

Keying in on Key Contract Components



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Keying in on Key Contract Components

A Panel Discussion

Moderated by:

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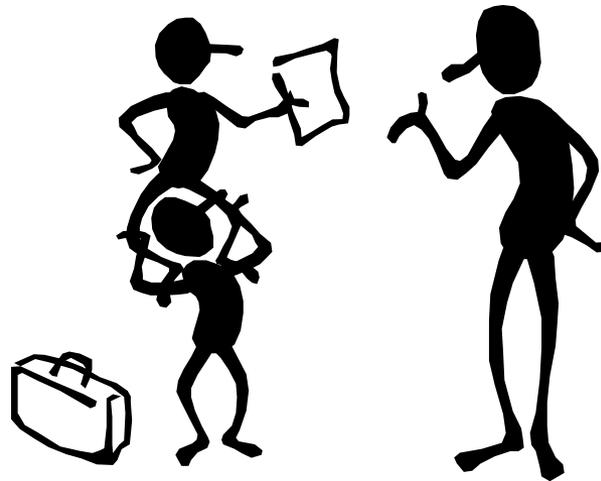
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Purpose

To identify those key components a contracting professional needs to successfully process a contract.



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Panelists

- ❖ NYS Department of Labor:
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- ❖ NYS Worker's Compensation Board
Paul Celentano and Walter Peretti
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- ❖ Office of the State Comptroller
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NYS Department of Labor

- ❖ What are prevailing wages?
- ❖ How are they used?
- ❖ What am I responsible for?



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Question?

My agency is located in New York City. Which prevailing wage rates govern my contract, New York State or New York City?

If New York City governs, where do I find those prevailing wage rates?



NYS Department of Labor

Answer:

- If the agency is in NYC, projects you have would require the NYC Comptroller's prevailing wage schedule.

You can obtain the schedule from the NYC Comptroller's website at:

www.comptroller.nyc.gov/bureaus/bll/schedules.shtm#prevwage



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Question?

Please explain the difference between Article 8 and Article 9 as it relates to Prevailing Wage.



NYS Department of Labor

Answer:

- Article 8 applies primarily to public projects involving construction, reconstruction, or maintenance contracts which involve the employment of laborers, workers, or mechanics.
- Article 9 covers public building services contracts requiring building service employees. Building service employees include, but are not limited to: guards, porters, janitors, landscapers, elevator operators, window cleaners, trash haulers, movers.



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NYS Department of Labor

Answer (Cont'd.):

- Both Article 8 and 9 of the NYS Labor Law require the payment of prevailing wages on public work projects.
- Under Article 8 prevailing wages must be paid on all public work projects regardless of contract amount.
- Under Article 9 prevailing wages must be paid on public work contracts in excess of \$1500.



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Question?

The 2008 SPOTA bill calls for individual agencies to review the Certified Payroll Records which they collect from their contractors for "facial validity".

Please provide a definition of what "facial validity" is, and cite the specific aspects of a typical Certified Payroll Record that should be reviewed.



Answer:

- “Facial Validity” is defined as the degree to which the criteria seem to apply logically to the job in question.

The simple way of saying this is ‘On the face of things, how does it look?’



Answer (cont'd.):

- As this term is used in the Spota Bill it requires the Department of Jurisdiction to make sure the certified payrolls appear accurate.

Examples of how this can be done are checking for all required information on the certified payrolls; comparing the hourly wage on the certified payrolls to the required prevailing wage rates; determining that the number of workers on the certified payrolls match the number of workers that are on the project; etc.



NYS Department of Labor

Answer (Cont'd.):

- If your agency has any questions or issues regarding the submitted payrolls, you can contact your local Public Work District Office for help.

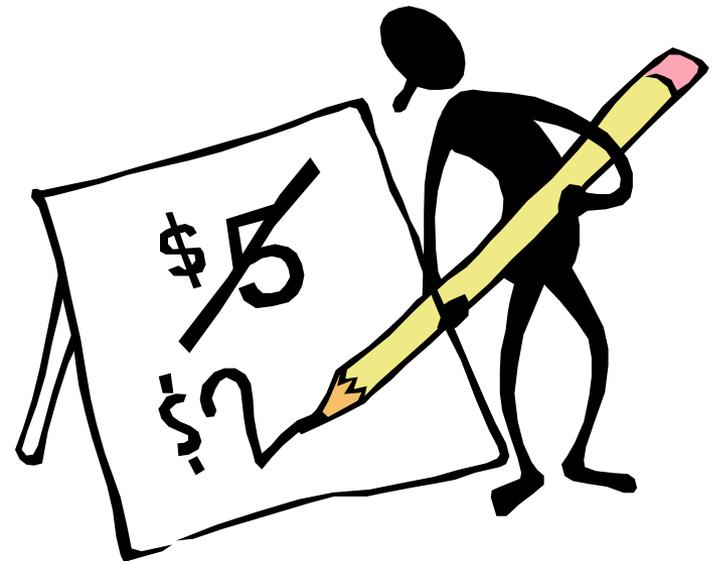
(<https://labor.ny.gov/workerprotection/publicwork/PWContactUs.shtm>)



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Question?

Who determines the prices of the prevailing wages for each county?



NYS Department of Labor

Answer:

- The prevailing wage for Article 8 construction / reconstruction public work projects, by law, is based on the collective bargaining agreements (CBA) between labor organizations and employers in the private sector.

The wage rate for each county is determined by the CBA that covers that particular county.



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Answer (cont'd.):

- CBA's are also used to establish the prevailing wage for Article 9 building service public work contracts. In areas not covered by CBA's, Article 9 prevailing wage is based on the research and statistics wage rates compiled by the Department of Labor.



Question?

If a vendor is self-employed, are prevailing wage rates applicable?



Answer:

- No.

A sole proprietor or owner/operator is not required to pay themselves prevailing wage rates. However, if they have any employees, the employees must be paid prevailing wage rates.



Question?

When developing a contract using prevailing wage, is it necessary to notify DOL when the contract has been awarded?



Answer:

- NYS Labor Law, Article 8, Section 220.3a and Article 9, Section 231.5 require that the Contracting Agency submit a “Notice of Contract Award” (PW16) for each contractor awarded a public project. When a project is completed or if it is cancelled, the Contracting Agency must submit a “Notice of Completion/Cancellation of Project” (PW200) to the Bureau of Public Work.



Answer:

- Both forms are part of the prevailing rate case schedule assigned to a public work project/contact. This information can also be submitted electronically at the NYS DOL website.

(<https://labor.ny.gov/workerprotection/publicwork/OWSaccess.shtm>)



Worker's Compensation Insurance and Disability Benefits Requirements

- ❖ What is Worker's Compensation Insurance?
- ❖ Why is it important?
- ❖ Who needs to be covered?
- ❖ What forms are required?



Worker's Compensation Insurance and Disability Benefits Requirements

Answers:

- Worker's Compensation Insurance covers on the job injuries and illnesses.
- Any person performing services for a for-profit business needs to be covered. There are additional coverage requirements as well. For a full listing consult the Employer's Handbook located at: www.wcb.ny.gov or call Walt Peretti at (518) 402-8330.
- The Certificate of NYS Worker's Compensation Insurance Form (C-105.2) or, if the entity is insured through the NYS Insurance Fund – Form U 26.2.

Vendor may submit the CE-200 if they are exempt from carrying NYS Worker's Compensation Insurance and/or NYS Disability Benefits Insurance.



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Worker's Compensation Insurance and Disability Benefits Requirements

Question – Part A?

With regard to Grants Reform Initiative and the Grants Gateway.... does Worker's Comp have a form that contractors can complete to meet these requirements?

Is this form available in electronic format?

Can the form be stored on the Grants Reform website?



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Worker's Compensation Insurance and Disability Benefits Requirements

Answer:

- Aside from the required Worker's Compensation / Disability Benefits Insurance and the Certificate of Exemption (CE-200) we do not have a form specific to the Grants Reform Initiative.



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Worker's Compensation Insurance and Disability Benefits Requirements

Question – Part B?

What can you suggest to help make the Grants Reform documentation easier for these contractors?



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Worker's Compensation Insurance and Disability Benefits Requirements

Answer:

- Workers' Compensation and Disability compliance should be discussed early in the grant/contracting process so that the process moves efficiently.



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Worker's Compensation Insurance and Disability Benefits Requirements

Question?

Workers Compensation Insurance seems to be an area that has recently been under closer scrutiny.

My agency is looking for guidance as to how best to handle this.



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Worker's Compensation Insurance and Disability Benefits Requirements

Answer:

- The NYS Workers' Compensation Board has been working closely with the Office of the State Controller (OSC) to provide educational outreach to them and other agencies at both the state and local level. This has led to many inquiries regarding compliance.

For specific compliance issues we would suggest you contact the WCB directly, 518-402-8330.

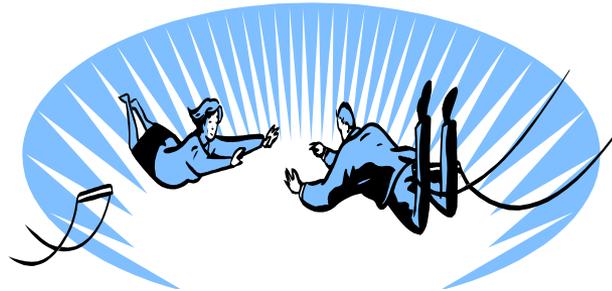


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Worker's Compensation Insurance and Disability Benefits Requirements

Question?

How much can an agency rely on the contractor submitted waiver after the agency has conducted its normal review?



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Worker's Compensation Insurance and Disability Benefits Requirements

Answer:

- The contractor / vendor is attesting under penalty of perjury that the Certificate of Exemption (CE-200) is valid.



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Worker's Compensation Insurance and Disability Benefits Requirements

Question?

(joint response by OSC and WCB)

What type of due diligence does OSC require of the agencies when questioning a Worker's Compensation waiver in a contract submitted for approval?



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Worker's Compensation Insurance and Disability Benefits Requirements

Answer:

- Any question regarding whether or not coverage is needed can be referred to the NYS Workers Compensation Board at (518) 402-8330.



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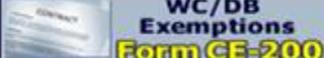
Worker's Compensation Insurance and Disability Benefits Requirements

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Governor Andrew M. Cuomo **Workers' Compensation Board** Chair Robert E. Beloten

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Ask yourself:

- ❖ What does OSC want me to include in a successful contract?
- ❖ What supporting documentation and examples can I obtain from this session?
- ❖ What resources are available?



Question?

It is my experience, and that of my colleagues, that locally bid service contracts yield significantly lower prices than statewide contracts.

What is OSC's experience in this regard?



Office of the State Comptroller

Answer:

- First the law and its changes: State Finance Law, Section 163.4.a-b.i. now requires state agencies to use 1st preferred sources and then 2nd OGS statewide contracts including commodities and services where form, function and utility is met. Previously, state agencies were not required to use service contracts but were available if the service contracts met your form, function and utility. Some of the older contracts still exist so it is possible you may better an OGS statewide contract.
- In the past, OGS service contracts such as HVAC, Elevator, and Pest Services were Backdrop contracts with maximum not-to exceed pricing where mini-bids would be conducted; thus achieving lower pricing. So the higher OGS prices were really maximum prices so it would be expected individual state agencies would obtain lower pricing when procured on their own. As these contracts expire OGS is replacing such service contracts (i.e. Temporary Service and Security Guard) with new awards with a primary awardee with a 2nd and/or 3rd awardee if the primary awardee is not available.



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Office of the State Comptroller

Answer (cont'd.):

- In answer to the question posed as it relates now to current law, state agencies must use OGS service contracts in the 2nd instance after preferred sources if the service meets your form, function and utility. However, standard clauses in all OGS contracts afford state agencies the right to negotiate better pricing at anytime with the awardee and that price decreases or discount increases are permitted at anytime. These clauses apply to both service and commodity contracts. Additional pricing clarifications are provided in OGS Appendix B 24. F. iii and iv. and g.
- Furthermore and for commodities, State Finance Law Section 163.3 a.v. still provides agencies the “OGS OR LESS” opportunity to procure commodities on their own but if they achieve lower pricing than on the OGS statewide contracts, the procuring agency must give the State contractor 2 business days to match or better the non-contract savings achieved by the state agency. If the price offered by the State contractor is equal to or better than the state agency procurement, the state agency must buy from the statewide contractor.



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Answer (cont'd.):

- OGS Appendix B 24.f. also provides, in part, for the following:
“Best Pricing Offer During the Contract term, if substantially the same or a smaller quantity of a Product is sold by the Contractor outside of this Contract upon the same or similar terms and conditions as that of this Contract at a lower price to a federal, state or local governmental entity, the price under this Contract, at the discretion of the Commissioner, shall be immediately reduced to the lower price....”



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Office of the State Comptroller

Question?

With regard to Statewide Term contracts, what if the services we need are not available through the contract?



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Answer:

- If the services you need are not available in your form, function and utility needs from Preferred Sources or Statewide contracts, the procurement laws provide for following up with other State agency contracts or procuring your needs under State Finance Law, Article 11, Section 163 which could include piggybacking, single or sole source or an open competitive procurement.



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Question?

What if only some of the counties have coverage in the contract?

Do I do a mini-bid for those that I can and bid the rest on the open market?

Can we still do mini-bids?



Office of the State Comptroller

Answer:

- Under the State Finance Law, if your needs are not available from a preferred source, you must use OGS statewide contracts if such contracts meet your form, function and utility and that includes the availability of such contracts even if they are only in certain counties. If the statewide contract requires a mini-bid you must conduct a mini-bid in accordance with the Statewide contract you are procuring from.
- With respect to mini-bids when conducting your own open procurement, OSC does provide for multi-agency mini-bid procurements through the use of CM contracts.



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Question?

(joint response by OSC and WCB)

What type of due diligence does OSC require of the agencies when questioning a Worker's Compensation waiver in a contract submitted for approval?



Office of the State Comptroller

Answer:

- When a CE-200 claiming an exemption is submitted, an agency is expected to review the reason for the exemption and assess whether the transaction supports the exemption reason.

Example: if you are buying a commodity that is manufactured and assembled completely out of state and is being shipped by a 3rd party (USPS, FedEx) where no vendor official is entering the State for purposes of completing the transaction, then it would be reasonable to conclude the vendor is exempt.



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Answer (cont'd.):

- If, however, the purchase requires the vendor to come into the state for purposes of installation and/or training and you believe coverage may be necessary, we expect you would refer the vendor to the Workers Compensation Board to obtain their determination.

Resolving the issue before you send the transaction to OSC will speed up our review and approval process.

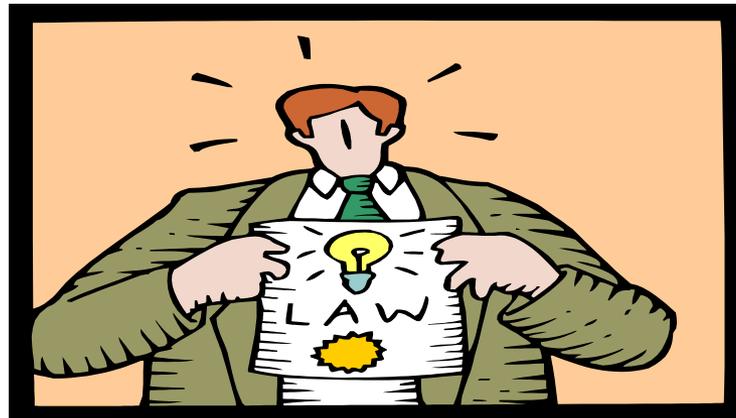


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Office of the State Comptroller

Question?

Please provide an overview of any new legislation regarding procurements.



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Office of the State Comptroller

Answer:

There were no significant or material changes to the procurement laws that affect state agencies, thus no changes to current or existing procedures; the process is the same as last year. As a result of Superstorm Sandy, the Governor issued:

- Executive Order 50 temporarily (30 days), which was subsequently extended, waiving multiple procurement laws for transportation emergencies, and
- Executive Order 55 exempting OGS from all the bidding and 112 rules regarding leasing, construction, bidding the emergency contract threshold.



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Thank You!

Enjoy the day 😊



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