1. Purpose and Scope

It is State policy that State agency procurement contracts of State agencies for goods and services ensure the wise and prudent use of public moneys and be in the best interests of the taxpayers of the State. Many rules and procedures set forth in law and in guidelines issued by the Division of the Budget (DOB), the Office of the State Comptroller (OSC), the State Procurement Council and the Office of General Services (OGS) support this general policy.

This item replaces the Budget Policy and Reporting Manual (BPRM) H-100 Item, dated March 1984. It also replaces the BPRM H-100A Item, dated October 25, 1994. It applies to departments and agencies in the Executive Branch of State government and concerns the processing of any proposed consultant or miscellaneous service contract with a total value of over $100,000. Examples of consultant and miscellaneous service contracts covered by this item include, but are not limited to: printing, legal services, auditing, public relations, advertising, training, moving, trash removal, pest control, data entry, food services, and employee benefit contracts.

2. Exemptions to the H-100 Process

Consultant and service contracts related to capital construction are exempt from the contract review process established by this item. Relevant sections of the State Finance Law will continue to apply to those contracts. The examination of capital construction-related contracts will continue to occur in the context of Executive Budget preparation and the various stages of budget execution.

In addition, DOB examination units may elect to exempt Not-for-Profit contracts covered under Article XI-B of the State Finance Law from the H-100 process when the unit determines the statutorily-required program plan provides the necessary information to serve in lieu of the H-100 documents. The H-100 process also does <u>not</u> apply either to purchase contracts or to contracts which OSC classifies as equipment, real property lease, revenue, repayment, construction, or grant agreements.

3. Relationship between the New H-100 Process and the Superseded H-100 and H-100A Processes

The new H-100 procedure is designed to provide agencies with greater flexibility and examiners with greater latitude to review broader issues than the former H-100 process

allowed. It assumes that, in the majority of cases, DOB review of an agency's planned miscellaneous and consultant service contracts, when combined with regular reporting by the agency of its actual contract activity, will provide budget examiners with sufficient oversight of this important aspect of agency operations. This change in procedure and in DOB's role in agency contract operations is predicated on the understanding that agencies will not contract for consultant or miscellaneous services in excess of what is affordable within available resources, both for current and future years. In effect, the new H-100 process is modeled on the former H-100A process in that it requires a higher level of agency responsibility and accountability and does not require DOB approval of proposed consultant and miscellaneous service contracts.

However, in those cases where closer supervision of agency activities proves warranted, DOB Unit Chiefs have discretion to require DOB approval of agency proposed consultant and miscellaneous service contracts for those agencies under their jurisdiction, as described more fully in Section 5 of this document, "Alternative Contract Approval Procedures".

4. Respective Roles

A. State Agencies

State agencies, and in particular an agency's administrative arm, represent the State's main line of defense against favoritism, improvidence, extravagance, fraud and corruption in the award of State contracts. It is the responsibility of the agency to ensure that the process for awarding contracts: (i) meets all statutory and regulatory requirements; (ii) will stand the test of public scrutiny; (iii) complies with agency internal controls; (iv) facilitates the acquisition of goods and services that are both necessary and affordable; and (v) ensures the greatest value at the lowest practicable cost.

Statutory requirements, supplemented by the guidelines developed by the State Procurement Council, DOB, OSC and OGS shall direct and foster agency policies and procedures with respect to the contract award process.

The new H-100 process is a tool to assist agency managers in implementing the State's procurement policy with respect to consultant and miscellaneous service contracts. In this regard, it is the responsibility of the agency to achieve an appropriate balance between the use of in-house expertise and that of outside consultants; one that guards against an unnecessary or excessive expansion of the State's workforce as well as an undue reliance or dependence on outside assistance.

This new H-100 process provides managers with an overview of proposed contracts, on an agency-wide basis against which the following factors, among others, can be judged:

(i) the need for a given contract;
(ii) contract affordability;
(iii) the availability of in-house staff to perform the required work;
(iv) the presence of duplicate service needs within or among agency program areas which might be combined or consolidated to reduce costs;
(v) the utility of offering the contract on a statewide basis through OGS, to avail the specific services to other State agencies;
(vi) the recurring nature of the request, and whether justification exists to request the service as part of the agency's normal operating budget; and
(vii) the need to review agency procedures, internal controls, etc. with respect to contracts.

B. Office of the State Comptroller

The State Finance Law provides that no contract exceeding $10,000 shall become effective until it is approved by the State Comptroller. In practice, the focus of OSC's review is the agency's procurement process with particular emphasis on the selection of contract recipients. OSC's review practices also cover the reasonableness of contract prices and associated terms and conditions.

OSC seeks to ensure that competition has been maximized as the means of obtaining the best possible price. As a general rule, OSC reviews contracts with respect to whether formal competition has been sought where the law requires competition, and that the contract has been awarded to the lowest responsible bidder meeting specifications. For service contracts, the procurement guidelines issued by the State Procurement Council and OSC regulations also include consideration of non-price factors. OSC's review emphasizes the award of contracts to the responsible bidder whose offer will be most advantageous to the State, price and other factors considered.

OSC's review of agency-proposed contracts also includes the terms and conditions of those contracts and assurances that the agency publicized its intent to procure in the Contract Reporter.

C. Division of the Budget

The Division's role in procurement matters includes both programmatic and fiscal concerns. Examiners should use the budget development process, the agency spending plan and other budget execution procedures to examine broad issues related to agency procurement. Considerations should include but are not limited to:

(i) the need for specific contracts and/or relevance to the agency's mission and program;
(ii) the availability of similar services within or among agencies;
(iii) the opportunity to provide required services through more economical methods or alternative means;
(iv) the identification of recurring patterns suggesting the need to secure in-house resources to address specific service needs;
(v) the need for a specific contract or the agency's general approach to procurement to stand the tests of public scrutiny or statutory or regulatory requirements;
(vi) the sufficiency of moneys to cover contractual services and the agency's capacity for managing within those resources; and
(vii) the general efficacy of the agency procurement policy, internal controls, fiscal management and internal oversight.

The H-100 process provides examiners with a comprehensive listing of proposed and continuing agency consultant and service contracts for informational and tracking purposes. The H-100 process is for internal use by DOB only. OSC will not, therefore, require DOB approval of an H-100 form to approve consultant or miscellaneous service contracts for agencies. However, examiners may identify a problem or concern with one or more of the proposed contracts listed on the H-100 document, and are expected to make those concerns known to the agency. Agencies are strongly urged to resolve such issues with their budget examiner within a reasonable time frame and before problematic contracts are submitted to OSC for its review and approval.

Examiners should use the H-100 to compare and contrast proposed and continuing contracts against those budgeted for and/or provided for in the agency spending plan, and to identify:

(1) new contracts that are potentially problematic and require further monitoring;
(2) situations in which resources may not be sufficient to cover anticipated expenditures; and
(3) contractual needs or issues that need to be addressed in the upcoming budget cycle.

4. Procedures and Required Documents

To the greatest extent possible, an agency's initial H-100 should serve as a complete, summary listing of proposed contracts for the fiscal year and be submitted to DOB by April 1 or as soon as is practicable after the enactment of the budget. Six months after submission of the initial plan, agencies are to submit a revised H-100 to DOB which identifies significant revisions, additions or deletions to the initial plan. Additionally, during the course of the year agencies are to advise DOB of any anticipated request for proposals or any other action to solicit bids and/or select an individual or firm to provide consultant or other services which was not included on the original H-100 submission and which has reasonable potential for substantive fiscal or programmatic consequences.

The H-100 contract review process is comprised of two parts: one for new contracts and one for renewal contracts.

A. New Contracts

(i) By April 1 of each year, or as soon as is practicable after enactment of the budget, each State department or agency is to complete the H-100 form listing all proposed new consultant and miscellaneous service contracts, other than capital construction contracts, that are projected to be over $100,000 which will be funded from any type of appropriation, and which the department or agency proposes or intends to award prior to the end of the fiscal year.

(ii) The list, grouped by categories and subcategories, will include (See Attachment A.):
(1) a contract title, which briefly describes the purpose of the proposed contract and vendor name (if known);
(2) the anticipated contract payment type (i.e., fixed price, unit price, cost-plus, other);

(3) the scheduled date (month and year), in which the agency plans to award the contract and in which the contract will be completed;

(4) the estimated total amount of the contract over its term;

(5) the amount that the contract is expected to cost during the fiscal year for which the H-100 is submitted;

(6) the appropriation from which the contract will be funded (i.e., chapter/section/law and the program/fund/account or sub-fund against which the contract will be charged;

(7) the expenditure object code to which the costs of the contract will be charged; and

(8) whether, when the H-100 form is updated for actual information, the contract was awarded as a sole-source (SS) contract or to a minority- or women- owned business enterprise (MWOBE).

(iii) Budget examiners will review submitted H-100 forms in order to understand and monitor agency operations, initiatives and trends in non-personal service spending. In some instances examiners may require additional information from agencies concerning the need for a particular contract, the source of funding for contract costs, or an explanation of what other means of securing the services in question were considered and rejected. In such instances, examiners will be responsible for notifying agencies of the nature of their concerns as well as the information required to resolve them, and may provide the submitting agency with a marked-up copy of the H-100 which identifies the proposed contract(s) in question.

(iv) It is the agency's responsibility to respond to DOB's expressed concerns and requests for information within a reasonable period, usually 10 working days. Since the H-100 is an informational document, and the primary responsibility for implementing the agency's mission within the limits of available resources rests with the agency head, the contract approval process may proceed while discussions with DOB continue. However, a continuing failure to respond to DOB's expressed concerns may result in the agency being placed under alternative contract approval procedures, as described more fully in Section 5, below.

(v) Six months after submission of the initial plan, departments and agencies must provide DOB with a revised H-100 form which updates the original submission to reflect what actually occurred. The amended H-100 should list additional

contracts not anticipated at the time the initial list was submitted, as well as significant changes to previously listed contracts. Significant changes would include: a change in dollar value of ten percent or more in either the total amount of the contract over the contract term or on an annual basis; modification of the term or terms of the contract; or a change in the source of funding.

B. Renewal Contracts

(i) By April 1 of each year, or as soon as is practicable after enactment of the budget, each State department or agency must also complete an H-100 form covering the proposed renewal of all consultant and service contracts of $100,000 or more that were in effect in the immediately prior fiscal year and that will continue during or be renewed in the upcoming fiscal year.

(ii) The list, grouped by categories and subcategories, as submitted must provide sufficient information to enable examiners to compare the contracts listed with those that were in effect in the prior year and will include (See Attachment A.):

(1) a contract title, which briefly describes the purpose of the contract and vendor name;
(2) the contract payment type (Fixed Price, Unit Price, Cost-Plus, Other);
(3) the scheduled date (month and year) in which the contract was awarded and in which the contract will be completed;
(4) the amount expended for the contract during the prior fiscal year;
(5) the estimated total amount of the contract over its term;
(6) the amount that the contract is expected to cost during the fiscal year for which the H-100 is submitted;
(7) the appropriation (i.e. chapter, section, law) from which the contract will be funded and the program/fund/account or sub-fund against which the contract will be charged.
(8) the expenditure object code to which the costs of the contract will be charged; and
(9) an indication of whether the contract was awarded as a sole-source (SS) contract or to a minority- or women-owned enterprise (MWOBE).

(iii) The H-100 list of contract renewals shall be provided to DOB on an informational basis.

5. Alternative Contract Approval Procedure

In some instances DOB Unit Chiefs may find it necessary to require agencies to obtain DOB approval of proposed new or renewal consultant and miscellaneous service contracts **before** those contracts are submitted to OSC. This alternative procedure may be necessary when an agency fails to respond in a timely and forthcoming manner to requests for information concerning proposed or existing consultant and miscellaneous service contracts, when an agency fails to adhere to its spending plan, or for other substantive cause.

When such a determination is made, the Bureau of Contracts of OSC and the agency will receive written notification of DOB's position. Agencies placed under this alternative contract approval procedures will be required to provide DOB with detailed justifications for any consultant and miscellaneous service contract costing $100,000 or more. Renewal or amendment of existing contracts will also require DOB approval if the cost of the revised or renewed contract is thereby raised to $100,000 or more on either an annual or cumulative basis. Information which the agency will be required to supply, in a format determined by the applicable budget examination unit, on each proposed new or renewal contract may include information similar to that requested on the H-100 form as well as additional information, including cost projections and explanations of why the services to be performed under the contract cannot be provided by State employees.

For those agencies placed under this alternative contract approval procedure, OSC has been asked to execute only those consultant or miscellaneous service contracts worth $100,000 or more which are approved by DOB. The Division of the Budget will provide the OSC's Bureau of Contracts and the agency with written notification of its approval or disapproval of proposed new and renewal contracts.

6. Process Steps for the Review of Contracts

(a) The agency completes an initial H-100 after enactment of the budget.

(b) The agency submits the H-100 to the Budget Division for informational purposes. **The usual process of agencies forwarding contracts to the Office of the State Comptroller for approval will continue.**

(c) The Budget Division reviews the H-100 and contacts the agency if it has any questions or concerns about a particular contract.

(d) The agency has ten (10) working days to respond to any inquiry from the Budget Division.

(e) Six (6) months after submission of the initial H-100, the agency provides the Budget Division with a revised H-100 that reflects final decisions made by the agency, the Budget Division and the Office of the Comptroller concerning contracts listed on the initial H-100.

(f) The Budget Division reviews the revised H-100.

7. Alternative Contract Approval Process Steps

(a) The Budget Division sends written notification to the agency the to the Office of the State Comptroller's Bureau of Contracts that the agency must follow the alternative contract approval process.

(b) The agency submits the requested information (see pages 8,9) to the Budget Division.

(c) The Budget Division reviews and sends written notification to the agency and to the Bureau of Contracts concerning which contracts may and may not be approved.

ATTACHMENT A

INSTRUCTIONS FOR
SUMMARY LIST OF PROPOSED NEW OR RENEWAL CONTRACTS

Send one copy of the summary listing to the Division of the Budget examination unit which reviews the department or agency budget request. In the upper left hand corner, indicate whether the H-100 is an original, summary listing for the fiscal year or an update of that summary modified to show actual experience. One H-100 should be prepared for new contracts. A separate H-100 should be prepared for renewal contracts.

1. Category/Subcategories. The department or agency should group its proposed new or renewal contracts in the following categories and subcategories:

Category	Subcategory
Consultant Services	Graphic arts and similar types of printing consultant services; legal services; auditing; public relations and advertising; management, information services and research and development consulting services; training; and other types of consultant services agreements.
Miscellaneous Services	Moving; laundry; rubbish removal; pest control; janitorial services; transportation; window washing; security services; delivery; landscaping; snow removal; food services; data entry services; burial; computer time sharing services; temporary office help; medical personnel services; hearing officer; employee benefit contracts (e.g., with providers of eye glasses); claims processing contracts; and other types of miscellaneous service contracts.

2. Contract Title/Vendor. A brief descriptive title should be provided for each proposed contract. When this form is updated for actual information, the name of the vendor should also be identified.

3. Payment Type. Indicate which contract payment mechanism will be used: Fixed Price, Unit Price, Cost-Plus or Other.

4. Scheduled Date. The scheduled month and year in which the agency plans to award or awarded the contract, and in which the contract will be completed.

5. Prior Year Actual Amount. To be completed only when the H-100 is submitted for renewal contracts. Enter the amount actually expended for the contract during the prior fiscal year.

6. Total Amount. The approximate amount that the contract is expected to cost over its life. When the H-100 is submitted as an update to the original summary listing, this item should show actual information.

7. Annual Amount. The amount to be expended against the contract during the fiscal year for which it is submitted.

8. Appropriation. The chapter, section, and year of the appropriation act against which the contract will be charged (e.g., chapter 55, section 1, of the laws of 1997). Please use this format: 55/1/97.

9. Program/Fund/Subfund or Account. The program/fund/subfund or account to which the costs of the contract will be charged.

10. Expenditure Object. The Audit and Control expenditure object code (statistical subobject or subobject if available) against which the contract will be charged.

11. SS/MWOBE. Indicate whether the contract is to be awarded on a sole source (SS) basis and/or to a minority or women-owned enterprise (MWOBE) and update accordingly.

DOB Form H-100
G Original Summary Listing
G Updated for Actual
G New Contracts
G Renewal Contracts

April 1, ____ - March 31, ____

SUMMARY LIST OF PROPOSED NEW OR RENEWAL CONTRACTS FOR
CONSULTANTS AND MISCELLANEOUS SERVICES
(See reverse side for instructions)

DEPARTMENT OF AGENCY _____ INSTITUTION OR REGION _____ OSC AGENCY CODE _____

CATEGORY/SUBCATEGORY _____

Contract Title/Vendor	Payment Type	Scheduled Date		Prior-Year Actual Amount	Total Amount	Annual Amount for Fiscal Year	Appropriation Chapter/ Section/Year	Program/Fund/Subfund or Account	Expenditure Object	SS/MWOBE
		Award	End							

* Group the proposed contracts according to the specific categories and subcategories which are listed on the reverse side of this form.