitted with the procurement record for any new contract > $100,000 and amendments that bring the value of the contract to $100,000 or more for the first time).

Forms and additional information are available by visiting the following websites:


VR questionnaire forms: [http://www.osc.state.ny.us/vendrep/](http://www.osc.state.ny.us/vendrep/)
VENDOR RESPONSIBILITY DOCUMENTATION REQUIREMENTS

<table>
<thead>
<tr>
<th>Transaction Type</th>
<th>Vendor Responsibility Profile</th>
<th>Agency Responsibility Certification</th>
<th>Vendor Questionnaire*1</th>
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<tr>
<td>New Contract</td>
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<td>✓</td>
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<td>Assignments</td>
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<tr>
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<td>Non Material Amendment/Renewal/Extension with Adverse Information</td>
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<td>Construction Change Order with Adverse Information</td>
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</tr>
<tr>
<td>Mini-bids against Backdrop Contracts with Adverse Information</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
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</tbody>
</table>

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*1 The Vendor Responsibility Questionnaire may be provided either electronically, through the VendRep System, or in paper format.

*2 Contract Assignments with $100,000 or more remaining on the agreement also require a questionnaire from the vendor to which the contract is assigned.

*3 An Agency Profile is only required if the agency is aware of potentially adverse information.

Below is a list of specific vendors and contract transactions which are Exempt from Vendor Responsibility Documentation Requirements:

- AC340 address changes
- AC340 corrections
- AC340 encumbrance only
- Backdrop Design Consultant Agreement Increases & SUCF Planning Allocations
- Board of Cooperative Education Services (BOCES)
- Budget Modifications
- Cities, Towns, Villages
- Construction change orders with no adverse information
- Counties
- DOT/Thruway/Canal-railroad/utility reimbursements
- DOT Uneconomic Remainders
- Eminent domain property takings
- Fire Districts
- Fiscal year rejection resubmittals
- Industrial Development Agencies (IDAs)
- Indian Nations
- Labor Unions for NYS Collective Bargaining agreement implementation only
- Lease escalation and holdover
- Minibid against Backdrop Contracts with no Adverse information
- Multi-phase project – not initial submission
- New York State Agencies
- Non-administering agency use of multi-agency contracts
- Non-Material Amendment w/ no adverse information
- Other States and other countries
- Purchase order against Statewide contract
- Preferred sources
- Price list changes
- Public Authority/Public Benefit Corporation
- Public Colleges and Universities
- Public libraries
- Real property sales required by law to be sold to the highest bidder
- Research Foundation including:
  - CUNY
  - SUNY
  - Mental Hygiene Research
  - Aging Research
  - Welfare Research
  - Health Research
- Resubmittal within 90 days of VR conclusion
- School districts and Charter Schools
- US Government entities
- Vocational Education Extension Board (VEEB)
- Water, Sewer and Water & Soil Districts

OSC RESERVES THE RIGHT TO REQUIRE A VENDOR RESPONSIBILITY PROFILE, AGENCY CERTIFICATION AND/OR VENDOR QUESTIONNAIRE IF DEEMED MATERIAL

Revised: July 30, 2007
Procurement and Disbursement Guidelines
(G-Bulletins)

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<th>Procurement &amp; Contracting</th>
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</tr>
<tr>
<td>Date Issued:</td>
<td>11/01/2004</td>
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<td>Date Last Updated:</td>
<td>08/07/2007</td>
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<td>Vendor Responsibility: Standards, Procedures, and Documentation Requirements</td>
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Purpose:
The purpose of this bulletin is to remind New York State contracting entities (state agencies) of their legal obligations with respect to determining the responsibility of a business entity (vendor, contractor or offerer) to which a contract may be awarded.

This bulletin also serves to outline the Comptroller’s procurement record requirements regarding vendor responsibility. These procurement record requirements ensure that:

- Public dollars are being spent appropriately with responsible contractors; and
- The procurement record on file with the Comptroller’s Office is complete.

Legal Requirements
State procurement laws require that state agencies award contracts only to responsible vendors. Additionally, the Comptroller must be satisfied that the submitting business entity is responsible before approving a contract award under Section 112 of the State Finance Law.

Section 163 of the State Finance Law (SFL) requires that contracts for services and commodities be awarded on the basis of lowest price or best value "to a responsive and responsible offerer." Section 163 (9) f of the SFL requires that prior to making an award of a contract, each contracting agency shall make a determination of responsibility of the proposer-contractor.

Section 8 of the Public Buildings Law provides that all contracts for amounts in excess of five thousand dollars for the work of construction, reconstruction, alteration, repair or improvement of any state building, whether constructed or to be constructed must be offered for public bidding and may be awarded to "the lowest responsible and reliable bidder," as will best promote the public interest, by the said department or other agency with the approval of the Comptroller for the whole or any part of the work to be performed, and, in the discretion of the said department or other agency, such contracts may be sublet; provided, however,
that no such contract shall be awarded to a bidder other than the lowest responsible and reliable bidder without the written approval of the Comptroller.

As a result, once an agency, in accordance with the applicable procurement statute, has determined which business entity(ies) should be awarded a contract, the agency must affirmatively determine that such business entity is responsible before it can award the contract to such business entity and execute any contract. Furthermore, the Comptroller will not approve a contract unless he or she concurs that the business entity is responsible.

Factors Affecting A Vendor's Responsibility

Section 163(c) of the SFL provides:

"Responsible' or 'responsibility' shall have the same meaning as such terms have been interpreted prior to the effective date of this article."

The courts, in examining vendor "responsibility," have indicated that "responsibility" is "an elastic word," encompassing factors including financial ability to complete the contract, accountability, reliability, skill, sufficiency of capital resources, judgment, integrity, and "moral worth."

Whether a business entity is "responsible" is a question of fact to be determined on a case-by-case basis. Based upon existing legal precedents, responsibility determinations can and should involve a review of the following four major categories:

1. Does the business entity possess the integrity to perform the contract? Factors to be considered include criminal indictments, criminal convictions, civil fines and injunctions imposed by governmental agencies, anti-trust investigations, ethical violations, tax delinquencies, debarment or suspension by a government entity, prior determination of integrity-related non-responsibility, etc.

2. Has the business entity performed at acceptable levels on other government contract Factors to be considered include reports of less than satisfactory performance, early contract termination for cause, contract abandonment, court determinations of breach of contract, etc.

3. Is the business entity legally capable of performing the contract? Factors to be considered include authority to do business in New York State, licensing (e.g., with the Education Department or Department of State), debarment by the State Labor Department due to a prevailing wage violation, etc.

4. Is the business entity financially and organizationally capable of performing the contract? Factors to be considered include assets, liabilities, recent bankruptcies, equipment, facilities, personnel resources and expertise, availability in consideration of other business commitments, existence of appropriate accounting and auditing procedures for control of property and funds, etc.

The courts have also recognized a protected constitutional due process liberty interest in
connection with a determination of non-responsibility. Therefore, prior to finding a contract non-responsible, the contracting agency must offer the "safeguards of reasonable notice and timely opportunity to be heard." This does not require a full evidentiary hearing. Rather, written notice, together with an opportunity to rebut the concerns over the vendor's responsibility, either in writing or at a meeting with the contracting agency, would appear to be sufficient (see suggested process to be followed below).

Agency Obligations/OSC Requirements

Review of Vendor Responsibility

Agencies are required to undertake an affirmative review of the responsibility of any business entity to which they propose to make a contract award. Such review shall be designed to provide reasonable assurances that the proposed contractor is responsible. In undertaking such review, agencies must comply with the following standards:

- In all cases, agencies must consider any information that has come to their attention from the proposed contractor or any other source that would raise issues concerning the proposed contractor's responsibility.

- In the case of any contract valued at $100,000 or more, agencies must affirmatively require disclosure by the proposed contractor of all information that the agency reasonably deems relevant to a determination of responsibility. At a minimum, such disclosure must satisfy the tests detailed above in "Factors Affecting a Vendor's Responsibility."

- An agency should notify a business entity, in writing, of its preliminary determination that the business entity is non-responsible, detailing the exact reasons for such preliminary determination. The business entity should be given a reasonable time from the receipt of the agency notice to file a written appeal. If a dispute as to the facts arises from this process, the agency may, at its option, hold a hearing to fully air this dispute. If the business entity files an appeal, the agency should promptly review it and make a final determination regarding the responsibility of the business entity.

Submitting Business Entity Affiliates, Owners and Officers

The same tests applied in determining the responsibility of a submitting business entity should also be applied to that entity's affiliated businesses, as well as to any entity to which the proposed contractor is a subsidiary.

The same tests applied in determining the integrity of a business entity should also be applied to the owners and/or officers of the entity.

Contracting Agency Vendor Responsibility Certification and Documentation

For contract transactions requiring vendor responsibility documentation, the agency must:
- certify in the procurement record that it has undertaken an affirmative review and has reasonable assurance that the submitting business entity is responsible. Such certification must be made by an authorized signatory (see Comptroller’s Bulletin No. G-126 on authorized signatures) The procurement record should include a statement that:

"[the agency] has undertaken an affirmative review of the proposed contractor's responsibility in accordance with the standards outlined in Comptroller's Bulletin No. G-221, and based upon such review, has reasonable assurance that the proposed contractor is [responsible or non-responsible, as applicable].";

- document in the procurement record the basis for its determination, including any information compiled or used in arriving at the conclusion. If the agency has required the proposed contractor to complete a Vendor Responsibility Questionnaire, the agency must include in the procurement record the paper questionnaire, if one was used, or an indication that the vendor’s questionnaire has been electronically filed, using the VendRep System.

Procurement record documentation is most efficiently achieved through the Vendor Responsibility Profile, which, with applicable attachments, is designed to provide OSC with the required Agency Responsibility Certification and Contracting Agency Documentation detailed above.

Additionally, if the original low bidder or best value offerer was determined by the agency to be non-responsible, resulting in the agency forwarding a contract with a contractor, which was not the original low bidder/best value offerer, the agency must document the basis for the agency's determination that the original contractor was non-responsible and the process that was followed in making such determination.

**OSC Review**

As part of its review of the contract pursuant to Section 112 of the State Finance Law, the Comptroller's Office will review the procurement record prepared by the agency to verify that the agency has affirmatively certified its findings of responsibility. In addition, if OSC is not satisfied that there is adequate documentation of the proposed contractor’s responsibility, OSC may either (i) return the contract unapproved, to the agency for further consideration of the proposed contractor’s responsibility; or (ii) undertake its own review of the proposed contractor’s responsibility.

**Frequently Asked Questions**

"Frequently Asked Questions" are available at:

http://www.osc.state.ny.us/vendrep/faqs.htm

http://osc.state.ny.us/agencies/gbull/g221.htm 3/17/2008
For additional assistance:

Your Agency Counsel
Your Agency Finance Office
OSC Help Desk – (518) 408-4OSC or 1-866-370-4OSC (4672)
OSC Legal – John Dalton or Richard Redlo (518) 474-6011

Helpful Links

- Office of the State Comptroller's Vendor Responsibility website:
  
  http://www.osc.state.ny.us/vendrep/

- Best Practices Bulletin on Vendor Responsibility
  
  http://www.ogs.state.ny.us/procurecoun/procurepdfdoc/BestPractice.pdf
Q1.1: What is the legal authority for requiring award of state contracts to responsible vendors?

A: State Finance Law, Article XI, §163 requires award of contracts for commodities or services to a responsible vendor. Furthermore, the State Procurement Guidelines require agencies to "administer a process in which offerers are required to provide assurances that they conform with responsibility requirements." Similar requirements apply for construction contracts (Public Buildings Law, §8, Highway Law, §38[3]). Additionally, the Comptroller must be satisfied that a proposed contractor is responsible before approving a contract award under Section 112 of the State Finance Law. (See. Konski Engineers, P.C. v. Levitt, 49 N.Y.2d 850 [1980]).

Q1.2: What is a responsibility determination?

A: Although "responsibility determination" is not a defined term under statute, numerous court decisions indicate that a responsibility determination is an informed and affirmative decision regarding whether a proposed contractor has the (i) financial and organizational capacity, (ii) legal authority, (iii) record of past performance, and (iv) integrity necessary to justify the award of a contract and the payment of public monies to such contractor. Except for very limited, statutorily-defined "debarments", each determination is made on a case-by-case basis, after considering specific facts and circumstances and their relevance to the procurement in question.

Q1.3: What is a "responsible" vendor?

A: To be considered a responsible vendor, a company or individual should have appropriate legal authority to do business in New York, a satisfactory record of integrity, appropriate financial, organizational and operational capacity and controls, and acceptable performance on previous contracts, if any.

Q1.4: Why is vendor responsibility important?

A: State Finance Law and sound procurement practice dictates that agencies take reasonable steps to ensure that public contracts are awarded to vendors that are most likely to be capable of fully performing their contractual obligations over the term of a contract and have the integrity to justify the award of public dollars. Responsibility reviews also help ensure that public dollars support honest vendors that compete on product and price and protect the competitive contractor selection process from unfair competition.
Full, fair and open competition produces better value for the State and its citizens.

Q1.5: What does the Comptroller’s Bulletin G-221 on vendor responsibility require agencies to do?

A: The Bulletin requires a contracting agency to make an affirmative determination of responsibility prior to award of a contract as follows:

- for all contracts, the agency must consider any information that has come to its attention that raises issues concerning the proposed contractor’s responsibility,
- for contracts equal to or exceeding $100,000 (see Q2.6), the agency must require written disclosure by the contractor of all information that the agency deems relevant to a responsibility determination, and
- for all contracts, the agency must include in the procurement record certification that it has performed an affirmative review of the contractor and has reasonable assurances that the contractor is responsible and documentation of the basis for its determination.

Please review Bulletin G-221 (http://www.osc.state.ny.us/agencies/gbull/g221.htm) for more details about required agency actions.

Q1.6: How does Bulletin G-221 apply to contract amendments?

A: Where the contract provides for renewals, each such renewal generally requires only an Agency Responsibility Certification. However, a Vendor Responsibility Profile and updated or new Vendor Responsibility Questionnaire are required if new potentially adverse information has come to the attention of the contracting agency, or if the renewal brings the total contract value to or above $100,000.

Where the contract does not provide for renewals, and an amendment extends the time of performance, but does not change the contract value, only an Agency Responsibility Certification is required (unless there is new potentially adverse information about the vendor).

Where the contract does not provide for renewals and an amendment provides for a change in contract value, a Vendor Responsibility Profile and Agency Responsibility Certification are required. A vendor questionnaire is also required if the amendment brings the total contract value to or above
$100,000, or if the agency becomes aware of adverse information about the vendor.

Where the contract does not provide for renewals and an amendment impacts neither the contract term nor value, generally, no vendor responsibility documentation is required. An example of this type of amendment would be a change to the legal language as a result of Federal and/or State Law, such as the inclusion of HIPAA compliance.

In any type of amendment, where the agency learns of potentially adverse information, it must conduct a full review and provide full vendor responsibility documentation to OSC.

The application of these various documentation requirements is summarized in the Vendor Responsibility Documentation Requirements chart.

Q1.7: Where a vendor bids on or is considered for award for more than one procurement by an agency, can it re-use the same disclosure submission (i.e., questionnaire)?

A: Yes. For vendors filing an online questionnaire using the VendRep System, a completed questionnaire will be considered "current" if it has been certified within six (6) months of the agency-defined due date for the questionnaire, with the vendor responsible for ensuring that the questionnaire reflects any material changes since last certified.

For vendors using a paper questionnaire, a contracting agency can accept as the required vendor disclosure a vendor-signed update to a previously-submitted questionnaire, or a Statement of No Change. Such documentation must be included with the original paper questionnaire, in the procurement record submitted by the contracting agency to OSC for contract approval.

Q1.8: If a proposed vendor is a current vendor of the contracting agency, and the agency is satisfied with its performance, does the agency need to obtain a new questionnaire?

A: The contracting agency must make a vendor responsibility determination for each new contract transaction, because performance, while a factor in vendor responsibility, is not the sole factor. Therefore, vendor disclosure is required if the contract is valued at $100,000 or more. However, if the vendor recently filed with the agency a Vendor Responsibility Questionnaire for another procurement, the agency can accept a Statement of No Change, rather than requiring a new questionnaire.
Q1.9: Is a contracting agency barred from contracting with a vendor previously found non-responsible by either itself or another agency?

A: No, each responsibility determination is made on a case-by-case basis, considering factors known at the time and the specifics of the procurement in question. However, in conducting a responsibility review, a contracting agency should consider previous findings of non-responsibility and should notify vendors that a finding of non-responsibility may be a factor in future procurement decisions.

There are limited, specific instances in New York State under which a vendor can be disbarred. Under New York State Law, a vendor may be debarred for repeated prevailing wage violations and for certain violations or fines related to Workers’ Compensation insurance. In addition, State Finance Law §139-j(10) obligates a state contracting entity to notify the Office of General Services when it makes a determination of non-responsibility due to a violation of State Finance Law §139-j (a knowing and willful violation of the permissible contacts requirements). Any subsequent determination of non-responsibility within a four year period shall result in a vendor being rendered ineligible to submit a proposal on or be awarded any procurement contract for a period of four years from the date of the second final determination.

Q1.10: Will OSC alert a contracting state agency if another state agency has found a proposed contractor to be potentially non-responsible?

A: Yes. If in reviewing a contract transaction the OSC identifies a proposed contractor as one with a potential responsibility issue, it will notify the contracting agency so that the agency can include such information as a factor in its responsibility review.

Q1.11: Will OSC make a listing of non-responsible vendors available for contracting agencies to reference as part of the vendor responsibility determination process?

A: OSC will, upon request, provide a State contracting agency with information OSC has relevant to a proposed contractor’s responsibility. Also, in reviewing a contract transaction, OSC will notify the contracting agency if OSC is aware of a non-responsibility finding and the agency has not addressed it in its responsibility review. In making any such information available, OSC would strongly caution agencies that a finding of non-responsibility is not equivalent to a debarment, and that a responsibility determination is made individually for each contract.
Q1.12: A vendor responsibility determination is a subjective assessment, especially as it pertains to integrity. Will OSC be issuing standards for responsibility determinations?

A: As the standards for responsibility determinations are defined in case law, it is suggested that contracting agency procurement staff consult with agency counsel for interpretation of case law as it pertains to vendor responsibility. In assessing a proposed contractor’s responsibility, an agency must review each of the four factors related to vendor responsibility: integrity, legal authority to do business in New York State, capacity, and previous performance. A contracting agency must consider the factual information available to it and make a reasonable determination based on its assessment of that information and the relevance of the information to the contract under consideration. (See FAQ questions 1.2 and 4.1 for related information.) Furthermore, as Bulletin G-221 states, in a finding of non-responsibility, vendors must receive due process. (See FAQ Question 4.9.) Additionally, in all contract transactions that are subject to OSC approval, OSC reserves the right to conduct a de novo responsibility review.

Q1.13: What happens if non-responsibility information becomes known to the agency after contract award?

A: The range of actions available to the contracting agency is essentially the same whenever the agency becomes aware of information that calls into question a contractor’s responsibility. The agency may review the responsibility issue(s) and determine no action is warranted, or the agency may require the contractor correct the problem or implement a corrective action plan. All contracts should give the contracting agency the ability to terminate for cause. Inclusion of a clause establishing lack of responsibility, including failure to disclose information, as a potential cause of termination enhances an agency's ability to address issues discovered after a contract has begun. The certification contained in the OSC Vendor Responsibility Questionnaires also provides for potential contract termination if a vendor provides false or misleading information.

Q1.14: What happens after the information regarding vendor responsibility is sent to OSC?

A: Information regarding vendor responsibility is considered in the OSC contract review process. OSC reviews the procurement record prepared by the agency to verify that the agency has certified its findings of responsibility and addressed responsibility issues. In the event that the procurement record is incomplete or leaves questions that need to be addressed, OSC
audit staff will ask agency staff to provide additional information. In instances where follow-up with the agency does not resolve the issue, OSC may return the contract unapproved. OSC may also undertake its own independent, de novo review of the proposed contractor's responsibility.

**Q1.15: Do the vendor responsibility procurement record requirements negatively impact the time it takes for OSC contract approval?**

**A:** No, the enhanced review resulting from the vendor responsibility procurement record requirements is conducted in parallel with the contract review process and generally does not extend overall approval time frames. To help prevent delays, agencies are encouraged to contact OSC for technical assistance and guidance on questions that arise regarding responsibility determinations.

**Q1.16: How can I obtain additional information about vendor responsibility?**

**A:** Additional information about vendor responsibility, including the Comptroller's Bulletin, suggested forms and templates, and links to useful resources, can be found on this OSC web site (http://www.osc.state.ny.us/vendrep/). You may also contact your agency counsel, contracts or finance office, or contact the OSC Help Desk at 518-408-4672 or 866-370-4672.

**Q1.17: Some transactions which come to OSC are primarily administrative transactions or transactions to implement provisions of the original contract, rather than reflecting a change in a contract or relationship to a contractor. Is new vendor responsibility documentation required in these cases?**

**A:** No, vendor responsibility documentation is not required for the following types of transactions sent to OSC for review:

- AC340 encumbrance-only transactions (i.e., ECC batch types, corrections or address changes);
- Name Changes;
- Budget modifications;
- Lease holdovers and lease escalation clause amendments;
- Price list changes;
- Multi-phase Projects (not the original submission)
Contract assignments are subject to the Vendor Responsibility documentation requirements.

**Q1.18: Does the Comptroller recognize any exceptions to the deadlines and standards prescribed by Bulletin G- 221?**

**A:** Rare exceptions will be considered by the OSC on a case-by-case basis. For example, for an emergency contract, where there is a direct health or safety impact, the OSC may approve a contract subject to the contracting agency filing the required Vendor Responsibility Certification and documentation on a post-approval basis.
Q2.1: What types of contractors are subject to the required vendor responsibility review?

A: All proposed contractors, including but not limited to individuals, sole proprietorships, partnerships, and corporations (for-profit or not-for-profit) are subject to agency responsibility determinations. Agency reviews should also extend to the majority shareholders, owners, directors and officers of proposed contractors, and, to a reasonable extent, any affiliates of proposed contractors.

Q2.2: Are responsibility determinations required for parent and subsidiary corporations, and are parent and subsidiary corporations required to file questionnaires?

A: It is recommended that the contracting agency consider the responsibility of a proposed contractor’s related companies and solicit information regarding those related companies. Accordingly, OSC vendor questionnaires include questions that solicit information on the proposed contractor as well as its related companies (affiliates) and require a proposed contractor to certify that it has made a good faith effort to provide a full and complete response.

Additionally, where a related company is a critical component of a proposed contractor’s capacity to fully perform a contract (i.e., the proposed contractor relies on the parent company for financial capacity or a related company for relevant experience) the contracting agency should conduct separate responsibility determinations for those related companies.

OSC reserves the right to require responsibility determinations related to parent and subsidiary companies and related affiliates.

Q2.3: Are subcontractors required to file a Vendor Responsibility Questionnaire?

A: Submission of a Vendor Responsibility Questionnaire and an agency vendor responsibility review is required for a subcontractor where:

- the subcontractor is known at the time of the contract award,
- the subcontractor’s qualifications are a material factor in the award, and
- the subcontract will equal or exceed $100,000 over the life of the contract.
Q2.4: Do vendor responsibility requirements apply to contracts with municipalities and other local government entities? To contracts with not-for-profits? To contracts with sole proprietors?

A: If an agency enters into a contract with a municipality, that agency must make a determination that the municipality is a responsible contractor for purposes of the contract. However, contracts with municipalities are exempt from the requirements for agency documentation of the vendor responsibility determination (Profile and Certification) and vendor disclosure of responsibility information (Questionnaire). For purposes of this policy, “municipality” refers to counties, cities, towns, villages, school districts, charter schools, community colleges, Boards of Cooperative Educational Services (BOCES), Vocational Education Extension Boards (VEEB’s), public libraries, and water, fire and sewer districts.

The exemption of contracts with municipalities from Bulletin G-221 requirements does not change or eliminate the requirement for contracting agency submission of contracts with municipalities to OSC for approval.

All of the Bulletin’s requirements apply to not-for-profits, sole proprietors, and any entity not defined herein as a municipality.

Q2.5: In FAQ 2.4, OSC identifies contracts with municipalities as exempt from vendor responsibility documentation requirements. Are there any other entities or transactions exempt from vendor responsibility documentation requirements?

A: Yes. OSC has identified certain cases where vendor responsibility documentation will be waived and these exemptions have been summarized in the Vendor Responsibility Documentation Requirements chart. These exemptions from vendor responsibility documentation include:

- Eminent domain property takings;
- Real property sales which are required by law to be sold to the highest bidder;
- The Department of Transportation and Thruway/Canal contracts for reimbursement to railroads under Section 91 of the Railroad Law, Section 10, subsection 24(c) of the Highway Law, and Section 222 of the Transportation Law;
- Contracts with governmental and sovereign entities, including other States and Federal government agencies;
- Contracts with public colleges and universities;
- Contracts with Labor Unions representing State employees carrying out the
terms and conditions of State collective bargaining agreements;
• Contracts with Research Foundations, including Aging Research Inc, Health Research Inc, Research Foundation, Research Foundation for Mental Hygiene, Research Foundations of CUNY and SUNY, and Welfare Research Inc;
• Contracts with Public Corporations, including Public Authorities, Public Benefit Corporations, District Corporations and Industrial Development Agencies.

An exemption eliminates the requirement for the inclusion of vendor responsibility documentation in the procurement record; it does not waive the requirement that a contracting agency award a contract to a responsible vendor. Furthermore, OSC reserves the right, on a case-by-case basis, to request vendor responsibility documentation on an entity normally considered exempt.

Q2.6: What contract transactions are subject to the vendor responsibility requirements?

A: Generally, the Vendor Responsibility requirements and related procurement record requirements apply to all contract transactions (contracts, purchase orders, amendments) by any entity that submits its contracts to OSC for approval. Furthermore, for contract transactions required to be approved by the Comptroller under Section 112 of the State Finance Law valued at $100,000 or more over the term of the agreement, the contracting state agency must require disclosure by the contractor of all information the contracting agency deems relevant to a responsibility determination.

Q2.7: Is a vendor responsibility determination required in cases where a state agency piggy-backs on another governmental agency’s contract?

A: Yes. Piggy-back contracts are considered new, separate contracts subject to vendor responsibility requirements.

Q2.8: Do purchases off of a state centralized or backdrop contract (established by the Office of General Services, the Office of Temporary and Disability Assistance or any other agency) require a responsibility review?

A: A vendor responsibility review is required at the time of initial contract award, and therefore a new responsibility determination is not required when purchasing off a centralized contract or backdrop (mini-bid) contract, unless
the contracting agency becomes aware of information that may negatively impact the vendor’s responsibility.

When the contracting agency is aware of potentially adverse information, such information should be communicated to the administering agency and assessed by the contracting agency in the context of their specific procurement. The contracting agency’s assessment must be documented on the agency’s Vendor Responsibility Profile and Agency Responsibility Certification when the mini-bid contract is submitted for OSC approval.

Q2.9: Do purchase orders require responsibility determinations?

A: Yes, unless they are purchases off a pre-existing contract (such as a State centralized contract) purchase orders are considered new contract transactions subject to vendor responsibility requirements.

Q2.10: Are "Quick" contracts subject to vendor responsibility requirements?

A: Yes, furthermore, if OSC finds any issues with the vendor responsibility information required to be included in the procurement record, the contract may be removed from "Quick" status, and reassigned to standard processing status.

Q2.11: Is a responsibility determination required for revenue contracts?

A: Yes, responsibility determinations are required for revenue contracts. Also, where revenues are anticipated to equal or exceed $100,000, a vendor disclosure is required. Responsibility factors which might be emphasized in this type of responsibility review include financial and organizational capacity, integrity and internal controls.

Q2.12: Are change orders issued against construction contracts subject to vendor responsibility requirements?

A: Generally, the original agency responsibility determination and Agency Responsibility Certification applies to subsequent change orders against a construction contract. If, however, the contracting agency is aware of new information that could negatively impact the contractor’s responsibility, it must conduct a complete vendor responsibility review and submit all of the required vendor responsibility documentation, including an Agency Responsibility Certification, Vendor Responsibility Profile, and updated Vendor
Responsibility Questionnaire, if applicable. In conducting a responsibility review for a change order transaction, the contracting agency may choose to obtain an updated questionnaire from the vendor.

OSC encourages agencies to include in their contracts language that requires the contractor to report to the contracting agency material changes in its initial vendor responsibility disclosure and that allows for the agency to terminate the contract in the event of a non-responsibility finding. See FAQ 4.8 and FAQ 4.9 for additional information.

In all contract transactions, OSC reserves the right to conduct a de novo responsibility review.

**Q2.13: Are P-card transactions, T-Contracts, one time purchases, purchase orders less than $50,000, etc., subject to vendor responsibility requirements?**

**A:** OSC encourages agency awareness and consideration of vendor responsibility in all its purchases and procurements. However, the requirements defined by Bulletin G-221 apply only to contract transactions (e.g., contracts and purchase orders) submitted to OSC for pre-approval. Furthermore, the requirement for vendor self-disclosure related to vendor responsibility applies only to contract transactions valued at $100,000 or more.

**Q2.14: Does Bulletin G-221 apply to grants and legislative initiatives?**

**A:** Yes, vendor responsibility documentation requirements defined by Bulletin G-221 apply to all contract transactions submitted to OSC for pre-approval.

**Q2.15: Are Preferred Source vendors subject to Bulletin G-221?**

**A:** Vendor responsibility is an important consideration in all state contracts and purchases, including contracts with preferred sources. At this time, OSC has temporarily waived the vendor responsibility documentation requirements defined in Bulletin G-221 for preferred source contracts subject to OSC approval.
Q3.1: Must responsibility questions be included in procurement solicitations? Must responses from vendors be part of their offers?

A: The contracting agency must decide when in its procurement process to require responses to responsibility questions, whether from all vendors as part of their bid or proposal submission, or from only the vendor(s) selected for award. In developing its procurement schedule, a contracting agency should take into account the time needed for its vendor responsibility review process.

OSC recommends that language stating the requirement for award of state contracts only to responsive and responsible vendors appear in all solicitations, with notice that prospective awardees will be required to provide vendor responsibility information if they are selected for a contract valued at $100,000 or more, and a requirement that bidders/proposers must certify the accuracy of information they provide.

Q3.2: What additional documents must be included in the procurement record for vendor responsibility?

A: For contract transactions requiring vendor responsibility documentation, there are certain required components to the procurement record:

- The agency must certify in the procurement record that it has undertaken an affirmative review and has reasonable assurance that the proposed contractor is responsible;
- When completing the Vendor Responsibility Profile, the agency must document the basis for its responsibility determination, including any information compiled or used in arriving at the conclusion, and note if the questionnaire was filed online;
- If a paper questionnaire was used, the agency must include the completed questionnaire;

Certain transactions are exempt from some of these requirements (see FAQs 1.6, 2.4, and 2.5).

Additionally, if a proposed contractor is passed over due to non-responsibility, the agency must document on the Vendor Responsibility Profile the basis for its determination, the process followed, and must indicate that the vendor completed their questionnaire using the VendRep System, or include a copy of the paper questionnaire for the vendor found non-responsible. In the event an agency finds a vendor non-responsible, the agency must provide the vendor with due process, including written notice
detailing exact reasons for the preliminary determination of non-responsibility and an opportunity to be heard before the determination is final.

Q3.3: May a contracting agency create its own Vendor Responsibility Profile form or does it have to be in OSC's format?

A: OSC will consider alternative formats for the Vendor Responsibility Profile, provided that all of the required information, including the Agency Responsibility Certification, is included. For approval of alternative formats, contact the OSC Help Desk at (518) 408-4672 or HelpDesk@osc.state.ny.us.

Q3.4: Can agency staff be identified as authorized signatories specifically for the purpose of signing the agency Vendor Responsibility Certification?

A: Yes, form AC1782 can be used to designate agency representatives authorized to sign the Agency Responsibility Certification. The form should be completed to indicate, in the column labeled “Restrictions”, that the person is authorized only for the agency certification of vendor responsibility.

Q3.5: Can a contracting agency that makes multiple contract awards from a single procurement (typically grants) provide one Agency Responsibility Certification for all contracts from the procurement, rather than submitting individual Agency Responsibility Certifications for each contract?

A: No. Responsibility determinations must be made individually on each vendor, and the required vendor responsibility documentation (Agency Responsibility Certification, Vendor Responsibility Profile, Questionnaire, if applicable, and related documentation) must be submitted to OSC with each contract. A contracting agency can, however, choose to include copies, rather than original signatures, of the Agency Responsibility Certification with each contract.

Q3.6: If an agency purchases items or contracts with the same vendor several times in a year does the agency need to complete the Vendor Responsibility Profile for each contract or purchase?

A: Generally, each contract submitted to OSC for approval must include the Agency Responsibility Certification and vendor responsibility documentation, including a Vendor Responsibility Profile and Questionnaire, if applicable. This is consistent with the concept that a responsibility determination is made on
a case-by-case basis. In the case of multiple contracts exceeding $100,000 with the same vendor, the agency can “re-use” the Vendor Responsibility Profile if the agency’s previous vendor responsibility analysis was completed recently and there are no changes in the vendor’s responses or the agency’s analysis of the relevant information. In reusing a Profile, the agency must indicate if the vendor filed the questionnaire online or must include a Statement of No Change by the vendor (accompanied by a copy of the previously submitted paper questionnaire), and re-submit the Vendor Responsibility Profile, with a new Agency Responsibility Certification.
Q4.1: How can an agency obtain the information necessary to assess vendor responsibility?

A: OSC recommends that the contracting agency administer a Vendor Responsibility Questionnaire to collect relevant information from the proposed contractor, and include as part of the questionnaire a certification by the vendor that the information provided is true, accurate and complete. In collaboration with state contracting agencies and members of the vendor community, the Office of the State Comptroller developed questionnaires that may be used to provide the necessary disclosure. These questionnaires are based upon the business characteristics of the vendor, specifically: whether the vendor is For-Profit or Not-For-Profit, and whether the vendor bids or anticipates bidding on construction contracts. Vendors may complete these questionnaires online using the VendRep System or they can complete paper copies found on the Comptroller’s website at http://www.osc.state.ny.us/vendrep. However, state contracting agencies may choose to require paper copies or non-standard questionnaires. Such questionnaires include those available in the Procurement Council’s "New York State Procurement Bulletin – Best Practices – Determining Vendor Responsibility" (BestPractice.pdf), or Uniform Contracting Questionnaire (http://www.ogs.state.ny.us/dnc/generalInfo/forms/ucq.html). The contracting agency’s solicitation document (Invitations For Bids, Requests For Proposals, etc.) should also solicit information relative to the vendor’s capacity to perform (i.e., staffing plan, staff qualifications, financial statements, etc.) and may include requirements related to legal authority (i.e., applicable licenses and permits).

There are also numerous sources of public information, both free and fee-based, which can and should be a factor in a vendor responsibility assessment. OSC has developed a Resource Guide identifying various sources of data relevant to vendor responsibility, which is available at the Comptroller’s web site (http://www.osc.state.ny.us/vendrep/). Agencies are encouraged to notify OSC of additional resources that they have found useful so that they can be added to the Resource Guide.

Q4.2: How will the online Vendor Responsibility Questionnaire be used by state contracting entities to assess vendor responsibility? - NEW-

A: The online Vendor Responsibility Questionnaire will be utilized by state contracting entities in the same manner as paper questionnaires. Information disclosed by the vendor on the questionnaire will be accessed by the state contracting entity, and reviewed and assessed along with other relevant
information to make a responsibility determination. If more information or clarification is needed, the contracting entity will contact the vendor. The vendor will be able to supply the additional information by updating their online questionnaire, if acceptable to the contracting entity requesting the information.

**Q4.3: Can additional or more detailed information requested by a contracting entity be provided via the VendRep System?**

**A:** The contracting entity has discretion in determining how additional information must be provided. If in accordance with the agency’s request, a vendor can supplement, modify and re-certify its online questionnaire at any time. In the VendRep System, the vendor creates a new questionnaire, modifies the appropriate responses (the vendor’s previous responses will automatically be populated in the new questionnaire), then certifies the new questionnaire.

**Q4.4: Must an agency verify the accuracy of a Vendor Responsibility Questionnaire certified by the vendor?**

**A:** It is up to the contracting agency to determine the appropriate level of review for information disclosed by a proposed contractor. It is expected that the level of scrutiny will depend on the specific characteristics of the procurement and the totality of the information available to the agency.

OSC recommends that contracting agencies incorporate into their contracts language that requires the contractor to formally communicate to the agency any changes in their vendor responsibility disclosure and that provides the agency with the right to terminate the contract for non-responsibility or failure to accurately disclose.

**Q4.5: What constitutes a reasonable process for determining vendor responsibility by a contracting agency?**

**A:** The process must be conducted such that it provides reasonable assurances that the proposed contractor is responsible.

A contracting agency must undertake an affirmative review and, in all cases, consider any information that comes to its attention that raises issues concerning the vendor’s responsibility. This information should be reviewed on a case-by-case basis, with consideration given to its relevance to the scope of work of the transaction as well as the integrity of the contractor.
The contracting agency must:

- Work with the vendor to address potentially negative information; and
- Make a finding of responsibility or non-responsibility.

Additionally, for contracts valued at $100,000 or more, an agency must:

- Require disclosure by the proposed contractor of all information the agency deems relevant to vendor responsibility, and
- Verify and understand any potentially negative information, by contacting the vendor and using other sources.

Q4.6: What and how much information must an agency consider when conducting a determination of vendor responsibility?

A: The specific scope of the agency responsibility review is determined by the contracting agency. Responsibility reviews should address the following four major categories:

**Legal Authority:** Factors to be considered include authority to do business in New York State (e.g., Foreign Corporation’s Registration with Department of State under the Business Corporation Law or Not-For-Profit Corporation Law), licensing (e.g., with the Education Department or Department of State), registration of Not-For-Profits with the New York State Attorney General’s Charities Bureau, debarment by the State Labor Department due to a prevailing wage violation, etc. Note that both foreign and domestic Business and Not-For-Profit Corporations, Limited Partnerships, Limited Liability Partnerships, and Limited Liability Companies should have filed documentation with the Department of State.

**Integrity:** Factors to be considered include, but are not limited to, criminal indictments or convictions, civil fines and injunctions imposed by governmental agencies, anti-trust investigations, ethical violations, tax delinquencies, debarment by the federal, state or local government, or prior determinations of integrity-related non-responsibility.

**Financial and Organizational Capacity:** Factors to be considered include, but are not limited to, assets, liabilities, recent bankruptcies, equipment, facilities, personnel resources and expertise, availability in consideration of other business commitments, or existence of appropriate accounting and auditing procedures for control of property and funds.
Previous Contract Performance: Factors to be considered may include reports of less than satisfactory performance, early contract termination for cause, contract abandonment, court determinations of breach of contract, etc.

Q4.7: How can a contracting agency evaluate a proposed contractor’s past performance?

A: A contracting agency can require that proposers/bidders submit, as part of their proposal/bid, applicable references and identify other government contracts it has received. Additionally, the contracting agency, as part of its evaluation process, should contact those references and evaluate the information obtained. In conducting reference checks, it is suggested that the contracting state agency require references for work of similar scope, complexity, etc. Any negative references should be carefully reviewed by the contracting agency, and include verification that the proposed contractor was provided due process by the entity providing the reference. OSC encourages the use of quality control and consumer satisfaction measures, especially for human services contracts.

These suggested procedures are not intended to be all-inclusive. Agencies should undertake any and all steps that they deem appropriate when evaluating a proposed contractor’s past performance.

Q4.8: What type of information might cause an agency to find a vendor non-responsive?

A: A multitude of factors must be considered, as well as their relevance to the specific procurement. A finding of non-responsibility may be warranted, for example, when the agency has reliable evidence that causes them to believe that the contractor has committed fraud, anti-trust violations, embezzlement, theft, forgery, bribery or tax evasion; made false statements, or similar offenses; has had contracts terminated for breach; does not possess financial capacity to perform; etc. This list is not exhaustive: reliable evidence of any other offense indicating a lack of business integrity or honesty that seriously and directly affects the responsibility of the vendor may be sufficient to justify a finding of non-responsibility. In assessing any potentially negative information, an agency must make attempts to verify its accuracy and provide an opportunity for the vendor to respond in defense on any material findings.

Q4.9: What should an agency do if a proposed contractor is found by the agency to be potentially non-responsive? What rights does a
vendor have when it disagrees with the agency findings of potential non-responsibility?

A: If an agency makes a preliminary determination that a vendor is non-responsible, the contracting agency must notify the vendor of its preliminary determination and the basis for it. The agency must give the vendor an opportunity to be heard prior to rendering a final determination of non-responsibility. The agency should consult with its legal counsel and follow its own specific procedures for rendering such determinations.

Questionnaires

Q5.1: What organizations must complete a Vendor Responsibility Questionnaire? -NEW-

A: Generally, a non-governmental vendor selected or being considered by a state contracting entity for a grant or contract award valued at $100,000 or more over the term of the agreement is required to disclose relevant information to the contracting entity to allow the contracting entity to conduct a vendor responsibility review. A state contracting entity, at its discretion, may also require vendor disclosure for contracts of lesser value. Typically, the required disclosure is provided via a Vendor Responsibility Questionnaire.

Q5.2: Must an agency use the questionnaires provided by OSC?

A: No, the questionnaires available online through the VendRep System and the paper versions available on the Comptroller’s website (http://www.osc.state.ny.us/vendrep/templates.htm) are provided to assist a contracting agency in collecting relevant information. Other questionnaires are also available in the Procurement Council’s “New York State Procurement Bulletin – Best Practices – Determining Vendor Responsibility” (BestPractice.pdf).

Q5.3: How does a vendor who does not want to file a questionnaire online access a paper form? -NEW-

A: Hard copy versions of each of the online questionnaires are available and can be printed from the VendRep website at www.osc.state.ny.us/vendrep. Vendors can also obtain a copy by contacting the state contracting entity’s designated contact, or from the VendRep Help Desk HelpDesk@osc.state.ny.us, at 518-408-4OSC (4672) or toll free at 1-866-
Q5.4: Will responses to questions contained in the online questionnaire automatically qualify or disqualify a vendor for contract award? -NEW-

A: No, a vendor’s response to a single question or a set of questions will not automatically trigger a particular responsibility determination. As with the paper-based process, the contracting entity and OSC must assess the information provided in the vendor’s questionnaire, as well as other relevant information, in making a responsibility determination. Additionally, a non-responsibility finding is not an automatic debarment from doing business with New York State. The vendor’s responsibility must be separately assessed for each potential contract award and no vendor is excluded from consideration based on a prior non-responsibility finding, unless otherwise provided for by law.

Q5.5: What information from the online questionnaire will be publicly available? -NEW-

A: With the exception of private information such as a social security number, personal address or personal telephone number, information contained in the VendRep System may be released in accordance with the State Freedom of Information Law (FOIL). The VendRep System provides each vendor with the ability to identify specific information it believes is, or should be, exempt from Freedom of Information disclosure. A vendor’s designation of exempt information will be considered by the state contracting entity that is required to respond to a FOIL request; however, such designation by a vendor does not guarantee that the information can be exempted from release under FOIL. In addition, information provided in a vendor’s response to an online questionnaire may be released in response to a legal action (e.g. subpoena, court order, etc.)

Q5.6: If one State Agency has already identified a vendor as responsible for purchasing supplies or services, does another contracting agency need to require the vendor to complete a Vendor Responsibility Questionnaire?

A: A vendor responsibility determination is a unique decision for each contract. The fact that another agency has found a vendor responsible for one contract does not necessarily make that vendor responsible for all
procurements. The same is true of a finding of non-responsibility. A separate assessment by the contracting agency is warranted.

One exception to this general rule is purchases off of State centralized contracts. A vendor responsibility review is required at the time of initial contract award, and therefore a new responsibility determination is not required when purchasing off a centralized contract or backdoor (mini-bid) contract, unless the contracting agency becomes aware of information that may negatively impact the vendor’s responsibility.
### Part I – Contract Information

*(Complete for all transactions)*

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<td>Agency Name:</td>
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<td>3.</td>
<td>Batch Number:</td>
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<td>4.</td>
<td>Contract/Purchase Order No.:</td>
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<td>11.</td>
<td>Responsibility Determination □ Responsible □ Non-Responsible</td>
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<tr>
<td>12.</td>
<td>Issues Disclosed or Found: □ No □ Yes (List and describe resolution in Question 13)</td>
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13. **Issue Detail:** For each issue found by the agency or disclosed by the vendor, describe the issue and its resolution.

*Note:* In the “Resolution” field, include the agency’s assessment of the issue, its relevance to the vendor’s responsibility for this procurement, and any corrective or mitigating actions taken by the agency or vendor in response to the issues (attach additional pages if necessary).

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Revised 09/09/08
Part II – Vendor Disclosure and Agency Process

(Complete for new contracts valued at $100,000 or more, and amendments that bring contract value to $100,000 or more for the first time.)

G-221 states "agencies must affirmatively require disclosure by the proposed contractor of all information that the agency reasonably deems relevant to a determination of responsibility."

14. **Vendor Disclosure**

Please identify the items of disclosure provided by the vendor. Check all that apply and attach all pertinent information. (OSC reserves the right to request copies of vendor disclosures the agency used in making its responsibility determination)

- Online VendRep Questionnaire
- Hard Copy Questionnaire (must attach if used)
- Solicitation Document Responses
- Financial Statements
- Vendor Correspondence
- Vendor Website
- Other Vendor Disclosure
  
  Describe:

15. **Agency Process**

Describe the steps taken by the agency to determine vendor responsibility including consideration of the vendor disclosures identified above, and the independent agency research such as Internet sources, agency records and internal and external agency communication.
AGENCY RESPONSIBILITY CERTIFICATION

The below named contracting entity has undertaken an affirmative review of the proposed contractor’s responsibility and, based upon such review, has reasonable assurance that the proposed contractor as indicated below is:

☐ Responsible  ☐ Non-Responsible

Contract/Purchase Order Number: __________________________________________

Vendor Name __________________________________________________________

Signed _________________________________________________________________

Print Name ______________________________________________________________

Title ________________________________________________________________

Contracting Entity ______________________________________________________

Date ____________________________________________________________________
NYS Tax Law Section 5-a
NYS Tax Law Section 5-a

NYS Tax Law Section 5-a was first added by Chapter 60 of the Laws of 2004 and later amended under Part L of Chapter 62 of the Laws of 2006. It affected new contracts awarded on or after April 26, 2006.

Tax Law 5-a (Tax) applies to all state tax levy funded contracts having an estimated value greater than $100,000 that CUNY enters into with a vendor for commodities or services.

The law applies to centralized contracts, including centralized backdrop contracts, in excess of $100,000, as well as agency-awarded backdrop contracts in excess of $100,000 but does not include a purchase by a covered agency of commodities or services with a value > $100,000 based on a formal mini-bid solicitation pursuant to an OGS centralized or agency awarded backdrop contract.

For each impacted contract, the selected vendor must complete and submit two Tax forms. They are:
- Form ST-220-CA (covered agency)
- Form ST-2210-TD (tax department)

The CA form must be submitted by the selected vendor to the covered agency and forwarded to OSC as part of the procurement record. The TD form must be submitted by the vendor directly to the Tax Department (address on the first page of the form). CUNY should request a copy of the TD form from the vendor for their records.

On the following pages are documents that provide additional information regarding the actions that CUNY must take to comply with the provisions of the Tax Law. These include:
- OSC Bulletin G-222a (Sales and Compensating Use Tax Documentation)
- Q&A Concerning Tax Law Section 5-a (Publication 223)
- Copies of blank ST-220-CA and ST-220-TD forms

Forms and additional information are available by visiting the following websites:

New York State Office of the State Comptroller

Procurement and Disbursement Guidelines
(G-Bulletins)

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<th>Procurement &amp; Contracting</th>
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<td>Date Last Updated:</td>
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<td>Sales and Compensating Use Tax Documentation</td>
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Purpose:
This bulletin identifies the documentation that must be submitted to the Office of the State Comptroller’s (OSC) Bureau of Contracts to satisfy Tax Law Section 5-a, which was added to the Tax Law under Part N of Chapter 60 of the Laws of 2004, and amended under Part L of Chapter 62 of the Laws of 2006. The 2005 amendments to Tax Law Section 5-a resulted in different rules to be applied, and new and different forms to be used relative to procurements initiated on or after January 1, 2005, where the contract award occurs on or after April 26, 2006.

Background:
The state contracting requirements imposed by the enactment of Tax Law Section 5-a in 2004 were identified in OSC Bulletin G-222. This bulletin, G-222a was originally released as a supplement to Bulletin G-222 and was intended to address the revised requirements which resulted from the 2006 amendments to Tax Law Section 5-a. At that time it was necessary to keep both bulletins active, because the provisions of Tax Law Section 5-a that were in effect prior to April 26, 2006 continued to apply for all procurements initiated on or after January 1, 2005, but awarded before April 26, 2006. However, since sufficient time has passed to allow all contracts awarded prior to April 26, 2006 to become effective Bulletin G-222 is now retired, and is superseded in full by this Bulletin G-222a.

NOTE: Contracting agencies should visit the Department of Taxation and Finance’s website at http://www.tax.state.ny.us to obtain the following resources which provide specifics as to the law’s requirements:

- Publication 223, Questions and Answers Concerning Tax Law Section 5-a (as amended, effective April 26, 2006).
  http://www.tax.state.ny.us/pdf/publications/sales/pub223_507.pdf

- Form ST-220-CA, Contractor Certification to Covered Agency
Amended Tax Law
Section 5-a

This revised law imposes upon certain contractors with regard to contracts awarded pursuant to State Finance Law Article XI, the obligation to certify to DTF that the contractor, and, to the best of the contractor’s knowledge, any affiliates and subcontractors, are registered to collect state sales and compensating use tax, or that the contractor and, to the best of the contractor’s knowledge, any affiliates and subcontractors, did not have sales within New York State of tangible personal property or taxable services in excess of $300,000 during the immediately preceding four consecutive sales tax quarters.

The contractor must also certify in writing to the procuring agency that the requisite certification has been made to DTF, or that the certification is not required to be filed, and that the certification is correct and complete. The certification to the procuring agency must be included in the procurement record.

The law provides that before a qualifying contract may take effect, the contractor must be in compliance with the certification requirements of the law. Furthermore, for contracts already in effect, and which provide for a renewal, the contractor must certify, prior to the commencement date of the renewal term, that the contractor has filed with DTF the certification, as required by Tax Law Section 5-a and that the certification is correct and complete.

Applicability of Tax Law Section 5-a

Tax Law Section 5-a applies to all contracts in excess of $100,000 for the purchase by a covered agency of commodities or services, awarded pursuant to Article XI of the State Finance Law. For purposes of determining whether or not a contract value exceeds $100,000, such that the provisions of Tax Law section 5-a would apply, the total cumulative value of the contract, including the original contract award value, and any amendments, extensions, or renewals, as they occur, must be considered. Once the total cumulative value of a contract exceeds $100,000, the law applies regardless of the transactional value of any contract, amendment, extension, or renewal, with one unusual exception that would occur if said amendment, extension, or renewal should result in a reduction in the total contract value to an amount not exceeding $100,000.

The law applies to centralized contracts, including centralized backdrop contracts, in excess of $100,000, as well as agency-awarded backdrop contracts in excess of $100,000 but does not include a purchase by a covered agency of commodities or services with a value in excess of $100,000 based upon a formal mini-bid solicitation pursuant to an OGS centralized or agency-awarded backdrop contract. The law does not apply to grants, intergovernmental agreements, or purchases of commodities or services from a preferred source.

The law provides that there should not be any aggregation of multiple purchases from the same contractor for purposes of determining whether the threshold of greater than
$100,000 has been met.¹

Effective Date of Tax Law Section 5-a

Tax Law Section 5-a became effective on August 20, 2004, but only impacts procurements initiated on or after January 1, 2005. The amendment to the law was passed on April 26, 2006, and takes effect as of that date.

As a result, the provisions of the amended law are applicable to contracts (as defined in the previous section of this bulletin) resulting from procurements initiated on or after January 1, 2005 and awarded, amended, extended, or assigned on or after April 26, 2006.

Contractor Certification Forms

Pursuant to Tax Law Section 5-a, contractors will be required to complete, sign, under penalty of perjury, and file with DTF Contractor Certification Form ST-220-TD.

Agencies should direct state contractors to the DTF websites listed below for more information on Publication 223 and ST-220-TD:


A second certification form (ST-220-CA) is required to be provided by the contractor to the procuring agency before a contract may take effect. This certification to the procuring agency, also made under penalty of perjury, states that the requisite (ST-220-TD) certification has been made to DTF and, to the best of the contractor’s knowledge, that the requisite (ST-220-TD) certification is correct and complete.

In addition, for all covered contracts that were effective and binding as of April 26, 2006, and which provide for extension or renewal, the contractor must, no later than the day prior to the commencement date of the applicable renewal term, provide certification (ST-220-CA) to the contracting agency that the requisite (ST 220-TD) certification has been made to DTF.

State contractors can access form ST-220-CA at the DTF website listed below:


NOTE: The certification provisions of Tax Law Section 5-a do not apply to a contract that the procuring covered agency and the State Comptroller find is necessary to address an emergency situation (an “emergency” within the meaning of State Finance Law Article XI, or to ensure the public health, safety, or welfare). In such instance, both the procuring covered agency and the Comptroller must agree in writing to waive the certification requirements. The contracting agency should request OSC’s concurrence on their exemption determination, in writing to OSC, which request shall explain the reasons supporting such
determination.

**Contracting Agency**

Where the contractor is obligated to make certification to the procuring agency, in accordance with Tax Law Section 5-a, procuring agencies must include a copy of ST-220-CA in all contract packages submitted to OSC for approval.

**Resources for More Information**

Questions regarding scope and applicability of Tax Law Section 5-a should be directed to:

Department of Taxation and Finance  
Taxpayer's Contact Center  
1-800-698-2931

Questions regarding the submission to OSC of required documentation should be directed to the OSC Bureau of Contracts at the telephone number listed below:

Bureau of Contracts:  
(518) 474-6494

1 This is in contrast to the situation where an underlying contract is later amended, extended, or renewed, and the cumulative value of these becomes the determinative dollar amount for purposes of determining applicability of the law. Tax Law 5-a, as amended, applies to amendments, renewals, and extensions of otherwise covered contracts, already in effect prior to the effective date of the amended law, where such contracts are amended, renewed, or extended on or after April 26, 2006.
ST-220 Tax Clearance Exemptions

1. Contracts for Architectural, Engineering and Surveying services

2. Contracts with not-for-profit firms or preferred sources.

3. Contracts with all public entities (e.g. US Govt., local governments, counties, cities, towns, villages, school districts, public authorities, public benefit corporations, etc.)

4. Contracts as the result of grants.

5. Highway construction contracts

6. Contracts with an education corporation (SUNY system/Research Foundation) – see FAQ #6

Last updated: 1/29/2008
Questions and Answers Concerning Tax Law Section 5-a
(as amended, effective April 26, 2006)

Contractor, Affiliate and Subcontractor Sales and Compensating Use Tax Certification
Note: Although accurate, some of the definitions given in this publication have been simplified. If there is any discrepancy between the definitions of the terms in this publication and applicable New York law or regulations, then the law and regulations will govern.

1) Q: What does Tax Law section 5-a require?
A: The statute requires certain contractors awarded certain state contracts valued at more than $100,000 to certify to the Tax Department that they are registered to collect New York State and local sales and compensating use taxes, if they made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of $300,000, measured over a specified period. In addition, contractors must certify to the Tax Department that each affiliate and subcontractor of such contractor exceeding such sales threshold during a specified period is registered to collect New York State and local sales and compensating use taxes. Contractors must also certify to the procuring state entity that they filed the certification with the Tax Department and that it is correct and complete.

2) Q: What is the purpose of section 5-a?
A: The statute’s aim is to ensure that contractors do not get state work unless they, their affiliates and their subcontractors are, when required by section 5-a, registered to collect New York State and local sales and compensating use taxes. Included within the statute’s scope are out-of-state businesses making sales of more than $300,000 into New York but having no physical presence in the state. Other businesses, if affiliated with, or subcontractors of, a bidder for a state contract, would similarly have to consent to registration as a condition of the contractor’s obtaining state work, providing the affiliate’s or subcontractor’s sales exceed the $300,000 sales threshold.

3) Q: Under what circumstances does section 5-a apply?
A: A contract is covered by section 5-a if:
   i. The procuring entity is a covered agency within the meaning of the statute (see Q & A 5);
   ii. The contractor is a contractor within the meaning of the statute (see Q & A 6); and
   iii. The contract is a contract within the meaning of the statute. This is the case when it (a) has a value in excess of $100,000, and (b) is a contract for commodities or services, as such terms are defined for purposes of the statute (see Q & A 8 and 9).

Furthermore, the procuring entity must have begun the solicitation to purchase on or after January 1, 2005, and the resulting contract must have been awarded, amended, extended, renewed, or assigned on or after April 26, 2006 (the effective date of the section 5-a amendments).

If all of the above criteria are met, amended section 5-a is applicable and, as general matter, two certifications (Forms ST-220-CA and ST-220-TD) are required to be filed. These forms are available at www.nystax.gov.

If any of the above criteria are not met, amended section 5-a is not applicable and no certifications (no forms) are required to be filed.

4) Q: Are any contracts expressly exempted from application of section 5-a?
A: Yes. A contract will be exempted from application of section 5-a if the procuring covered agency and OSC, or other contract reviewer if OSC is not required to approve the contract, find in writing that the contract is necessary to:
   (a) address an emergency, within the meaning of Article 11 of the State Finance Law; or
   (b) ensure the public health, safety, or welfare when an urgent event with a compelling public purpose arises.

In addition, the agency’s and contract reviewer’s written finding must explain the reasons supporting the determination.

5) Q: What governmental entities are covered agencies for purposes of Tax Law section 5-a?
A: Tax Law section 5-a defines a covered agency to mean:
   • a state agency for purposes of Article 11 of the New York State Finance Law; or
   • a public authority or public benefit corporation at least one of whose members is appointed by the Governor.

For purposes of Article 11 of the New York State Finance Law, the term state agency includes all state departments, boards, commissions, offices or institutions. As such, the Department of Law, Office of the State Comptroller and the Education Department are included. Local government entities are not covered agencies for purposes of section 5-a.

1 An emergency within the meaning of the State Finance Law is “an urgent and unexpected requirement where health and public safety or the conservation of public resources is at risk.”
6) Q: Who is a contractor for purposes of section 5-a?

A: The statute defines a contractor as a person awarded a contract by a covered agency. The term person is defined as an individual, partnership, limited liability company, society, association, joint stock company or corporation.

The term person does not include a public corporation or an education corporation, as such terms are defined in section 66 of the New York State General Construction Law, a not-for-profit corporation whose contracts are subject to approval in accordance with Article 11-B of the New York State Finance Law, a board of cooperative educational services created pursuant to Article 40 of the New York State Education Law, or a soil and water conservation district created pursuant to section 5 of the New York State Soil and Water Conservation Districts Law.

As defined in the New York State General Construction Law:

* The term public corporation includes a municipal corporation, a district corporation and a public benefit corporation.

* A municipal corporation includes a county, city, town, village and school district.

* A district corporation includes any territorial division of the state, other than a municipal corporation, established by law, which possesses the power to contract indebtedness and levy taxes or benefit assessments upon real estate or to require the levy of such taxes or assessments, whether or not such territorial division is expressly declared to be a body corporate and politic by the statute creating or authorizing the creation of such territorial division.

* A public benefit corporation is a corporation organized to construct or operate a public improvement wholly or partly within the state, the profits from which inure to the benefit of New York State or other states, or to the people thereof.

* As defined in the New York State General Construction Law and the New York State Education Law, the term education corporation means a corporation

  — chartered or incorporated by the Board of Regents of the University of the State of New York or otherwise formed under the New York State Education Law, or

  — formed by a special act of New York State with its principal purpose an education purpose and which is a member of the University of the State of New York, or

  — formed under laws other than the statutes of New York State which, if it were to be formed currently under the laws of New York State, might be chartered by the Board of Regents of the University of the State of New York, and which has been authorized to conduct its activities in this state by the Regents or as an authorized foreign education corporation with the consent of the New York State Commissioner of Education.

7) Q: When does award of a contract occur for purposes of section 5-a?

A: A contract is awarded when the procuring covered agency notifies a person either orally or in writing that the person has been selected to provide the commodities or perform the services being procured. The certifications required by section 5-a are only required to be filed by the person awarded a contract.

8) Q: What contracts let by covered agencies are subject to section 5-a?

A: The statute defines the term contract as an agreement between a contractor and a covered agency for the purchase by the covered agency, pursuant to Article 11 of the New York State Finance Law, of commodities or services having a value in excess of $100,000. The statute also expressly includes within the definition of contract centralized contracts with values in excess of $100,000.

The definition of contract in section 5-a is broad enough to include, but is not limited to, the following types of contracts:

* backdrop contracts;
* single source contracts;
* sole source contracts;
* multiple award contracts;
* piggybacking contracts;
* strategic partnership procurement contracts; and
* contracts for the state.

Definitions

The term commodities has the meaning given by Article 11 of the New York State Finance Law, and includes (other than with respect to contracts for state printing) material goods, supplies, products, construction items, or other standard articles of commerce, other than technology, which are the subject of any purchase or other exchange.
The term services has the meaning given by Article 11 of the New York State Finance Law. Services means (other than with respect to contracts for state printing) the performance of a task or tasks, and may include a material good or a quantity of material goods, and which is the subject of any purchase or other exchange. For Article 11 purposes, services includes technology. The term services does not apply to contracts for architectural, engineering or surveying services, or to contracts with not-for-profit organizations approved in accordance with Article 11-B of the New York State Finance Law.

9) Q: Is a contract for information technology (IT) services subject to Tax Law Section 5-a?

A: Yes, assuming the criteria identified in Q & A 3 are met. When an IT service contract is awarded to a contractor, the section 5-a certifications must be made on Forms ST-220-CA and ST-220-TD irrespective as to whether the contractor is providing (1) only custom software, (2) only hardware and pre written off-the-shelf software, or (3) a combination of (1) and (2).

On Form ST-220-TD, a certification is made by the contractor as to whether the contractor, an affiliate(s) and/or subcontractor(s) made sales in New York State of tangible personal property (TPP) or taxable services, as set forth under the Tax Law, that exceeded $300,000 over a certain look-back test period. If such sales threshold is met, then a certification is made that the contractor, affiliate(s) and/or subcontractor(s) is (are) registered to collect sales tax in New York. If the threshold is not met, then the contractor marks the box on Form ST-220-TD indicating that fact.

Pre written computer software (including software delivered electronically) and computer hardware constitute TPP for sales tax purposes, and therefore, are counted towards the $300,000 New York sales threshold. In contrast, custom software (which is computer software designed to the specifications of a specific purchaser) is neither TPP nor a taxable service. Thus, the amount of sales derived from custom software is not counted towards this $300,000 sales tax threshold.

Example:

A contractor made sales in New York State valued at $1,000,000 during the test period specified in section 5-a of only custom software, which is neither TPP nor a taxable service. Under such circumstances the contractor would certify on Form ST-220-TD that it did not meet the $300,000 sales threshold by marking the bottom box in Section 1 of the form. Although total sales exceeded $300,000, custom software does not fit the criteria of being TPP or taxable services and cannot be counted toward the $300,000 sales threshold.

However, if the contractor also made sales of pre-written computer software (TPP) in the amount of $500,000 during the same look-back test period, then the contractor must certify that it was registered to collect sales tax in New York. Accordingly, the contractor must mark the first box in Section 1 on Form ST-220-TD.

Under both scenarios above, the contractor must also certify to the procuring agency on Form ST-220-CA that it also filed Form ST-220-TD with the Tax Department.

10) Q: What contract types are excluded from the definition of contract under section 5-a?

A: The following are not included within the definition of contract in section 5-a:
- contracts based on formal mini-bid solicitations pursuant to centralized contracts;
- grants;
- revenue contracts;
- intergovernmental agreements; and
- contracts with preferred sources as defined in Article 11 of the New York State Finance Law.

11) Q: Is the more than $100,000 threshold determined based on total contract value, or on an annualized basis?

A: The more than $100,000 threshold is determined based on the value (estimated, if necessary) of the contract over its full term, excluding possible renewal terms.

Also, multiple purchases of commodities or services by a covered agency from the same contractor during a state fiscal year are not to be aggregated for purposes of determining whether the more than $100,000 threshold has been met.

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2 The term technology is defined by Article 11 of the New York State Finance Law as either a good or a service or a combination of the two, that results in a technical method of achieving a practical purpose or in improvements in productivity. Goods may be either new or used.
12) Q: If a contract is not let pursuant to Article 11 of the State Finance Law, is it subject to section 5-a?

A: Contracts not let pursuant to Article 11 of the State Finance Law are not subject to section 5-a.

13) Q: Does Tax Law section 5-a apply to an agency accessing a centralized contract through issuance of a purchase order?

A: Assuming all criteria identified in Q&A 3 are met, Tax Law section 5-a applies to award of the centralized contract and not to covered agency access to the centralized contract through issuance of a purchase order. However, the requirements of Tax Law section 5-a do apply to covered agency purchases using all-copy purchase orders. For information regarding all-copy purchase orders, contact the Office of the State Comptroller, Bureau of Contracts at (518) 474-4622.

14) Q: Is a mini-bid contract, which is let by a covered agency from a backdrop contract, subject to Tax Law Section 5-a?

A: No. A backdrop contract is one in which a procuring agency selects a pool of qualified vendors that are deemed eligible to bid on a procurement via a mini-bid. A mini-bid is an abbreviated process during which contract users solicit final pricing from the pool of pre-selected back-drop contractors. A state agency backdrop procurement is deemed awarded to a contractor at the point in time when the vendor is selected to be included in the pool of contractors eligible to participate in a mini-bid process. In view of that, a contractor is required to submit the Tax Law section 5-a forms when selected as a backdrop vendor by a state agency. During a mini-bid process, additional section 5-a certifications by a backdrop contractor are not required unless there are changes necessitating a new filing. For instance, if during a mini-bid, a contractor hires a new subcontractor which was not previously reported on its Form ST-220-TD, then the contractor should report the new subcontractor by filing of a new Form ST-220-TD (assuming the subcontractor meets the more than $300,000 sales in New York State threshold).

15) Q: Who is an affiliate for purposes of Tax Law section 5-a?

A: Section 5-a defines an affiliate as a person which directly, indirectly or constructively controls another person; is controlled by another person; or is, along with another person, under the control of a common parent. Control means possession of the power to direct, or cause the direction of, the management and policies of another person. Determining whether control exists is a factual inquiry to be based upon the circumstances in each case. Responsibility for determining whether a person is an affiliate rests with the contractor.

16) Q: Who is a subcontractor for purposes of Tax Law section 5-a?

A: A subcontractor is a person engaged by a contractor or another subcontractor to perform a portion of the contractor's obligations under a contract.

17) Q: Which contractors, affiliates and subcontractors must be certified as registered to collect New York State and local sales and compensating use taxes pursuant to section 5-a prior to a contract taking effect?

A: Those contractors, affiliates and subcontractors making sales delivered by any means to locations within New York State of tangible personal property or taxable services having a value in excess of $300,000 during a specified period must be certified as registered to collect New York State and local sales and compensating use taxes.

All sales of tangible personal property or taxable services within New York State during the specified period (not merely sales to covered agencies) are taken into account in determining whether the more than $300,000 cumulative sales threshold has been met. This also includes the amount of any sales made which are exempt from sales tax (see Q & A 20).

18) Q: Over what period must the more than $300,000 cumulative sales threshold occur so as to require a contractor, affiliate, or subcontractor to be certified under Tax Law section 5-a as registered with the Tax Department to collect sales and compensating use taxes?

A: The registration requirement applies if the person made a cumulative total of more than $300,000 in sales in New York State during the four completed sales tax quarters which immediately precede the sales tax quarter in which the certification is made. Sales tax quarters are June-August, September-November, December-February and March-May.

If a person has not closed its books for the sales tax quarter immediately preceding the sales tax quarter in which the certification is being made, such person should use its sales information from the four most recent sales tax quarters for which such information is available to determine whether the more than $300,000 cumulative sales threshold has been met.
Application of the above rule is illustrated by the following example:

**Example:** Contractor A is awarded a $150,000 contract by covered agency B in June, 2006. Contractor A would determine whether the more than $300,000 threshold was met by examining its sales of tangible personal property or taxable services within New York State during the June, 2005-August, 2005; September, 2005-December, 2005; December, 2005-February, 2006; and March, 2006-May, 2006 sales tax quarters. If Contractor A has not completed its accounting for the March, 2006-May, 2006 sales tax quarter, then it should, in lieu of that sales tax quarter, use data from the March, 2005-May, 2005 sales tax quarter.

19) Q: How are the terms sale, tangible personal property and taxable services defined for purposes of determining whether the more than $300,000 cumulative sales threshold has been met?

A: Sale has the meaning given for New York State and local sales and compensating use tax law purposes, and includes any transfer of title or possession or both, exchange or barter, rental, lease or license to use or consume (including, with respect to computer software, the right to reproduce), conditional or otherwise, in any manner or by any means whatsoever for a consideration, or any agreement therefor.

Tangible personal property has the meaning given for New York State and local sales and compensating use tax purposes. For such purposes, the term means corporeal personal property of any nature having a material existence and perceptible to the human senses. Tangible personal property includes, but is not limited to:

- raw materials, such as wood, metal, rubber and minerals;
- manufactured items, such as gasoline, oil, diesel motor fuel and kero-jet fuel, chemicals, jewelry, furniture, machinery and equipment, parts, tools, supplies, clothing, motor vehicles, appliances, boats, yachts, lighting fixtures, building materials;
- computers and pre-written (canned/off-the-shelf/standard) software;
- artistic items, such as sketches, paintings, photographs, moving picture films and recordings;
- animals, trees, shrubs, plants and seeds;
- bottled water, soda, beer;
- candy and confections;
- cigarettes and tobacco products;
- cosmetics and toiletries;
- coins and other numismatic items, when purchased for purposes other than for use as a medium of exchange;
- postage stamps, when purchased for purposes other than mailing; and
- precious metals in the form of bullion, ingots, wafers and other forms.

Tangible personal property does **not** include real property or intangible personal property.

Taxable services means services, the receipts from the sale of which are taxable for New York State and local sales and compensating use tax purposes. The term includes those services specifically enumerated in New York State and local sales and compensating use tax law as taxable. Taxable services are determined without regard to exemptions provided for in the sales and compensating use tax law. The term includes, but is not limited to:

- providing information by printed, mimeographed or multigraphed matter or by duplicating written or printed matter in any other manner, including the services of collecting, compiling or analyzing information of any kind or nature and furnishing reports thereof to other persons;
- processing, assembling, fabricating, printing or imprinting tangible personal property furnished by a customer who did not purchase the tangible personal property for resale;
- installing tangible personal property, or maintaining, servicing or repairing tangible personal property that is not held for sale by the purchaser of the service;
- storing tangible personal property that is not being held for sale, and the rental of safe deposit boxes or similar space;
- maintaining, servicing or repairing real property, whether inside or outside buildings;
- providing parking, garaging or storing for motor vehicles;
- interior decorating and designing services;
- protective and detective services; and
- furnishing entertainment or information services by means of telephony or telegraphy.

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20) Q: Are exempt sales taken into account in determining whether the more than $300,000 sales threshold of section 5-a is met?
A: Yes. In determining whether more than $300,000 in sales of tangible personal property or taxable services were made during the specified period, contractors must count exempt sales of tangible personal property or taxable services. Contractors should determine whether sales are of tangible personal property or taxable services with reference to Articles 28 and 29 of the New York State Tax Law, disregarding relevant exemptions provided for therein, including, but not limited to, the exemption for sales to exempt organizations.

Example:
During the four specified sales tax quarterly periods, an out-of-state contractor made $400,000 in sales of tangible personal property into New York State. The entire $400,000 in sales during such periods was made to exempt state agencies. The contractor has exceeded the $300,000 threshold and must be certified as registered for New York State and local sales and compensating use tax purposes.

21) Q: Who is responsible for making the certifications required by section 5-a?
A: The contractor is responsible for making the certifications required by the statute. The contractor’s certification must include whether its affiliates and/or subcontractors whose sales exceeded the $300,000 threshold during the specified period, are registered for New York State sales and compensating use tax purposes. The contractor’s certification must be made to the best of its knowledge.

22) Q: How does a contractor make the certifications required by the statute?
A: The contractor must file a properly completed Form ST-220-CA (with the procuring covered agency) and Form ST-220-TD (with the Tax Department). The covered agency must include Form ST-220-CA in the procurement record for the contract. These requirements must be met before a contract may take effect.

Renewals: In addition, after a contract has taken effect, a Form ST-220-CA must be filed again with a covered agency if a contract, which by its terms may be renewed, is being renewed. In this case, the Form ST-220-CA must be filed with the contracting covered agency prior to the commencement date of the renewal term(s). In addition, a new Form ST-220-TD may be required to be filed with the Tax Department. A new Form ST-220-TD would be required to be filed with the Tax Department if no previous Form ST-220-TD has been filed by the contractor with the Tax Department or, if a previously filed Form ST-220-TD is no longer correct and complete.

Example:
Contractor A is awarded a contract by Covered Agency B. The contract is Contractor A’s first with a covered agency, and is subject to the requirements of section 5-a. Contractor A has one affiliate and one subcontractor, and all three entities exceeded the $300,000 threshold during the specified period. Contractor A must file Form ST-220-TD with the Tax Department, certifying that all three entities are registered for New York State and local sales and compensating use tax purposes. In addition, Contractor A must file Form ST-220-CA with Covered Agency B, certifying that it has filed Form ST-220-TD with the Tax Department, and that it is correct and complete.

During the term of its contract with Covered Agency B, Contractor A acquires two new affiliates and one additional subcontractor. One of the affiliates, as well as the subcontractor, exceeded the $300,000 threshold during the specified sales tax quarters. Contractor A must, as soon as possible after learning of the changed circumstances, file a new Form ST-220-TD with the Tax Department, certifying that the affiliate and the subcontractor exceeding the $300,000 threshold are registered for New York State and local sales and compensating use tax purposes. If Contractor A does not file the new Form ST-220-TD with the Tax Department, then the consequences specified in Q&A 29 below could apply.

Contractor A’s contract with Covered Agency B provides that the contract may be renewed for one additional two-year term, at the option of the parties. The parties agree to renew the contract. Thus, Contractor A must, prior to the commencement date of the renewal term, file a new Form ST-220-CA with Covered Agency B certifying that it has filed Form ST-220-TD with the Tax Department, and that it is correct and complete. If Contractor A cannot make such certification to Covered Agency B because information shown on the current Form ST-220-TD filed with the Tax Department is not correct and complete, then it must immediately file a new Form ST-220-TD with the Tax Department reflecting current information. Contractor A must then file Form ST-220-CA with Covered Agency B before the commencement date of the renewal term.

Following commencement of Contractor A’s renewal term with Covered Agency B, Contractor A is awarded a new contract by Covered Agency C. The new contract is covered by section 5-a. If the information shown on Contractor A’s last filed
Form ST-220-TD is correct and complete, it need not file a new Form ST-220-TD with the Tax Department. However, Contractor A must file Form ST-220-CA with Covered Agency C certifying that it has previously filed Form ST-220-TD with the Tax Department, and that it is correct and complete as of the date of the new certification (Form ST-220-CA) filing with Covered Agency C.

23) Q: If the contractor filed Form ST-220 prior to amendment of section 5-a on April 26, 2006, and the contract has, since April 26, 2006, been amended, extended, renewed or assigned, must a Form ST-220-TD be filed with the Tax Department?
   A: Yes, if the contract meets the criteria set forth in Q & A 3.

24) Q: Must Form ST-220-TD be filed with the Tax Department if the contractor filed Form ST-220 prior to amendment of section 5-a on April 26, 2006, and the contractor is then awarded another contract after that date?
   A: Yes, if the contract meets the criteria set forth in Q & A 3.

25) Q: When is a contractor, affiliate or subcontractor required to be listed in Schedule A of Form ST-220-TD?
   A: A contractor, affiliate or subcontractor is required to be listed in Schedule A of Form ST-220-TD when such contractor, affiliate or subcontractor has exceeded the more than $300,000 cumulative sales threshold during the specified period as discussed in Q & A 18.

26) Q: When is a contractor who previously filed Form ST-220-TD with the Tax Department required to file a new Form ST-220-TD certification with the Tax Department?
   A: If a contractor or an affiliate or subcontractor, is not registered with the Tax Department for sales and compensating use tax purposes on the contractor’s original certification, and such contractor, affiliate, or subcontractor makes sales delivered by any means to locations within New York State of tangible personal property or taxable services having a value in excess of $300,000 during any consecutive four sales tax quarters which follow the sales tax quarter in which the contractor’s original certification was made, then the contractor shall, as soon as possible after such occurrence, file a new Form ST-220-TD with the Tax Department certifying that it, and/or its affiliates and/or subcontractors, as applicable, are registered for sales and compensating use tax purposes.

27) Q: If a contractor, affiliate or subcontractor is required by section 5-a to be registered with the Tax Department to collect New York State and local sales and compensating use taxes, and such person is not registered, what must such person do to register?
   A: The contractor, affiliate or subcontractor must complete Form DTF-17, Application for Registration as a Sales Tax Vendor, to register. Upon registration, the Tax Department will issue a certificate of authority, which authorizes the recipient to collect New York State and local sales and compensating use taxes. Form DTF-17 is available on the Tax Department’s Web site, www.nys_tax.gov, or may be obtained by calling the Sales Tax Information Center at 1-800-698-2909. For additional information regarding registration, see Publication 750, A Guide to Sales Tax in New York State.

28) Q: If a contractor, affiliate or subcontractor has submitted Form DTF-17, to register to collect New York State sales and compensating use taxes at the time of filing the certifications required under section 5-a, but has not yet received its certificate of authority from the Tax Department, how should the contractor complete the certifications?
   A: The contractor should complete the certifications as required. The column on Schedule A asking whether the person listed is in the process of registering should be checked. If there is a problem with the registration (see Tax Law section 1134(a)(4)(B) for reasons why registration may be denied), the Tax Department will notify the applicant.

29) Q: Who is responsible for signing Forms ST-220-TD and ST-220-CA?
   A: An individual authorized to sign on behalf of the contractor may execute the certifications.

30) Q: Can Form ST-220-TD be provided to the Tax Department electronically?
   A: Form ST-220-TD cannot be provided electronically to the Tax Department at this time. If the Tax Department later determines that electronic submission is feasible, instructions will be issued as to how to electronically sign and file Form ST-220-TD.
31) Q: What are the consequences if Form ST-220-TD and/or Form ST-220-CA are not provided, or if provided, are determined to be false?

A: If a contractor fails to make the certifications required by section 5-a, by law, the contract cannot take effect. If during the term of the contract, the Tax Department or the covered agency discovers that a certification is false, then such false certification may subject the contractor to civil or criminal sanctions, and a finding of nonresponsibility for future procurements. Under certain circumstances, the statute provides that the contract shall be subject to termination if the covered agency determines that termination of the contract is in the best interests of New York State.

32) Q: What is the effect of registering with the Tax Department to collect New York State and local sales and compensating use taxes?

A: Once registered, a person is a vendor within the meaning of New York State and local sales and compensating use tax law, and must file returns and collect and pay, or pay over, tax. Failure to file returns and collect and pay, or pay over, tax will result in imposition of penalty and interest charges.

Need help?

Internet access: www.nystax.gov
(for information, forms, and publications)

Fax-on-demand forms: Forms are available 24 hours a day, 7 days a week. 1 800 748-3676

Telephone assistance is available from 8:00 A.M. to 5:00 P.M. (eastern time), Monday through Friday. 1 800 698-2331
To order forms and publications: 1 800 462-8100
From areas outside the U.S. and outside Canada: (518) 485-6600

Hotline for the hearing and speech impaired:
If you have access to a telecommunications device for the deaf (TDD), contact us at 1 800 634-2110. If you do not own a TDD, check with independent living centers or community action programs to find out where machines are available for public use.

Persons with disabilities: In compliance with the Americans with Disabilities Act, we will ensure that our lobbies, offices, meeting rooms, and other facilities are accessible to persons with disabilities. If you have questions about special accommodations for persons with disabilities, please call 1 800 572-1233.
Contractor Certification to Covered Agency

(Pursuant to Section 5-a of the Tax Law, as amended, effective April 26, 2006)

For information, consult Publication 223, Questions and Answers Concerning Tax Law Section 5-a (see Need Help? on back).

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<tr>
<th>Contractor name</th>
<th>For covered agency use only Contract number or description</th>
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<tr>
<td>Contractor's principal place of business</td>
<td>City</td>
</tr>
<tr>
<td>Contractor's mailing address (if different than above)</td>
<td>Estimated contract value over the full term of contract (but not including renewals)</td>
</tr>
<tr>
<td>Contractor's federal employer identification number (EIN)</td>
<td>Contractor's sales tax ID number (if different from contractors EIN)</td>
</tr>
<tr>
<td>Contractor's telephone number</td>
<td>Covered agency name</td>
</tr>
<tr>
<td>Covered agency address</td>
<td>Covered agency telephone number</td>
</tr>
</tbody>
</table>

I, ____________________________, hereby affirm, under penalty of perjury, that I am ____________________________,

(name) (title)

of the above-named contractor, that I am authorized to make this certification on behalf of such contractor, and I further certify that:

(Mark an X in only one box)

☐ The contractor has filed Form ST-220-TD with the Department of Taxation and Finance in connection with this contract and, to the best of the contractor's knowledge, the information provided on the Form ST-220-TD, is correct and complete.

☐ The contractor has previously filed Form ST-220-TD with the Tax Department in connection with ____________________________,

(insert contract number or description)

and, to the best of the contractor's knowledge, the information provided on that previously filed Form ST-220-TD, is correct and complete as of the current date, and thus the contractor is not required to file a new Form ST-220-TD at this time.

Sworn to this ______ day of ________________, 20__

(sign before a notary public) (title)

Instructions

Tax Law section 5-a was amended, effective April 26, 2006. On or after that date, in all cases where a contract is subject to Tax Law section 5-a, a contractor must file (1) Form ST-220-CA, Contractor Certification to Covered Agency, with a covered agency, and (2) Form ST-220-TD with the Tax Department before a contract may take effect. The circumstances when a contract is subject to section 5-a are listed in Publication 223, Q&A 3. This publication is available on our Web site, by fax, or by mail. (See Need help? for more information on how to obtain this publication.) In addition, a contractor must file a new Form ST-220-CA with a covered agency before an existing contract with such agency may be renewed.

If you have questions, please call our information center at 1 800 688-2931.

Note: Form ST-220-CA must be signed by a person authorized to make the certification on behalf of the contractor, and the acknowledgement on page 2 of this form must be completed before a notary public.

When to complete this form

As set forth in Publication 223, a contract is subject to section 5-a, and you must make the required certification(s), if:

i. The procuring entity is a covered agency within the meaning of the statute (see Publication 223, Q&A 5);

ii. The contractor is a contractor within the meaning of the statute (see Publication 223, Q&A 6); and

iii. The contract is a contract within the meaning of the statute. This is the case when it (a) has a value in excess of $100,000 and (b) is a contract for commodities or services, as such terms are defined for purposes of the statute (see Publication 223, Q&A 8 and 9).

Furthermore, the procuring entity must have begun the solicitation to purchase on or after January 1, 2005, and the resulting contract must have been awarded, amended, extended, renewed, or assigned on or after April 26, 2006 (the effective date of the section 5-a amendments).
Individual, Corporation, Partnership, or LLC Acknowledgment

STATE OF  

COUNTY OF  

On the ___ day of ____________ in the year 20__, before me personally appeared ____________________________, known to me to be the person who executed the foregoing instrument, who, being duly sworn by me did depose and say that he resides at _____________________________.

Town of _____________________________.

County of _____________________________.

State of _____________________________.; and further that:

[Mark an X in the appropriate box and complete the accompanying statement.]

☐ (If an individual): he executed the foregoing instrument in his/her name and on his/her own behalf.

☐ (If a corporation): he is the Chairman of ____________________________, the corporation described in said instrument; that, by authority of the Board of Directors of said corporation, he is authorized to execute the foregoing instrument on behalf of the corporation for purposes set forth therein; and that, pursuant to that authority, he executed the foregoing instrument in the name of and on behalf of said corporation as the act and deed of said corporation.

☐ (If a partnership): he is a ____________________________, the partnership described in said instrument; that, by the terms of said partnership, he is authorized to execute the foregoing instrument on behalf of the partnership for purposes set forth therein; and that, pursuant to that authority, he executed the foregoing instrument in the name of and on behalf of said partnership as the act and deed of said partnership.

☐ (If a limited liability company): he is a duly authorized member of ____________________________, LLC, the limited liability company described in said instrument; that he is authorized to execute the foregoing instrument on behalf of the limited liability company for purposes set forth therein; and that, pursuant to that authority, he executed the foregoing instrument in the name of and on behalf of said limited liability company as the act and deed of said limited liability company.

Notary Public

Registration No.

Privacy notification

The Commissioner of Taxation and Finance may collect and maintain personal information pursuant to the New York State Tax Law, including but not limited to, sections 5-a, 171, 171-a, 287, 308, 429, 475, 506, 597, 1066, 1142, and 1415 of that Law, and may require disclosure of social security numbers pursuant to 42 USC 405(c)(3)(C)(I).

This information will be used to determine and administer tax liabilities and, when authorized by law, for certain tax offset and exchange of tax information programs as well as for any other lawful purpose.

Information concerning quarterly wages paid to employees is provided to certain state agencies for purposes of fraud prevention, support enforcement, evaluation of the effectiveness of certain employment and training programs and other purposes authorized by law.

Failure to provide the required information may subject you to civil or criminal penalties, or both, under the Tax Law.

This information is maintained by the Director of Records Management and Data Entry, NYS Tax Department, W.A. Harriman Campus, Albany NY 12227; telephone 1 800 225-5829. From areas outside the United States and outside Canada, call (518) 465-6800.

Need help?

Internet access: www.nystax.gov
(for information, forms, and publications)

Fax-on-demand forms: 1 800 748-3676

Telephone assistance is available from 8:00 A.M. to 5:00 P.M. (eastern time), Monday through Friday. 1 800 698-2931

To order forms and publications: 1 800 462-8100

From areas outside the U.S. and outside Canada: (518) 485-9800

Hearing and speech impaired (telecommunications device for the deaf (TDD) callers only): 1 800 634-2110

Persons with disabilities: In compliance with the Americans with Disabilities Act, we will ensure that our lobbies, offices, meeting rooms, and other facilities are accessible to persons with disabilities. If you have questions about special accommodations for persons with disabilities, please call 1 800 972-1233.
**Contractor Certification**

(Pursuant to Section 5-a of the Tax Law, as amended, effective April 26, 2006)

For information, consult Publication 223, *Questions and Answers Concerning Tax Law Section 5-a* (see Need help? below).

<table>
<thead>
<tr>
<th>Contractor name</th>
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<th>Contractor's principal place of business</th>
<th>City</th>
<th>State</th>
<th>ZIP code</th>
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<th>Contractor's mailing address (if different than above)</th>
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<tr>
<th>Contractor's federal employer identification number (EIN)</th>
<th>Contractor's sales tax ID number (if different from contractor's EIN)</th>
<th>Contractor's telephone number</th>
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<tr>
<th>Covered agency or state agency</th>
<th>Contract number or description</th>
<th>Estimated contract value over the full term of contract (but not including renewals) $</th>
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<tr>
<th>Covered agency address</th>
<th>Covered agency telephone number</th>
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**General information**

Section 5-a of the Tax Law, as amended, effective April 26, 2006, requires certain contractors awarded certain state contracts valued at more than $100,000 to certify to the Tax Department that they are registered to collect New York State and local sales and compensating use taxes, if they made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of $300,000, measured over a specified period. In addition, contractors must certify to the Tax Department that each affiliate and subcontractor exceeding such sales threshold during a specified period is registered to collect New York State and local sales and compensating use taxes. Contractors must also file a Form ST-220-CA, certifying to the procuring state entity that they filed Form ST-220-TD with the Tax Department and that the information contained on Form ST-220-TD is correct and complete as of the date they file Form ST-220-CA.

All sections must be completed including all fields on the top of this page, all sections on page 2, Schedule A on page 3, if applicable, and Individual, Corporation, Partnership, or LLC Acknowledgement on page 4. If you do not complete these areas, the form will be returned to you for completion.

For more detailed information regarding this form and section 5-a of the Tax Law, see Publication 223, *Questions and Answers Concerning Tax Law Section 5-a*, (as amended, effective April 26, 2006), available at [www.nystax.gov](http://www.nystax.gov).

Information is also available by calling the Tax Department’s Contractor Information Center at 1 800 698-2931.

**Note:** Form ST-220-TD must be signed by a person authorized to make the certification on behalf of the contractor, and the acknowledgement on page 4 of this form must be completed before a notary public.

Mail completed form to:

NYS TAX DEPARTMENT
DATA ENTRY SECTION
W A HARRIMAN CAMPUS
ALBANY NY 12227

**Privacy notification**

The Commissioner of Taxation and Finance may collect and maintain personal information pursuant to the New York State Tax Law, including but not limited to, sections 5-a, 171, 171-a, 287, 308, 429, 475, 505, 697, 1096, 1142, and 1415 of that Law; and may require disclosure of social security numbers pursuant to 42 USC 405(c)(2)(C)(ii).

This information will be used to determine and administer tax liabilities and, when authorized by law, for certain tax offset and exchange of tax information programs as well as for any other lawful purpose.

Information concerning quarterly wages paid to employees is provided to certain state agencies for purposes of fraud prevention, support enforcement, evaluation of the effectiveness of certain employment and training programs and other purposes authorized by law.

Failure to provide the required information may subject you to civil or criminal penalties, or both, under the Tax Law.

This information is maintained by the Director of Records Management and Data Entry, NYS Tax Department, W A Harriman Campus, Albany NY 12227.

**Need help?**

- **Internet access:** [www.nystax.gov](http://www.nystax.gov)
  (for information, forms, and publications)

- **Fax-on-demand forms:** 1 800 748-3676

- **Telephone assistance** is available from 8:00 A.M. to 5:00 P.M.
  (eastern time), Monday through Friday.
  To order forms and publications: 1 800 462-8100

- **Sales Tax Information Center:** 1 800 698-2909
  From areas outside the U.S. and outside Canada: (518) 485-6800

- **Hearing and speech impaired** (telecommunications device for the deaf (TDD) callers only): 1 800 634-2110

- **Persons with disabilities:** In compliance with the Americans with Disabilities Act, we will ensure that our lobbies, offices, meeting rooms, and other facilities are accessible to persons with disabilities. If you have questions about special accommodations for persons with disabilities, please call 1 800 972-1233.
I, ____________________________, hereby affirm, under penalty of perjury, that I am ____________________________,
of the above-named contractor, and that I am authorized to make this certification on behalf of such contractor.

Complete Sections 1, 2, and 3 below. Make only one entry in each section.

Section 1 — Contractor registration status

☐ The contractor has made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of $300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made. The contractor is registered to collect New York State and local sales and compensating use taxes with the Commissioner of Taxation and Finance pursuant to sections 1134 and 1253 of the Tax Law, and is listed on Schedule A of this certification.

☐ The contractor has not made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of $300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made.

Section 2 — Affiliate registration status

☐ The contractor does not have any affiliates.

☐ To the best of the contractor's knowledge, the contractor has one or more affiliates having made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of $300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made, and each affiliate exceeding the $300,000 cumulative sales threshold during such quarters is registered to collect New York State and local sales and compensating use taxes with the Commissioner of Taxation and Finance pursuant to sections 1134 and 1253 of the Tax Law. The contractor has listed each affiliate exceeding the $300,000 cumulative sales threshold during such quarters on Schedule A of this certification.

☐ To the best of the contractor's knowledge, the contractor has one or more affiliates, and each affiliate has not made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of $300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made.

Section 3 — Subcontractor registration status

☐ The contractor does not have any subcontractors.

☐ To the best of the contractor's knowledge, the contractor has one or more subcontractors having made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of $300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made, and each subcontractor exceeding the $300,000 cumulative sales threshold during such quarters is registered to collect New York State and local sales and compensating use taxes with the Commissioner of Taxation and Finance pursuant to sections 1134 and 1253 of the Tax Law. The contractor has listed each subcontractor exceeding the $300,000 cumulative sales threshold during such quarters on Schedule A of this certification.

☐ To the best of the contractor's knowledge, the contractor has one or more subcontractors, and each subcontractor has not made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of $300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made.

Sworn to this ______ day of ____________________, 20____

__________________________________________ (sign before a notary public)

__________________________________________ (title)
Schedule A — Listing of each entity (contractor, affiliate, or subcontractor) exceeding $300,000 cumulative sales threshold

List the contractor, or affiliate, or subcontractor in Schedule A only if such entity exceeded the $300,000 cumulative sales threshold during the specified sales tax quarters. See directions below. For more information, see Publication 223.

<table>
<thead>
<tr>
<th>A</th>
<th>B</th>
<th>C</th>
<th>D</th>
<th>E</th>
<th>F</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Name</td>
<td>Address</td>
<td>Federal ID Number</td>
<td>Sales Tax ID Number</td>
<td>Registration in progress</td>
</tr>
</tbody>
</table>

Column A — Enter C in column A if the contractor; A if an affiliate of the contractor; or S if a subcontractor.

Column B — Name - If the entity is a corporation or limited liability company, enter the exact legal name as registered with the NY Department of State, if applicable. If the entity is a partnership or sole proprietor, enter the name of the partnership and each partner’s given name, or the given name(s) of the owner(s), as applicable. If the entity has a different DBA (doing business as) name, enter that name as well.

Column C — Address - Enter the street address of the entity's principal place of business. Do not enter a PO box.

Column D — ID number - Enter the federal employer identification number (EIN) assigned to the entity. If the entity is an individual, enter the social security number of that person.

Column E — Sales tax ID number - Enter only if different from federal EIN in column D.

Column F — If applicable, enter an X if the entity has submitted Form DTF-17 to the Tax Department but has not received its certificate of authority as of the date of this certification.
Individual, Corporation, Partnership, or LLC Acknowledgment

STATE OF

COUNTY OF

On the ___ day of ___________ in the year 20___, before me personally appeared ___________________________, known to me to be the person who executed the foregoing instrument, who, being duly sworn by me did depose and say that
he resides at ____________________________________________________________

Town of ________________________________________________________________

County of ______________________________________________________________

State of ___________________________; and further that:

[Mark an X in the appropriate box and complete the accompanying statement.]

☐ (If an individual): he executed the foregoing instrument in his/her name and on his/her own behalf.

☐ (If a corporation): he is the __________________________________________ of __________________________________________, the corporation described in said instrument; that, by authority of the Board of Directors of said corporation, he is authorized to execute the foregoing instrument on behalf of the corporation for purposes set forth therein; and that, pursuant to that authority, he executed the foregoing instrument in the name of and on behalf of said corporation as the act and deed of said corporation.

☐ (If a partnership): he is a __________________________________________ of __________________________________________, the partnership described in said instrument; that, by the terms of said partnership, he is authorized to execute the foregoing instrument on behalf of the partnership for purposes set forth therein; and that, pursuant to that authority, he executed the foregoing instrument in the name of and on behalf of said partnership as the act and deed of said partnership.

☐ (If a limited liability company): he is a duly authorized member of ______ LLC, the limited liability company described in said instrument; that he is authorized to execute the foregoing instrument on behalf of the limited liability company for purposes set forth therein; and that, pursuant to that authority, he executed the foregoing instrument in the name of and on behalf of said limited liability company as the act and deed of said limited liability company.

__________________________________________________
Notary Public

Registration No. ________________________________
Consultant Disclosure Legislation
Consultant Disclosure Legislation (CDL)

As a result of new reporting requirements included in Chapter 10 of the Laws of 2006 (Consultant Disclosure Legislation), State contractors are now required to disclose, by employment category, the number of persons employed to provide services under a contract for consulting services, the number of hours worked and the amount paid to the contractor by the State as compensation for work performed by these employees. This will include work by subcontractors also.

The CDL applies to all state tax levy funded contracts having an estimated value greater than $20,000 that CUNY enters into with a vendor for consulting services only. These services include analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal or similar services. There may be services that are exempt from the requirements of this legislation if they are not identified in or similar to the services listed above.

For each impacted contract, the successful vendor must complete and submit two CDL forms. They are:

- Form A (Contractor’s Planned Employment from Contract Start through the End of the Contract Term) – Filed once at the initiation of the contract.
- Form B (Contractor’s Annual Employment Report) – Filed annually throughout the contract term (see following paragraph).

Form A must be submitted by the vendor to CUNY at the end of the negotiation process and forwarded by CUNY as part of the Procurement Record to OSC with the resultant contract. It is an estimate of the personal services costs to be paid to the vendor over the course of the contract. Form B must be completed and submitted each year of the contract by the consultant on or before May 15th for the prior April 1st through March 31st. It is sent to the Office of the State Comptroller, with copies filed with both the Department of Civil Services and CUNY.

On the following pages are documents that provide additional information regarding the actions that CUNY must take to comply with the provisions of the CDL. These include:

- OSC Bulletin G-226 (Consultant Disclosure Legislation)
- Copies of blank Forms A and B
- Copy of CDL language that should appear in each new contract or supplement, if not contained in the original contract.

Forms and additional information are available by visiting the following websites:

OSC Required Forms: http://osc.state.ny.us/agencies/gbull/g226forma.doc and http://osc.state.ny.us/agencies/gbull/g226formb.doc

Employment Category Database: http://online.onetcenter.org/
The purpose of this bulletin is to explain new reporting requirements related to Chapter 10 of the Laws of 2006 and to provide forms to be used to submit the necessary information in a uniform format.

Chapter 10 of the Laws of 2006 amends State Finance Law § 8 and § 1631 by requiring:

1. That the Office of the State Comptroller (OSC) include in the Consulting Services Report it compiles annually on contracts issued by State agencies for consulting services during the previous fiscal year, certain additional information on employees providing services under such contracts;

2. That contractors annually report certain employment information to the contracting agency, the Department of Civil Service (DCS) and OSC; and,

3. That OSC include such employment information in the Procurement Stewardship Act Report it compiles annually.2

The new legislation takes effect on June 19, 2006.

State Contractors
Employment Information: As a result of these changes in law, State contractors will be required to disclose, by employment category, the number of persons employed to provide services under a contract for consulting services, the number of hours worked and the amount paid to the contractor by the State as compensation for work performed by these employees. This will include information on any persons working under any subcontracts with the State contractor.

Contracts for Consulting Services: Chapter 10 of the Laws of 2006 expands the definition of contracts for consulting services to include any contract entered into by a State agency for analysis, evaluation, research,
training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal, or similar services.

Initial Report Requirements:

State Finance Law § 8 (subd 17) requires that OSC report to the Legislature on contracts for consulting services that were issued by State agencies during the previous fiscal year. The new legislation requires that OSC include in the Consulting Services Report the employment information described above.

To enable compliance with the law, State agencies must include in the Procurement Record submitted to OSC for new consultant contracts, the State Consultant Services Contractor’s Planned Employment From Contract Start Date Through the End of the Contract Term (Form A attached to this bulletin). The completed form must include information for all employees providing service under the contract whether employed by the contractor or a subcontractor. Please note that the form captures the necessary planned employment information prospectively from the start date of the contract through the end of the contract term.

State agencies may incorporate the Form A into new solicitations for consulting services in order to provide notice to potential contractors that the contractor selected may be required to complete the form.

It is important to note that regardless of a contract’s payment methodology (for example, deliverable based payment or lump sum payments), an agency must structure the procurement/contract to be able to ascertain and report the required data.

State agencies should begin to submit Form A as part of the Procurement Record for new consulting services contracts as soon as possible. In order to allow sufficient time for State agencies to implement the new requirements, submission of a completed Form A will be required for OSC approval of new contracts for consulting services received by OSC for approval on or after July 17, 2006, except in extraordinary circumstances as determined in the sole discretion of OSC.

Annual Report Requirements:

Chapter 10 of the Laws of 2006 mandates that State agencies must now require State contractors to report annually on the employment information described above, including work performed by subcontractors. The legislation mandates that the annual employment reports are to be submitted by the contractor to the contracting agency, to OSC and to DCS. OSC must include the employment information in the Procurement Stewardship Act Report. State Finance Law § 163 (subd 14) requires that OSC annually report to the State Procurement Council, the Governor and the Legislature on active procurement contracts above $15,000.³

State Consultant Services Contractor’s Annual Employment Report (Form B attached to this bulletin) is to be used to report the information. Please note that, in contrast to the
information to be included on Form A, which is a one-time report of planned employment data for the entire term of a consulting contract on a projected basis, Form B will be submitted each year the contract is in effect and will capture historical information, detailing actual employment data for the most recently concluded State fiscal year (April 1st - March 31st).

To enable compliance with the law, State agencies need to incorporate the annual reporting requirement and the Form B template into new solicitations for consulting services to provide notice to potential contractors that the contractor selected will be required to submit the form annually.

Incorporation of the reporting requirement for Form B to be submitted annually will be a requirement for OSC approval of new contracts for consulting services including those contracts resulting from mini-bids received by OSC for approval on or after July 17, 2006, except in extraordinary circumstances as determined in the sole discretion of OSC. As above, this date was established to allow time for State agencies to implement the new requirements; however, State agencies are encouraged to incorporate the new Form B reporting requirement as soon as possible.

For existing contracts for consulting services (i.e., in place before June 19, 2006), the contracting agency must also require contractors to submit Form B annually, commencing with the close of fiscal year 2006-2007.

The first State Consultant Services Contractor’s Annual Employment Report will be due May 15, 2007, and will include information for the period ending March 31, 2007. Thereafter, the State Consultant Services Contractor’s Annual Employment Reports will be due no later than May 15th of each succeeding year.

Summary:
RFP’s and other solicitations for consulting services should include notice of the new reporting requirements. The Procurement Record for new contracts for consulting services received by OSC for approval on or after July 17, 2006 must include, upon submission of the contract for approval, a completed Form A. New contracts for consulting services, including those contracts resulting from mini-bids must include a requirement that Form B be submitted annually by the contractor to the contracting agency, DCS and OSC. In addition, with respect to contracts for consulting services in place prior to June 19, 2006, the contracting agency must require its contractors to submit a completed Form B annually, commencing with the close of fiscal year 2006-2007.

Completing the Forms:
Form A and Form B should be completed for contracts for consulting services in accordance with the following:

- **Scope of Contract (Form B only):** a general classification of the single category
that best fits the predominate nature of the services provided under the contract.

- **Employment Category:** the specific occupation(s), as listed in the O*NET occupational classification system, which best describe the employees providing services under the contract.

  *(Note: Access the O*NET database, which is available through the US Department of Labor’s Employment and Training Administration, on-line at online.onetcenter.org to find a list of occupations.)*

- **Number of Employees:** the total number of employees in the employment category employed to provide services under the contract during the report period, including part time employees and employees of subcontractors.

- **Number of hours (to be) worked:** for Form A, the total number of hours to be worked, and for Form B, the total number of hours worked during the report period by the employees in the employment category.

- **Amount Payable under the Contract:** the total amount paid or payable by the State to the State contractor under the contract, for work by the employees in the employment category, for services provided during the report period.

Reports that are to be submitted to OSC may be transmitted as follows:

**By mail:** NYS Office of the State Comptroller
Bureau of Contracts
110 State Street, 11th Floor
Albany, NY 12236
Attn: Consultant Reporting

Reports that are to be submitted to DCS may be transmitted as follows:

**By mail:** NYS Department of Civil Service
Alfred E. Smith Office Building
Albany, NY 12239
Attn: Counsel’s Office

**Questions:**

**Vendors/Contractors:** If you have any questions regarding this bulletin, or the requirements of Consultant Disclosure Law, please contact the State agency responsible for the procurement/contract.

**State Agencies:** If you have any questions regarding this bulletin, please contact:

[2] In addition, the new legislation requires the Department of Civil Service to publish an annual report summarizing the number of contract employees performing consulting services and the types of services provided by such contract employees. The new legislation also mandates that the Governor include in the Executive Budget certain information based on the State Contractor’s Annual Employment Reports.

[3] Because the Comptroller’s contract approval threshold has been raised to $50,000 while the PSA Report threshold remains at $15,000, the PSA Report will contain information on contracts not requiring OSC approval. Consequently, State agencies must use the "T" contract mechanism for all consulting services contracts between $15,000 and $50,000.
FORM A
State Consultant Services - Contractor's Planned Employment
From Contract Start Date Through The End Of The Contract Term

State Agency Name: [Blank]  
Contractor Name: [Blank]  
Contract Start Date: [Blank] / [Blank]  
Contract End Date: [Blank] / [Blank]  
Agency Code: [Blank]  
Contract Code: [Blank]  
Contract Number: [Blank]

<table>
<thead>
<tr>
<th>Employment Category</th>
<th>Number of Employees</th>
<th>Number of hours to be worked</th>
<th>Amount Payable Under the Contract</th>
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Total this page: 0  
Grand Total: 0  
Amount Payable: $0.00

Name of person who prepared this report: [Blank]
Title: [Blank]
Preparer's Signature: [Blank]
Date Prepared: [Blank] / [Blank] / [Blank]

(Use additional pages, if necessary)
State Consultant Services
Contractor's Annual Employment Report
Report Period: April 1, to March 31,

Contracting State Agency Name:  
Contract Number:  
Contract Term: / / to / /
Contractor Name:  
Contractor Address:  
Description of Services Being Provided:

Scope of Contract (Choose one that best fits):
- Analysis  
- Evaluation  
- Research  
- Training  
- Data Processing  
- Computer Programming  
- Other IT consulting  
- Engineering  
- Architect Services  
- Surveying  
- Environmental Services  
- Health Services  
- Mental Health Services  
- Accounting  
- Auditing  
- Paralegal  
- Legal  
- Other Consulting  

<table>
<thead>
<tr>
<th>Employment Category</th>
<th>Number of Employees</th>
<th>Number of Hours Worked</th>
<th>Amount Payable Under the Contract</th>
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</table>

Total this page 0 0 $ 0.00

Grand Total

Name of person who prepared this report:
Preparer's Signature:___________________________
Title: ________________________________
Phone #: ___________________________
Date Prepared: / /
CONSULTANT DISCLOSURE LEGISLATION. In accordance with Chapter 10 of the Laws of 2006, the Contractor shall complete the “State Consultant Services Contractor’s Annual Employment Report” (Form B, and submit copies to the Office of the State Comptroller, the Department of Civil Service, and the City University of New York on or before May 15th of each year the contract is in effect. The Contractor shall provide information regarding all employees providing service under this contract, whether employed by the Contractor or any subconsultant or subcontractor. Annual employment reports should be submitted to the following addresses. It is recommended, however, that consultants check the agency websites annually to confirm the addresses.

By mail:

**NYS Office of the State Comptroller**
Bureau of Contracts
110 State Street, 11th Floor
Albany, N. Y. 12236
**Attn:** Consultant Reporting

**NYS Department of Civil Service**
Alfred E. Smith Building
Albany, N. Y. 12239
**Attn:** Chapter 10

**City University of New York**
Office of University Controller
230 West 41st Street
New York, N. Y. 10036
**Attn:** Chapter 10
Contracts with Non-Profit Organizations
Contracts with Non-Profit Organizations

Article 7-a of the Executive Law requires, with certain exemptions, that charitable organizations must register with the Office of the Attorney General. In addition, the Estates, Powers and Trusts law (EPTL) Section 8-1.4(s) requires that a charitable organization “shall not be qualified to make application for funds or grants or to receive such funds from any department or agency of the State without certifying compliance with” all applicable registration and filing requirements.

The Law applies to all contracts that CUNY enters into with a vendor for commodities or consulting services where the selected vendor is a non-profit organization. When submitting a contract to OSC for approval, the agency must include the organization’s charitable registration number (CRN) and written documentation from the Office of the Attorney General (A/G) that the charitable organization is currently up-to-date with its Charities Registration. This CRN must also be entered in the “provisions” section of the AC-340 (encumbrance document). Additionally, the agency will need to submit a statement from the charitable organization that the organization is exempt pursuant to one of the categories indicated on the Office of Attorney General’s Request for Registration Exemption (Schedule E).

On the following pages are documents that provide additional information regarding the actions that the vendor and CUNY must take to comply with the provisions of the law. These include:

- OSC Bulletin G-079 (Contracts with Non-Profit Organizations)
- Summary of Registration and Filing Requirements for Charitable Entities
- Form CHAR410 – Registration Statement for Charitable Organizations.
- Schedule E – Request for Registration Exemption for Charitable Organizations

Forms and additional information are available by visiting the following websites:

Charities Bureau (A/G): http://www.oag.state.ny.us/bureaus/charities/charities.html
Charity Form 410: http://www.oag.state.ny.us/bureaus/charities/pdfs/char410.pdf
Schedule E: http://www.oag.state.ny.us/bureaus/charities/pdfs/char410SchE.pdf
Procurement and Disbursement Guidelines (G-Bulletins)

<table>
<thead>
<tr>
<th>Bulletin Category:</th>
<th>Procurement &amp; Contracting</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bulletin Number:</td>
<td>G-079</td>
</tr>
<tr>
<td>Date Issued:</td>
<td>8/22/88</td>
</tr>
<tr>
<td>Date Last Updated:</td>
<td>9/10/08</td>
</tr>
<tr>
<td>Bulletin Name:</td>
<td>Contracts with Non-Profit Organizations</td>
</tr>
</tbody>
</table>

The purpose of this bulletin is to clarify the requirement for state agencies to provide charities registration information in connection with State contracts with charitable organizations. This bulletin supersedes Procurement and Disbursement Guidelines' Bulletin G-079 last updated January 31, 2006.

Article 7-a of the Executive Law requires, with certain exemptions, that charitable organizations must register with the Office of the Attorney General. In addition, the Estates, Powers and Trusts Law (EPTL) Section 8-1.4(e) requires that a charitable organization "shall not be qualified to make application for funds or grants or to receive such funds from any department or agency of the state without certifying compliance with" all applicable registration and filing requirements.

Effective immediately, when an agency submits to the Comptroller's Office a contract with a charitable organization, the agency must submit one of the following:

1. The organization's charitable registration number and written documentation from the Office of the Attorney General that the charitable organization is currently up-to-date with its Charities Registration. This information should be submitted with the vendor responsibility documents. The Charities Registration number must also be inserted in the "provisions" section of the AC-340 Contract Encumbrance form accompanying the contract; or

2. A statement from the contractor (charitable organization) that the organization is exempt pursuant to one of the categories indicated on the Office of Attorney General's Request for Registration Exemption (Schedule E). The statement must identify the specific category under which the charitable organization is exempt, and be submitted with the vendor responsibility documents.

To obtain written documentation of an organization's charities registration status, or if you have questions regarding the statutory requirements for registration, contact:

Office of the Attorney General
Bureau of Charities Registration
120 Broadway
New York, NY 10271-0332
(212)416-8402

e-mail: charities.bureau@oag.state.ny.us

Web address:

http://www.oag.state.ny.us/bureaus/charities/charities.html

If you have questions regarding this bulletin, contact:

Office of the State Comptroller
Bureau of Contracts
110 State Street ~ 11th Floor
Albany, NY 12235
(518)474-3488

1 Section 172-a of the Executive Law and Section 8.14 of the EPTL enumerate certain entities which are exempt from the registration requirements. These entities are listed on the Office of the Attorney General’s Request for Registration Exemption (Schedule E).
Summary of Registration and Filing Requirements for Charitable Entities
Pursuant to the Executive Law and the Estates, Powers and Trusts Law

www.on.state.ny.us/charities/charities.htm

Contents:
I. Types of Charitable Entities ........................................ 1
II. Registration Information ............................................. 1-2
   A. Registration Statutes and Registration Types .............. 1-2
   B. New York State Registration Number ....................... 2
III. Registration Requirements ....................................... 2
IV. Filing Requirements ................................................ 2
V. Disclosure Requirement for Solicitation ....................... 2
VI. Exemption from Registration ...................................... 2-3
VII. Closing Registration and Dissolutions ....................... 3
VIII. Discontinued Charities Bureau Forms ......................... 3-4
IX. Questions / Contacting the Charities Bureau ................. 4-5
   A. General Contact Information .................................. 4
   B. Offices for Estates, Charitable Remainder Trusts and Dissolution Matters ........................................... 5

Note:
[4] The information in this publication is for charitable and other nonprofit entities. For registration and financial reporting requirements for fund raising professionals engaged by nonprofit organizations, see publication CHAR009 (Summary of Registration and Filing Requirements for Fund Raising Professionals).
[5] Nonprofit organizations registered with the Charities Bureau can determine their New York State registration number and the statute(s) under which they are registered by searching for their organization at the Charities Bureau’s website at www.nys.state.ny.us/charities/search.html.
[6] Please place identifying information (registration number if applicable, organization name, etc.) on all correspondence and other documents, including checks, submitted to the Charities Bureau.
[7] All fees must be paid by a single check or money order, payable to “New York State Department of Law.” Please submit filing fee with statements, not separately.
[8] All references to forms designated “CHAR” are to official forms of the Attorney General’s Charities Bureau. Copies of these forms are available on the Charities Bureau’s website (see address at top of this page).

I. Types of Charitable Entities

There are two general types of charitable and other nonprofit entities that must register with the Charities Bureau:

- **charitable and other nonprofit organizations**: Included in this category are both (1) charitable and other nonprofit organizations that solicit contributions from New York State (including residents, foundations, corporations, government agencies and other entities) and (2) charitable organizations that are incorporated, formed or otherwise conduct activity in New York State (including wholly charitable trusts that file an IRS Form 990, 990-EZ or 990-PF).

- **trusts and estates with charitable interests**: Included in this category are trusts and estates with charitable interests that do not file an IRS Form 990, 990-EZ or 990-PF.

Registration and filing requirements differ based on the type of entity. **Submissions on the incorrect form will not be accepted, so it is important to understand what type your entity is**.

Fund raising professionals engaged by nonprofit organizations to conduct fund raising activity in New York State may also be required to register with the Charities Bureau. Refer to publication CHAR009 (Summary of Registration and Filing Requirements for Fund Raising Professionals) to learn about those requirements.

II. Registration Information

A. **Registration Statutes and Registration Types**

There are two statutes that require registration of charitable and other nonprofit entities:

- **Article 7-A**: Article 7-A of the Executive Law (Article 7-A) requires registration of charitable and other nonprofit organizations that solicit contributions from New York State (including residents, foundations, corporations, government agencies and other entities).

- **EPTL**: Section 8-14 of the Estates, Powers and Trusts Law (EPTL) requires registration of both charitable organizations that are incorporated, formed or otherwise conduct activity in New York State and trusts and estates with charitable interests.

Based on these two registration statutes, there are three registration types for organizations registered with the Charities Bureau:

- **Article 7-A**: Entities registered pursuant to Article 7-A only and not registered under the EPTL.
- **EPTL**: Entities registered pursuant to the EPTL only and not registered under Article 7-A.
- **Dual**: Entities registered pursuant to both Article 7-A and the EPTL.
The Charities Bureau will determine the registration type from the information provided in the registration materials you submit. You may request that the Charities Bureau adjust the registration type if information or activities change after initial registration. Your charitable entity type and registration type determine your annual filing requirements (see also parts I (Types of Charitable Entities) and IV (Filing Requirements) of these instructions).

To find out the registration information, including the registration type, for a nonprofit organization that is already registered, search for your organization at the Charities Bureau website:

www.eap.state.ny.us/charities/search.html

If your organization is registered but you cannot find your organization at the Charities Bureau website, please contact the Charities Bureau for assistance. See part IX (Questions / Contacting the Charities Bureau) of these instructions.

B. New York State Registration Number

The Charities Bureau will assign a registration number to you. If you already registered your nonprofit organization, you may find out its registration number by searching for the organization at the Charities Bureau website, as described in the preceding paragraph.

III. Registration Requirements

You must know your type of charitable entity to determine which parts of these instructions apply to you. For more information, see part I (Types of Charitable Entities) of these instructions.

- charitable and other nonprofit organizations: To learn about registration of charitable and other nonprofit organizations, refer to CHAR410 (Registration Statement for Charitable Organizations) and the instructions for that form.

- trusts and estates with charitable interests: To learn about registration of trusts and estates with charitable interests that do not file an IRS Form 990, 990-EZ or 990-PF, refer to the following forms and their respective instructions:

<table>
<thead>
<tr>
<th>Entity</th>
<th>Form and Instructions</th>
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</thead>
<tbody>
<tr>
<td>Charitable Lead Trusts</td>
<td>CHAR001-LT &amp; instructions</td>
</tr>
<tr>
<td>Charitable Remainder Trusts</td>
<td>CHAR001-RT &amp; instructions</td>
</tr>
<tr>
<td>Estates with a Charitable Interest</td>
<td>Notice of Probate &amp; Charitable Estate Registration Instructions</td>
</tr>
</tbody>
</table>

IV. Filing Requirements

You must know your type of charitable entity to determine which parts of these instructions apply to you. For more information, see part I (Types of Charitable Entities) of these instructions.

- charitable and other nonprofit organizations: Registered charitable and other nonprofit organizations must file with the Charities Bureau every year. To learn about the filing requirements, refer to CHAR500 (Annual Filing for Charitable Organizations) and the instructions for that form.

- trusts and estates with charitable interests: To learn about filing requirements of trusts and estates with charitable interests that do not file an IRS Form 990, 990-EZ or 990-PF, refer to the following forms and their respective instructions:

<table>
<thead>
<tr>
<th>Entity</th>
<th>Form and Instructions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Charitable Lead Trusts</td>
<td>CHAR004 &amp; instructions</td>
</tr>
<tr>
<td>Charitable Remainder Trusts</td>
<td>Accounting &amp; instructions to CHAR001-RT</td>
</tr>
<tr>
<td>Estates with a Charitable Interest</td>
<td>Accounting &amp; Charitable Estate Registration Instructions</td>
</tr>
</tbody>
</table>

V. Disclosure Requirement for Solicitation

Pursuant to New York Executive Law § 174-b, any solicitation of contributions used by or on behalf of a charitable organization, which is required to register and file annual financial reports with the New York State Attorney General pursuant to Article 7-A of the Executive Law, must include a statement that a copy of its latest annual report may be obtained, upon request, from the organization or from the New York State Attorney General's Charities Bureau, Attn: FOIL Officer, 120 Broadway, New York, New York 10271. A charitable organization is prohibited from including such a statement if it has failed to comply with all registration and filing requirements. If the charitable organization has not previously been required to file an annual report with the Charities Bureau, the solicitation must state the date when the annual report will be filed. Please review all of your solicitation material to ensure that it contains the required statement, including the address of the Charities Bureau.

VI. Exemption from Registration

You must know your type of charitable entity to determine which parts of these instructions apply to you. For more information, see part I (Types of Charitable Entities) of these instructions.

- charitable and other nonprofit organizations: Charitable and other nonprofit organizations that believe they are exempt from registration may request exemption by submitting the appropriate CHAR410 Series form with Schedule E (Request for Registration Exemption) attached. To determine if your organization qualifies for an exemption and learn how to request an exemption, refer to the instructions for the CHAR410 (Registration Statement for Charitable Organizations), which includes instructions for Schedule E.
VII. Closing Registration and Dissolutions

You must know your type of charitable entity to determine which parts of these instructions apply to you. For more information, see part I (Types of Charitable Entities) of these instructions.

- charitable and other nonprofit organizations: The registration of a charitable or other nonprofit organization will only be closed if the organization demonstrates that it has dissolved or otherwise formally ceased operations.

**Corporations** — If the organization was incorporated, it must be dissolved before the Charities Bureau can close its registration.

- If you do have a certificate of dissolution from the New York Department of State, or from a similar government agency in a different state, submit it along with the CHAR500 (Annual Filing for Charitable Organizations) marked "Final filing", with all required attachments to that form. If you do not yet have a certificate of dissolution, you must obtain one.

- If the organization was incorporated and you do not have a certificate of dissolution but do have a court-approved plan of dissolution, complete the dissolution process and then submit to the Charities Bureau a copy of that certificate of dissolution. For New York corporations, obtain the certificate of dissolution from the New York State Department of State Division of Corporations customer service department, which may be reached by phone at 518-473-2492, option 5.

- If the organization was incorporated and you do not have a certificate of dissolution and do not have a court-approved dissolution plan, please submit:

  1) a brief description of the organization's plans to dissolve; and

  2) if the assets were transferred to another organization, proof that the other organization received the assets (for example, a letter from the recipient organization, signed by an officer, stating that it received the transfer).

If you need help planning for dissolution, please refer to the following guides, which may be found at the web address listed at the top of these instructions:

- Procedures and Forms for a No Assets Non-Judicial Dissolution Pursuant to Article 10 of the Not-for-Profit Corporation Law
- Procedures and Forms for a Voluntary Non-Judicial Dissolution Pursuant to Article 10 of the Not-for-Profit Corporation Law of a Not-for-Profit Corporation With Assets

For help with dissolution procedures and requirements, contact the Regional Office of the Attorney General for the New York State county in which your organization is incorporated. To determine which county that is, search for your organization by name at the Division of Corporations website:

http://appsex5.doc.state.ny.us/corp_public/enter_search

To locate the Regional Office for that county, see part IX.B. (Questions / Contacting the Charities Bureau, Offices for Estates, Charitable Remainder Trusts and Dissolution Matters) of these instructions.

**Unincorporated organizations** — If the organization was never incorporated, you may request that the Charities Bureau close the registration by submitting a cover letter explaining the reasons for closure, a copy of the CHAR500 marked "Final filing" and a copy of IRS Form 990, 990-EZ or 990-PF marked "final return", if applicable. If the assets were transferred to another organization, you must also submit proof that the other organization received the assets (for example, a letter from the recipient organization, signed by an officer, stating that it received the transfer).

- trusts and estates with charitable interests: In general, the Charities Bureau will close registrations for trusts and estates with charitable interests only after receiving and reviewing a final accounting.

VIII. Discontinued Charities Bureau Forms

The following Charities Bureau forms have been discontinued and should no longer be used:

<table>
<thead>
<tr>
<th>Discontinued Charities Bureau Form</th>
<th>Superseded By</th>
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<tbody>
<tr>
<td>CHAR001 (Trusts and Estates Registration Form)</td>
<td>- CHAR001-LT (Registration Statement for Charitable Lead Trusts)</td>
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<td>- CHAR001-RT (Registration Statement and Notice of Termination of Interceeding Interest for Charitable Remainder Trusts)</td>
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<td>- Notice of Probate (for registration of estates with a charitable interest)</td>
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<tr>
<td>CHAR003 (Securities Schedule)</td>
<td>CHAR500 (Annual Filing for Charitable Organizations)</td>
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<td>CHAR005 (Request to Withdraw Executive Law Registration)</td>
<td>- CHAR410 Series (Registration Statement for Charitable Organizations), and</td>
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<td>- Schedule E (Request for Registration Exemption)</td>
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<tr>
<td>CHAR006 (Notice of Annual Filing Exemption)</td>
<td>CHAR500 (Annual Filing for Charitable Organizations)</td>
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<tr>
<td>Discontinued Charities Bureau Form</td>
<td>Superseded By</td>
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<tr>
<td>CHAR010 (Certification to Accompany Reports Submitted on Forms Other Than Attorney General Forms)</td>
<td>CHAR500 (Annual Filing for Charitable Organizations)</td>
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<tr>
<td>CHAR497 (Annual Financial Report for Charitable Organizations)</td>
<td>CHAR500 (Annual Filing for Charitable Organizations)</td>
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</tbody>
</table>

IX. Questions / Contacting the Charities Bureau

A. General Contact Information

Questions about registration and filing should be directed to the Charities Bureau as follows:

By Email: charities.bureau@oag.state.ny.us (note the category of charitable entity and the nature of the request in the subject line)

By Phone: 212-416-8401 (mention the category of charitable entity and the nature of the request to the representative)

By Mail: New York State Attorney General Charities Bureau 120 Broadway, 3rd Floor New York, NY 10271-0352

Helpful information may also be found on the Charities Bureau website at [http://www.oag.state.ny.us/bureau/charities/about.html](http://www.oag.state.ny.us/bureau/charities/about.html).
B. Offices for Estates, Charitable Remainder Trusts and Dissolution Matters

ALBANY
New York State Attorney General
Charities Bureau
The Capitol
Albany, NY 12224-0341
518-473-5049

BINGHAMTON
New York State Attorney General
Binghamton Regional Office
44 Hawley Street, 17th Floor
Binghamton, NY 13901-4433
607-721-8771
Counties: Broome, Chemung, Chenango, Delaware, Otsego, Schuyler, Tioga and Tompkins

BUFFALO
New York State Attorney General
Buffalo Regional Office
Statler Towers
107 Delaware Avenue
Buffalo, NY 14202
716-853-8400
Counties: Allegheny, Cattaraugus, Chautauqua, Erie, Genesee, Niagara, Orleans and Wyoming

NASSAU [not for trusts and estates matters]
New York State Attorney General
Nassau Regional Office
200 Old Country Road, Suite 460
Mineola, NY 11501-4241
516-248-3302
Counties: Nassau [note: trusts and estates matters are handled by NYC]

NEW YORK CITY
New York State Attorney General
Charities Bureau
120 Broadway, 3rd Floor
New York, NY 10271-0332
212-416-8401
Counties: Bronx, Kings, New York, Queens and Richmond [note: NYC also handles Dutchess, Nassau, Orange, Putnam, Rockland, Suffolk and Westchester - trusts and estates matters only]

PLATTSBURGH
New York State Attorney General
Plattsburgh Regional Office
43 Durkee Street, Suite 700
Plattsburgh, NY 12901
518-562-3288
Counties: Clinton, Essex and Franklin

POUGHKEEPSIE [not for trusts & estates matters]
New York State Attorney General
Poughkeepsie Regional Office
235 Main Street, 3rd Floor
Poughkeepsie, NY 12601-3194
914-485-3900
Counties: Dutchess, Orange, Sullivan and Ulster [note: Dutchess and Orange County trusts and estates matters are handled by NYC; Sullivan and Ulster County trusts and estates matters are handled by Albany]

ROCHESTER
New York State Attorney General
Rochester Regional Office
144 Exchange Boulevard
Rochester, NY 14614-2176
585-546-7430
Counties: Livingston, Monroe, Ontario, Seneca, Steuben, Wayne and Yates

SUFFOLK [not for trusts & estates matters]
New York State Attorney General
Suffolk Regional Office
300 Motor Parkway
Hauppauge, NY 11788-5127
631-231-2424
Counties: Suffolk [note: trusts and estates matters are handled by NYC]

SYRACUSE
New York State Attorney General
Syracuse Regional Office
615 Erie Blvd. West, Suite 102
Syracuse, NY 13204
315-448-4800
Counties: Cayuga, Cortland, Madison, Onondaga and Oswego

UTICA
New York State Attorney General
Utica Regional Office
207 Genesee Street, Room 504
Utica, NY 13501-2812
315-793-2225
Counties: Herkimer and Oneida

WATERTOWN
New York State Attorney General
Watertown Regional Office
317 Washington Street
Watertown, NY 13601-3744
315-785-2444
Counties: Jefferson, Lewis and St. Lawrence

WESTCHESTER [not for trusts & estates matters]
New York State Attorney General
Westchester Regional Office
101 East Post Road
White Plains, NY 10601-3310
914-422-5755
Counties: Orange, Putnam, Rockland and Westchester [note: trusts and estates matters are handled by NYC]

Page 5 of 5
### Part A - Identification of Registrant

1. Full name of organization (exactly as it appears in your organizing document)

5. Fed. employer ID no. (EIN)

2. c/o Name (if applicable)

6. Organization’s website

3. Mailing address (Number and street)

7. Primary contact

   City or town, state or country and ZIP+4

   Title

4. Principal NYS address (Number and street)

   Room/suite

   Phone

   Fax

   City or town, state or country and ZIP+4

   Email

### Part B - Certification - Two Signatures Required

We certify under penalties for perjury that we reviewed this Registration Statement, including all schedules and attachments, and to the best of our knowledge and belief, they are true, correct and complete in accordance with the laws of the State of New York applicable to this statement.

<table>
<thead>
<tr>
<th>Position</th>
<th>Signature</th>
<th>Printed Name</th>
<th>Title</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. President or Authorized Officer/Trustee</td>
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<tr>
<td>2. Chief Financial Officer or Treasurer</td>
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</tbody>
</table>

### Part C - Fee Submitted

- If registering to solicit contributions, fee is $25.
- If not registering to solicit contributions, no fee is owed.
- If you are submitting $25 fee to register to solicit contributions.

Submit check or money order, payable to "NYS Department of Law."

### Part D - Attachments - All Documents Required

Attach all of the following documents to this Registration Statement, even if you are claiming an exemption from registration:

- Certificate of incorporation, trust agreement or other organizing document, and any amendments; and
- Bylaws or other organizational rules, and any amendments; and
- IRS Form 1023 or 1024 Application for Recognition of Exemption (if applicable); and
- IRS tax exemption determination letter (if applicable)

### Part E - Request for Registration Exemption

Is the organization requesting exemption from registration under either or both Article 7-A or the EPTL? □ Yes * □ No

* If "Yes", complete Schedule E.
### Part F - Organization Structure

1. Incorporation / formation
   - **a. Type of organization:**
     - Corporation
     - Limited liability company (LLC)
     - Partnership
     - Sole proprietorship
     - Trust
     - Other *
   - **b. Type of corporation if New York not-for-profit corporation**
     - A
     - B
     - C
     - D
   - **c. Date incorporated if a corporation or formed if other than a corporation**
     - __/__/____
   - **d. State in which incorporated or formed**

   * If Other, describe:

2. List all chapters, branches and affiliates of your organization (attach additional sheets if necessary)

<table>
<thead>
<tr>
<th>Name</th>
<th>Relationship</th>
<th>Mailing address (number and street, room/suite, city or town, state or country and zip+4)</th>
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3. List all officers, directors, trustees and key employees

<table>
<thead>
<tr>
<th>Name</th>
<th>Title</th>
<th>Mailing address (number and street, room/suite, city or town, state or country and zip+4)</th>
<th>End of term (if applicable)</th>
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4. Other Names and Registration Numbers

   - **a. List all other names used by your organization, including any prior names**

   - **b. List all prior New York State charities registration numbers for the organization, including those from the New York State Attorney General's Charities Bureau or the New York State Department of State's Office of Charities Registration**
Part G - Organization Activities

1. Month the annual accounting period ends (01-12)
2. NTee code

3. Date organization began doing each of following in New York State:
   a. conducting activity .............................................................. ___/___/____
   b. maintaining assets .............................................................. ___/___/____
   c. soliciting contributions (including from residents, foundations, corporations, government agencies, etc.) .............................................................. ___/___/____

4. Describe the purposes of your organization

5. Has your organization or any of your officers, directors, trustees or key employees been:
   a. enjoined or otherwise prohibited by a government agency or court from soliciting contributions? .............................................................. □ Yes* □ No
      * If “Yes”, describe:

   b. found to have engaged in unlawful practices in connection with the solicitation or administration of charitable assets? .............................................................. □ Yes* □ No
      * If “Yes”, describe:

6. Has your organization’s registration or license been suspended by any government agency? .............................................................. □ Yes* □ No
   * If “Yes”, describe:

7. Does your organization solicit or intend to solicit contributions (including from residents, foundations, corporations, government agencies, etc.) in New York State? .............................................................. □ Yes* □ No
   * If “Yes”, describe the purposes for which contributions are or will be solicited:

8. List all fund raising professionals (FRP) that your organization has engaged for fund raising activity in NY State (attach additional sheets if necessary)

<table>
<thead>
<tr>
<th>Name</th>
<th>Type of FRP (see instructions for definitions)</th>
<th>Mailing address (number and street, room/suite, city or town, state or country and zip+4)</th>
<th>Dates of contract</th>
</tr>
</thead>
<tbody>
<tr>
<td>PFR</td>
<td><img src="image1.png" alt="Image" /></td>
<td>Start date: <em><strong>/</strong></em>/____ End date: <em><strong>/</strong></em>/____</td>
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<tr>
<td>FRC</td>
<td><img src="image2.png" alt="Image" /></td>
<td>Start date: <em><strong>/</strong></em>/____ End date: <em><strong>/</strong></em>/____</td>
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<tr>
<td>CCV</td>
<td><img src="image3.png" alt="Image" /></td>
<td>Start date: <em><strong>/</strong></em>/____ End date: <em><strong>/</strong></em>/____</td>
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<tr>
<td>PFR</td>
<td><img src="image4.png" alt="Image" /></td>
<td>Start date: <em><strong>/</strong></em>/____ End date: <em><strong>/</strong></em>/____</td>
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<tr>
<td>FRC</td>
<td><img src="image5.png" alt="Image" /></td>
<td>Start date: <em><strong>/</strong></em>/____ End date: <em><strong>/</strong></em>/____</td>
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<tr>
<td>CCV</td>
<td><img src="image6.png" alt="Image" /></td>
<td>Start date: <em><strong>/</strong></em>/____ End date: <em><strong>/</strong></em>/____</td>
<td></td>
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</table>

Part H - Federal Tax Exempt Status

1. If applicable, list the date your organization:
   a. applied for tax exempt status .............................................................. ___/___/____
   b. was granted tax exempt status .............................................................. ___/___/____
   c. was denied tax exempt status .............................................................. ___/___/____
   d. had its tax exempt status revoked .............................................................. ___/___/____

2. Provide Internal Revenue Code provision: 501(c)(_____ )
# Schedule E

**(Form CHAR410, CHAR410-A or CHAR410-R)**

**Request for Registration Exemption for Charitable Organizations**

New York State Department of Law (Office of the Attorney General)
Charities Bureau - Registration Section
120 Broadway
New York, NY 10271
www.cag.state.ny.us/charities/charities.html

**Open to Public Inspection**

<table>
<thead>
<tr>
<th>Full Name of Organization</th>
<th>Fed. employer ID no. (EIN)</th>
<th>NY State registration no.</th>
</tr>
</thead>
</table>

If your organization is not claiming exemption from registration under either or both Article 7-A or the EPTL, do not complete Schedule E and do not submit a blank Schedule E. An exemption request that is not accompanied by all required documentation as listed below and in CHAR410, CHAR410-A or CHAR410-R Part D (Attachments) will not be considered. Do not request exemptions that cannot be supported by the documentation required. An exemption request has not been granted unless you receive a letter confirming your organization’s exemption.

Indicate whether you are claiming an exemption from the EPTL or Article 7-A or both. Complete the corresponding exemption request questions.

- EPTL ❏ Complete Part I (EPTL), skip Part II (Article 7-A).
- Article 7-A ❏ Complete Part II (Article 7-A), skip Part I (EPTL).
- Both EPTL and Article 7-A ❏ Complete Part I (EPTL) and Part II (Article 7-A). If you complete one but not both exemption request parts, your organization may be exempted under only one law and registered under the other law, in which case your organization would be required to file annually with the Charities Bureau.

## Part I: EPTL Exemption Request

<table>
<thead>
<tr>
<th>Registration exemption claim (check all that apply)</th>
<th>Required additional documentation (in addition to attachments listed in CHAR410, CHAR410-A or CHAR410-R Part D)</th>
</tr>
</thead>
<tbody>
<tr>
<td>☐ 1. Organization is not charitable</td>
<td>None</td>
</tr>
<tr>
<td>☐ 2. Organization does not conduct activity in NY State</td>
<td>If your organization lists a New York address in question 3 (Mailing address) or question 4 (Principal NYS address) of CHAR410, CHAR410-A or CHAR410-R Part D, the organization must be an active user of the activity.</td>
</tr>
<tr>
<td>☐ 3. Organization is a government agency or is controlled by a government agency</td>
<td>For organizations controlled by a government agency, attach a description of the relationship between your organization and the government agency and either:</td>
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<tr>
<td></td>
<td>• a copy of the letter from the Charities Bureau confirming the government agency's exemption of that other organization, or</td>
</tr>
<tr>
<td></td>
<td>• a copy of the government agency's charter and, if applicable, IRS tax exemption determination letter</td>
</tr>
<tr>
<td>☐ 4. Organization reports annually to either the U.S. Congress or the NY State Legislature</td>
<td>Attach a copy of either:</td>
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<tr>
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<td>• the most recent annual report filed with the U.S. Congress or the NY State Legislature, as the case may be, or</td>
</tr>
<tr>
<td></td>
<td>• a letter from such legislative body confirming that your organization reports annually to it</td>
</tr>
<tr>
<td>☐ 5. Organization is incorporated under the religious corporations law or is another type of organization with a religious purpose or is operated, supervised or controlled by or in connection with a religious organization</td>
<td>Attach a copy of either:</td>
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<tr>
<td></td>
<td>• a copy of the letter from the Charities Bureau confirming the religious organization's exemption of that other organization, or</td>
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<tr>
<td></td>
<td>• a copy of the religious organization's certificate of incorporation, by-laws, trust agreement and/or other organizational documents and amendments, and, if applicable, IRS tax exemption determination letter</td>
</tr>
<tr>
<td>☐ 6. Organization is an educational institution, museum or library incorporated under the NY State Education Law or by special act</td>
<td>None</td>
</tr>
<tr>
<td>☐ 7. Organization is a hospital, skilled nursing facility or diagnostic/treatment center</td>
<td>Attach a copy of your organization’s operating certificate from the NY State Department of Health</td>
</tr>
<tr>
<td>☐ 8. Organization is a membership organization (fraternal, patriotic, social, student, alumni, veterans)</td>
<td>None</td>
</tr>
<tr>
<td>☐ 9. Organization is a volunteer firefighters or volunteer ambulance service organization</td>
<td>None</td>
</tr>
<tr>
<td>☐ 10. Organization is a historical society chartered by the Board of Regents of the State University of New York</td>
<td>Attach a copy of the organization's charter from the Board of Regents of the State University of New York</td>
</tr>
<tr>
<td>☐ 11. Organization is a cemetery corporation subject to the provisions of Article 15 of the NY State Not-For-Profit Corporation Law</td>
<td>None</td>
</tr>
<tr>
<td>☐ 12. Organization is the NY State parent teachers association (&quot;PTA&quot;) or any PTA affiliated with an educational institution subject to the jurisdiction of the NY State Education Department</td>
<td>Attach a copy of both:</td>
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<tr>
<td></td>
<td>• the educational institution's charter from the NY State Education Department; and</td>
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<td>• a description of the relationship between the organization and the educational institution</td>
</tr>
<tr>
<td>☐ 13. Organization is incorporated under Article 43 of the NY State Insurance Law</td>
<td>None</td>
</tr>
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</table>
### Part II: Article 7-A Exemption Request

<table>
<thead>
<tr>
<th>Registration exemption claim (check all that apply)</th>
<th>Required additional documentation (in addition to attachments listed in CHAR410, CHAR410-A or CHAR410-R Part D)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Organization does not solicit or receive any contributions from NY State (excluding residents, foundations, corporations, government agencies, etc.).</td>
<td>None</td>
</tr>
<tr>
<td>2. Organizations solicits and receives gross contributions from NY State (including residents, foundations, corporations, government agencies, etc.), but organization's gross contributions are less than and will continue to be less than $25,000 per year and organization does not and will not use the services of a professional fund raiser or fund raising counsel</td>
<td>None</td>
</tr>
<tr>
<td>3. Organization receives all or substantially all of its contributions from a single government agency to which it submits annual financial reports similar to those required by Article 7-A and organization's gross contributions from all other NY State sources, including other government agencies, do not and will not exceed $25,000 per year.</td>
<td>Attach a copy of the organization's most recent IRS Form 990, 990-EZ or 990-PF, including Schedule B, filed with the IRS</td>
</tr>
<tr>
<td>4. Organization receives an allocation from a federated fund, United Way or Incorporated community appeal and organization's gross contributions from all other sources do not and will not exceed $25,000 per year and organization does not and will not use the services of a professional fund raiser or fund raising counsel</td>
<td>Attach a copy of the organization's most recent IRS Form 990, 990-EZ or 990-PF, including Schedule B, filed with the IRS</td>
</tr>
</tbody>
</table>
| 5. Organization is incorporated under the religious corporations law or is another type of organization with a religious purpose or is operated, supervised or controlled by or in connection with a religious organization. | - Attach a copy of listing in official denominational directory (for example, "Blue Directory"), if applicable; and 
  - For organizations operated, supervised or controlled by or in connection with another organization that is exempt from registration as religious, attach a description of the relationship between your organization and that other organization and either: 
    - a copy of the letter from the Charities Bureau confirming the religious exemption of that other organization; or 
    - a copy of that other organization's certificate of incorporation, by-laws, trust agreement and/or other organizational document and amendments, and, if applicable, IRS tax exemption determination letter |
| 6. Organization is an educational institution that confines its solicitation to its student body, alumni, faculty and trustees and their families | Attach a copy of the organization's charter from the NY State Department of Education, Board of Regents of the State University of New York or similar government agency |
| 7. Organization is an educational institution or museum that files annual financial reports with the Board of Regents of the State University of New York as required by the NY State Education Law or with an agency having similar jurisdiction in another state. | Attach a copy of either: 
  - the most recent annual financial report filed with the Board of Regents of the State University of New York or other similar government agency; or  
  - a letter from such government agency confirming that your organization reports annually to it |
| 8. Organization is a library that files annual financial reports as required by the NY State Education Department. | Attach a copy of either: 
  - the most recent annual financial report filed with the NY State Education Department; or  
  - a letter from the NY State Education Department confirming that your organization reports annually to it |
| 9. Organization is a membership organization (lateral, patriotic, social or alumni) that confines its solicitation of contributions to its membership | None |
| 10. Organization is a law enforcement support organization that confines its solicitation of contributions to its membership. | None |
| 11. Organization is a historical society chartered by the Board of Regents of the State University of New York that confines its solicitation of contributions to its membership. | Attach a copy of the organization’s charter from the Board of Regents of the State University of New York |
| 12. Organization is the NY State parent teachers association ("PTA") or any PTA affiliated with an educational institution subject to the jurisdiction of the NY State Education Department. | Attach a copy of both:  
  - the educational institution's charter from the NY State Education Department; and  
  - a description of the relationship between the organization and the educational institution |
| 13. Organization is a chartered local post, camp, chapter or county unit of a bona fide veterans' organization, a bona fide organization of volunteer firefighters, a volunteer ambulance service organization, or a bona fide auxiliary or affiliate of such an organization and organization's fund raising is done by its members without direct or indirect compensation. | For veterans' organizations, attach a copy of the organization's charter from a bona fide veterans' organization |
| 14. Organization is a police department, sheriff's department or other governmental law enforcement agency. | None |
| 15. Organization is a government agency or is controlled by a government agency. | For organizations controlled by a government agency, attach a description of the relationship between your organization and the government agency and either:  
  - a copy of the letter from the Charities Bureau confirming the government agency exemption of that other organization; or  
  - a copy of the government agency's charter and, if applicable, IRS tax exemption determination letter |