



December 12, 2023

The Honorable Kathy Hochul
Governor of the State of New York
New York State Capitol Building
Albany, NY 12224

Dear Governor Hochul:

We write to ask you to sign A7404/S6941, a bill to require State agencies and authorities to publish contracts that are exempt from prior approval by the Office of the State Comptroller (OSC). This legislation is a commonsense transparency measure that would bring much needed sunlight to the State's emergency spending, which can be prone to waste and at risk of corruption.

The bill requires that within 30 days of an emergency contract (those executed under authority of an executive order suspending oversight provisions) or other exempt contract (those executed under statutory authority exempting spending from OSC oversight), the State agency, authority, commission, or governmental body publish the emergency contract on its website, along with the following supporting information:

- The related emergency declaration or statutory provision for exemption;
- A summary of the contract including the dollar amount, name of vendor(s), term, and scope of work;
- A description of how the emergency contract relates to an emergency declaration;
- Whether the contract was awarded by a competitive process; and
- An explanation of why the contractor was not selected by competitive process, if applicable.

While emergency contract authority is appropriate and necessary in some circumstances, its use should be infrequent, specifically justified, and transparent; there is no reason that details of emergency contracts should not be made public. Exempt contracts are of particular concern, as they have been increasing in prevalence under continuing State and local states of emergency.

OSC oversight and prior approval of contracts is a critical step in the State's financial management system. Prior approval helps prevent wasteful spending and impropriety. The Comptroller's Office completes prompt review of contracts submitted by State agencies and authorities. However, Executive Orders for emergencies and individual exemptions in State law (principally through provisions attached to individual appropriations in the budget) subvert this crucial oversight.

Many of our groups heartily supported the restoration of OSC pre-audit authority, which had been diminished over time, creating unnecessary financial risk for the State. Last December, we were pleased that you signed legislation restoring and codifying the Comptroller’s prior approval authority on certain contracts.¹ OSC provides prompt review (averaging approximately 5 days), and oversight provisions apply only to contracts valued above certain floors (beginning at \$50,000).²

Unfortunately, too much spending is exempt from the Comptroller’s prior approval. More concerning, many contracts exempt from OSC oversight are also exempt from competitive procurement rules. This year’s enacted budget included dozens of exemptions to sections 112 (prior approval) and 163 (competitive bidding) of State Finance Law.³ As a result, State agencies and authorities can spend and contract billions of dollars without oversight or best-value procurement rules, allowing potentially wasteful or corrupt spending. Such exemptions are contrary to the intent of the restoration of Comptroller’s oversight, and – more importantly – increase the risk that billions of public dollars will be misspent. Going forward, we urge you to no longer include these exemptions in your executive budget bills, and reject any proposed by the Legislature.

This bill provides transparency to the expansive portfolio of emergency and exempted contracts, ensures that they are available for public review, and provides information about the justification for such contracts. Although more should also be done to reduce their number, amount, or scope, this bill would provide basic transparency of emergency and exempt contracts.

We urge you to sign this legislation to promote transparency of State contracts.

Sincerely,

Andrew S. Rein
President
Citizens Budget Commission

Tim Hoefer
President & CEO
Empire Center for Public Policy

John Kaehny
Executive Director
Reinvent Albany

cc:

Senator Jeremy A. Cooney
Assemblywoman Michaelle C. Solages

¹ Reinvent Albany, Citizens Budget Commission, and others, “Dozens of Unions, Watchdogs, and Other Groups Urge Gov. Hochul to Sign Bill Restoring Comptroller’s Oversight Powers” (October 5, 2022), <https://reinventalbany.org/2022/10/dozens-of-unions-watchdogs-and-public-interest-groups-urge-governor-hochul-to-sign-bill-restoring-comptrollers-oversight-powers/>.

² Office of the Comptroller of the State of New York, *Independent Oversight: OSC’s Contract Review Safeguards Public Funds* (May 2022), www.osc.state.ny.us/files/reports/pdf/osc-contract-review.pdf.

³ The Comptroller’s Office identified in the Executive Budget 14 appropriations exempting both sections 112 and 163 of State Finance Law totaling \$12.8 billion, and a further 17 appropriations exempt from section 163 of State Finance Law alone, totaling \$2.6 billion. Most of these provisions were included in the Enacted Budget. See Office of the Comptroller of the State of New York, *Report on the State Fiscal Year 2023-24 Executive Budget* (March 2023), p. 40, www.osc.state.ny.us/files/reports/budget/pdf/executive-budget-report-2023-24.pdf.