

Citizens Budget Commission • Reinvent Albany
Citizens Union • Common Cause New York
New York Public Interest Research Group

August 27, 2024

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 A10281/S9171, a bill to require State agencies and authorities to publish information related to 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 from OSC oversight), the State agency, authority, commission, or governmental body publish the following information related to the contract:

- 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.

OSC oversight and prior approval of contracts is a critical step in the State's financial management. 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. Two years ago, 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 5.3 days, and oversight provisions apply only to contracts valued above certain floors (beginning at \$50,000).²

Unfortunately, too much spending still 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, amounting to hundreds of millions of dollars in spending authority.³ As a result, State agencies and authorities can spend and contract significant sums of public money 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 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 on emergency and exempt contracts.

We urge you to sign this legislation to promote transparency of State contracts with no changes other than a correction to clarify that “contract terms” (§149(2)(ii)(c)) should read “contract term.”

Sincerely,

Andrew S. Rein
President
Citizens Budget Commission

John Kaehny
Executive Director
Reinvent Albany

Susan Lerner
Executive Director
Common Cause New York

Betsy Gotbaum
Executive Director
Citizens Union of the City of New York

Blair Horner
Executive Director
New York Public Interest Research Group

cc:

Senator Andrea Stewart-Cousins, Majority Leader of the NYS Senate
Assemblymember Carl Heastie, Speaker of the NYS Assembly
Senator Jeremy A. Cooney
Assemblymember 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 Enacted Budget appropriations exempting section 112 of the State Finance Law totaling \$368 million, and \$1.5 billion in appropriations exempt from section 163 of State Finance Law. See Office of the Comptroller of the State of New York, *Enacted Budget Report, State Fiscal Year 2024-25* (May 2024), p. 19, www.osc.ny.gov/files/reports/budget/pdf/enacted-budget-report-2024-25.pdf.