



Category:  
Facility Management / Safety  
Financial

Responsible Office:  
[Office of Capital Facilities](#)

**Procedure Title:**

Construction-Related Consultant Contracting Procedures

Document Number:  
7555

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This procedure item applies to:  
State-Operated Campuses

**Table of Contents**

- [Summary](#)
- [Process](#)
- [Forms](#)
- [Related Procedures](#)
- [Other Related Information](#)
- [Authority](#)
- [History](#)
- [Appendices](#)

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**Summary**

This procedure sets forth guidelines to assist state-operated campuses of the State University of New York (University) in the procurement of construction related consultant contracts. The purpose of this document is to identify and clarify procedural differences from the general procurement procedures found in "Purchasing and Contracting" procedure (Procedure Item #7553).

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**Process**

**I. Definitions**

- A. Professional Firm – an individual or sole proprietorship, partnership, corporation, association or other legal entity permitted by law to practice the professions of architecture, engineering, landscape architecture or surveying in the State of New York.
- B. Consultant Service Agreement – a contract in which a Professional Firm, as defined above, is hired to provide assistance in the execution of a project or study, related to campus facilities, facility system(s), utility(ies), utility system(s), site improvements, or components of any of the above.
- C. The Fund – State University Construction Fund
- D. OSC – Office of the State Comptroller
- E. NYSCR – New York State Contract Reporter
- F. MWBE – Minority and Women Owned Business Enterprises
- G. SDVOB – Service Disabled Veteran Owned Business Enterprises

**II. Consultant Service Agreements**

- A. Types of Agreement: Four different types of agreements exist to initiate consultant service work. For each work may be accomplished through bidding or by campus staff.
  - 1. **Lump Sum Agreement with no associated construction cost (for studies & limited design services):** The submission of a lump sum cost by a professional or technically qualified firm or entity for the preparation of a study; or, the submission of a lump sum cost by a professional firm for limited design services. The cost of this type of lump sum agreement must be justified by means of a standard multiplier calculation.
  - 2. **Cost Plus Fixed Fee Agreement (for studies & design with a clearly defined scope):** The negotiation of hourly rates with a professional firm for the preparation of a program study or for

design services. This type of contract shall have a maximum, not-to-exceed dollar value and a term of not more than two years. The campus must define all of its deliverables in the terms of the contract and must specify documentation requirements for payments to be made in the terms of the contract. The intent of this kind of agreement is to provide professional services for a small project with a clearly defined scope of work. The cost of this type of agreement must be justified by means of a standard multiplier calculation.

3. **Lump Sum Agreement with an associated construction cost (for studies & design):** An agreement with a professional firm for the preparation of a program study or for design services for a defined scope of work that has an associated construction cost. The cost of the agreement may be justified by the use of a standard multiplier or by a comparison to the current Construction Fund Fee schedule based on the construction cost. The current schedule and complexity factors can be found on the Fund's [website](#). The negotiated lump sum will be paid to the consultant based on the completion of the deliverables.

4. **Term and Backdrop Agreements:**

- i. *Term Agreement (for small projects of similar scope):* A pre-awarded agreement for the preparation of a study or for design services and/or contract administration of small projects of a similar scope. This type of contract shall have a maximum, not-to-exceed dollar value consistent with the limits set forth in Section V of this document, and a term of not more than three years with no option for renewal. The cost of this type of agreement must be justified by means of a standard multiplier calculation. Consultation with University Counsel is strongly recommended for all term contracts.

See Section V 'Consultant Term Agreement and Backdrop Agreement Limits' and Section VI 'Consultant Term Agreements' for more specific guidance.

- ii. *Backdrop Agreement (for small projects of diverse scope):* A pre-awarded agreement for the preparation of studies or for design services and/or contract administration of small projects of a diverse scope. Backdrop term agreements involve the selection of three to six firms to serve as a "backdrop" of consultants and a mini-selection process is used to determine the most qualified consultant for each project. This type of contract shall have a maximum, not-to-exceed dollar value consistent with the limits set forth in Section V of this document, and a term of not more than three years with no option for renewal. The cost of this type of agreement must be justified by means of a standard multiplier calculation. Consultation with University Counsel is strongly recommended for all term contracts.

See Section V 'Consultant Term Agreement and Backdrop Agreement Limits' and Section VII 'Consultant Backdrop Term Agreements' for more specific guidance.

B. Overview

1. All consultant agreements must specify the term, contract type, contract amount and explicitly identify the scope of services and deliverables. The fee for all services must be negotiated. Although the current [Construction Fund Fee Schedule](#) may be used as a benchmark by a campus when it is negotiating a fee, the Construction Fund Fee Schedule may not be included in the terms of the agreement, nor may it be presented to a prospective consultant. In accordance with the provisions of State Finance Law 136a, all fees must be determined by the Campus to be fair and reasonable taking into account the scope, complexity, and value of the services.
2. In addition to advertising, all campuses should either maintain their own listing of Professional Firms and individuals or utilize the listing maintained by the State University Construction Fund and should mail out RFQ's to these firms as appropriate.
3. Design work can be accomplished by a licensed professional on campus staff or through a consultant service agreement.
  - i. The New York State Education Law (Article 147) requires that, with limited exceptions, construction/ alteration projects bear the seal of a licensed professional and be designed by a registered Architect, Professional Engineer or Registered Landscape Architect and all design work must be under the direct supervision of the same. This requirement applies to projects that affect public or structural safety, regardless of the dollar amount. It does not apply to (1) farm buildings, including barns, sheds, poultry houses and other buildings used directly and solely for agricultural purposes; (2) residence buildings of gross area of

fifteen hundred square feet or less, not including garages, carports, porches, cellars or uninhabitable basements or attics; or (3) alterations which do not affect the structural safety or public safety costing ten thousand dollars or less for any building within the city of New York and twenty thousand dollars or less for any building or structure outside the city of New York. However, regardless of legal requirement, all contract documents should generally bear the seal of a licensed professional.

- ii. Verification of licensure with New York State can be done through an online search of the NYS Education Department and Office of the Professions [website](#).
4. It is the University's policy to take affirmative action to ensure that New York State certified minority- and women-owned business enterprises ("MWBES") are given the opportunity to demonstrate their ability to provide the University with construction related services. Requirements for compliance to NYS Executive Law Article 15-A are outlined in the procedure "Participation by Minority Group Members and Women (MWBES) with Respect to State University of New York Contracts" ([Procedure Item #7557](#)).

Consistent with the State University of New York (SUNY)'s commitment to, and in accordance with, Article 17-B of the New York State Executive Law, contractors are required to ensure that good faith efforts are made to include meaningful participation by Service Disabled Veteran-Owned Businesses. Requirements for compliance to NYS Executive Law Article 17-B are outlined in the procedure "Participation by Service-Disabled Veteran-Owned Business (SDVOBs) with Respect to State University of New York Contracts" Procedure Item #7564).

It is required that the EEO Policy Statements and Sub-consultant Staffing Plans defined within [Procedure Item #7557](#) be requested by the University in the Request for Qualifications and submitted by the Consultant with its Submittal of Qualifications.

### III. Consultant Service Agreements Not Exceeding \$25,000

#### A. General

1. Under the provisions of State Finance Law Section 136a, consultant contracts for architect, engineering and surveying services under \$25,000 are not required to be awarded to the most qualified firm. However, due to the nature of consultant agreements, oftentimes there are amendments to these contracts made based on unforeseeable circumstances, causing the contract value to exceed \$25,000. Consequently, it is recommended that all contracts for architecture, engineering or surveying services be awarded to the most qualified consultant unless the campus is absolutely certain that the amount of the contract will never exceed \$25,000. Campuses must be able to demonstrate that the consultant selected has the competence and qualifications for the type of service required, and that the cost is reasonable either by a low-bid process or using a standard multiplier.

#### B. Required Documentation (to be on file at Campus)

1. DOB B-1184 Approval (*applies >\$20,000*)
2. Procurement Lobbying (*applies >\$15,000*) ([Procedure 7552](#))
  - i. Summary: Policy and Procedure of the State University of New York Relating to State Finance Law §§139-j and 139-k ([Form A](#), [Procedure 7552](#))
  - ii. Affirmation with respect to State Finance Law §§139-j and 139-k ([Form B](#), [Procedure 7552](#))
  - iii. Disclosure and Certification with respect to State Finance Law §§139-j and 139-k ([Form C](#), [Procedure 7552](#))
  - iv. State University of New York Procurement Lobbying Law Record of Contact ([Form D](#), [Procedure 7552](#))
  - v. [Governmental Entity Representation Concerning Compliance with State Finance Law §§139-j and 139-k](#)
3. ACORD 25 - Certificate of Liability Insurance Form and the SUNY Certificate of Insurance Instructions and Checklist ([Form 7555-09](#))
4. Certificate of Workers Compensation Insurance (as provided by insurance carrier or licensed NYS insurance agent)
5. Certificate of Disability Benefits Insurance (as provided by insurance carrier or licensed NYS insurance agent)
6. State Consultant Services Contractor's Planned Employment From Contract Start Date Through

the End of the Contract Term ([OSC Form A](#)) (*applies >\$15,000; applicable to salaries, does not include travel or reimburseables*)

7. Purchase Order or Signed Agreements with Acknowledgment (Form [7555-10](#), [7555-10A](#) or [7555-10B](#))
  - i. Exhibit A
  - ii. Exhibit A-1 (*applies >\$25,000*)
  - iii. Project scope and requirements
8. If processed as a Contract - Campus Procurement Certification ([Form XV](#), [Procedure 7553](#))

#### IV. Consultant Service Agreements Exceeding \$25,000

##### A. Consultant Service Agreement Process - Overview

1. Solicitation
  - i. Document Project Justification and obtain Division of Budget Approval (B-1184)
  - ii. Assemble the Request for Qualifications ([Form 7555-01](#)), RFQ Transmittal Letter ([Form 7555-02](#)), applicable rating forms (Forms [7555-03](#), [7555-04](#), [7555-05](#), [7555-06](#))
  - iii. Advertise in the New York State Contract Reporter
  - iv. Request qualifications from a minimum of five consultants
    - a. Includes requests to MWBE consultants (for detailed requirements see "Participation by Minority Group Members and Women (MWBEs) with Respect to State University of New York Contracts" (Procedure Item #7557)
    - b. Includes requests to SDVOB consultants (for detailed requirements see "Participation by Service-Disabled Veteran-Owned Business (SDVOBs) with Respect to State University of New York Contracts" (Procedure Item #7564)
2. Selection
  - i. Evaluate and select the consultant (Forms [7555-03](#), [7555-04](#), [7555-05](#), [7555-06](#))
  - ii. Forward a Letter of Intent ([Form 7555-08](#)) to the successful consultant
  - iii. Negotiate fee
  - iv. Ensure all required consultant documentation is complete
3. Award
  - i. Have three copies of the Agreement signed by the Consultant. The campus will retain two file copies of the agreement and send one copy to the consultant
  - ii. Complete Campus Procurement Certification ([Form XV](#), [Procedure 7553](#))
  - iii. Complete Consultant Procurement Checklist ([Form 7555-00](#))
4. Required Agency and Consultant Documentation (to be on that file at Campus)
  - i. See the Consultant Procurement Checklist ([Form 7555-00](#))

##### B. Consultant Service Agreement Process - Detailed

1. Solicitation
  - i. Document Project Justification and obtain Division of Budget Approval (B-1184) through the DOB's online application system. [eBudget Applications Login](#)
  - ii. Assemble the Request for Qualifications ([Form 7555-01](#)) and evaluation forms ([Forms 7555-03](#), [7555-04](#), [7555-05](#), [7555-06](#)). Include the Subconsultant Staffing List ([Form 7555-15](#), [16](#), [17](#)) in the RFQ package.
  - iii. Advertise in the New York State Contract Reporter (NYSCR). See Section VIII 'General Requirements' for detailed requirements.
  - iv. Distribute the Request for Qualifications ([Form 7555-01](#)) to a minimum of five potential consultants, including those who have requested the package in response to advertisements. Include requests to MWBE and SDVOB consultants.
2. Selection
  - i. Form a Selection Committee
    - a. The basis for selection for all consultant agreements shall be demonstrated competence and qualifications for the type of service required.
    - b. A Selection Committee shall consist of a minimum of three committee members

- who are able to participate in the full selection process.
    - i. If interviews are held, each must be attended by all Selection Committee members. Any member that fails to participate in all interviews will not be permitted to submit ratings for purposes of determining the selected firm. Such member may, however, participate in Selection Committee meetings and discussions. Therefore, it is recommended that selection committees consist of four or more members.
  - c. At a minimum the Committee Chair shall have completed Consultant Selection Training with SUNY or SUCF.
  - d. Each Committee Member shall adhere to the procedures set forth in Procurement Lobbying [Procedure Item #7552](#), and shall have no unauthorized contact with consultants during the selection period.
  - e. A Selection Committee member shall have no conflict of interest relating to the consultants being considered. A conflict of interest occurs when the Committee member or an immediate family member (spouse/domestic partner, parent, sibling or child) has a financial interest in or has been employed by any of the firms under consideration within the previous two years. If a potential conflict of interest exists, the Committee member shall notify Campus Counsel in writing and request a determination of whether an actual conflict of interest exists.
- ii. Review submittals and identify a Short List of consultants
    - a. Individually rate each consultant ([Form 7555-03](#)) using the following criteria.
      - i. 1 (firm should not be considered for this contract)
      - ii. 2 (firm may merit further consideration for this contract)
      - iii. 3 (firm merits further consideration for this contract)
    - b. Calculate the total score for each consultant and develop a Short List of firms to be considered for the project ( [Form 7555-04](#)). The total score is based on the sum of the individual committee member's scores. At a minimum the five firms with the highest ratings are to continue in the selection process. In the event that the fifth and sixth firms' ratings are tied both firms are to continue in the selection process.
  - iii. Evaluation of Short Listed firms
    - a. Site visits and interviews may be conducted at the discretion of the Selection Committee. If conducted, they must be done so for all consultants submitting qualifications.
      - i. Interviews are recommended, but not required, for all consultant selections.
      - ii. If interviews are held, each must be attended by all Selection Committee members. Any member that fails to participate in all interviews will not be permitted to submit ratings for purposes of determining the selected firm. Such member may, however, participate in Selection Committee meetings and discussions.
    - b. Contact references of the short listed firms ([Form 7555-07](#)).
    - c. Rank the short listed firms using numerical ratings based on the standards identified within the evaluation ([Form7555-06](#)). The highest ranking consultant shall be determined by calculating the average of all Selection Committee Member's scores.
  - iv. Forward a Letter of Intent ([Form 7555-13](#)) to the most qualified consultant requesting any consultant documentation not previously submitted.
  - v. Negotiate Fee
    - a. The campus shall negotiate a contract with the most qualified consultant at a fee which it determines, in writing, to be fair and reasonable for the services rendered. Cost justification will be made by means such as a standard multiplier or by

reference to the current Construction Fund Fee Schedule. Although the current [Construction Fund Fee Schedule](#) may be used as a benchmark by a campus when it is negotiating a fee, the Construction Fund Fee Schedule may not be included in the terms of the agreement, nor may it be presented to a prospective consultant.

- b. At the time the cost proposal is submitted the consultant is required to submit an updated Subconsultant Staffing List ([Form 7555-15, 16](#) or [17](#)) inclusive of dollar values.
- c. If the fee arrived at is not deemed fair and reasonable, or if negotiations with the most qualified consultant fail to reach a satisfactory conclusion, the negotiation process must be formally terminated in writing and negotiations may proceed with the second most qualified consultant. A copy of such termination shall be in the procurement record.
- vi. Ensure all required documentation is complete in the procurement record and are in compliance with applicable threshold requirements, rules, regulations and laws.
  - a. Once the campus has begun to negotiate with the second most qualified consultant, the first may no longer be considered. If negotiation with the second most qualified bidder is not successful, either the process may be terminated or negotiations may proceed sequentially between the campus and the third, fourth, fifth, etc. most qualified consultant in a similar fashion, until a satisfactory Agreement is reached. The campus shall not go back to a firm it previously negotiated with unless the RFQ canceled and reissued.

### 3. Award

- i. Attach and incorporate SUNY Exhibits A and A-1 to the resulting contract.
- ii. Complete the Campus Procurement Certification ([Form XV, Procedure 7553](#)). For contracts >\$250,000 a copy must be placed in the Procurement Officers Space in Confluence.
- iii. Have three copies of the Agreement signed by the Consultant. The campus will retain two copies of the agreement and send one copy to the consultant.
- iv. Publish notification of award in the NYSCR.

## V. Consultant Term and Backdrop Term Agreement Limits

A. Consultant term agreement limits are defined by tier. Each campus's tier is designated by the Office for Capital Facilities. Such designation is based upon past performance, results of internal or external audits and projected future spending on consultant service agreements. Term contracts are intended to be a tool to increase efficiencies on smaller projects. Under no circumstances should a campus use term contracts as their principal means for placing consultant service.

### 1. Definitions

- i. Contract Limit: The total cumulative value of the consultant term agreement over a three year period
- ii. Contract Limit Estimated Construction Value: The estimated cumulative value of construction associated with the contract over a three year period. (*Approximate, for reference only*)
- iii. Project Limit: The maximum value permitted for each individual project placed under the consultant term agreement.
- iv. Project Limit Estimated Construction Value: The estimated value of construction associated with each individual project. (*Approximate, for reference only*)

### 2. Contract and Project Limits.

#### Tier 1

<b>Contract Limit (Consultant Cost)</b>	<b>\$225,000</b>
Contract Est. Construction Value	\$1,500,000
<b>Project Limit (Consultant Cost)</b>	<b>\$75,000</b>
Project Est. Construction Value	\$525,000

**Tier 2**

<b>Contract Limit (Consultant Cost)</b>	<b>\$700,000</b>
Contract Est. Construction Value	\$5,000,000
<b>Project Limit (Consultant Cost)</b>	<b>\$200,000</b>
Project Est. Construction Value	\$1,300,000

**Tier 3**

<b>Contract Limit (Consultant Cost)</b>	<b>\$3,500,000</b>
Contract Est. Construction Value	\$17,500,000
<b>Project Limit (Consultant Cost)</b>	<b>\$500,000</b>
Project Est. Construction Value	\$3,500,000

**VI. Consultant Term Agreements**

- A. In cases where the campus has many small projects with similar scopes of work a consultant term agreement may be used. Term agreements involve the selection of a consultant for an agreement under which small projects may be authorized.
- B. Term agreements may be executed as dry appropriation contracts. The campus individual responsible for the funding source must obtain the appropriate campus approvals and funding prior to execution of a project under the term agreement.
- C. The maximum term allowed is three years with no provision for renewal. In the event that a project's completion extends beyond the end date of the term contract the term contract may be extended for the sole purpose of the completion of that project.
- D. Campuses are responsible for ensuring the use of a term contract is appropriate and in compliance with the tenants of State Finance Law 136a. The most qualified professional firm shall be selected and a fair and reasonable fee negotiated. Term consultant selection documentation must demonstrate that the most qualified consultant is selected.
- E. All term agreements are campus specific unless defined and executed as a multi-campus agreement.
- F. When pursuing a term agreement consultation with University Counsel is strongly recommended.
- G. Authorization for a consultant to proceed after the necessary approvals are received must be given by the campus individual responsible for the funding source.

**VII. Consultant Backdrop Term Agreements**

- A. In cases where a campus has many small projects with diverse scopes of work a backdrop term agreement may be used. Backdrop term agreements involve the selection of three to six firms to serve as a "backdrop" of consultants

- B. Backdrop term agreements may be executed as dry appropriation contracts. The campus individual responsible for the funding source must obtain the appropriate campus approvals and funding prior to execution of a project under the backdrop term agreement.
- C. The maximum term allowed is three years with no provision for renewal. In the event that a project's completion extends beyond the end date of the term contract the term contract may be extended for the sole purpose of the completion of that project.
- D. Consultant backdrop term agreement limits are the same as those defined for term agreements in Section V of this document.
- E. Backdrop term consultant mini selections must demonstrate that the most qualified consultant is selected for each project. For each project a campus wishes to place under a backdrop term agreement:
  - 1. Provide a project notification & summary to all consultants on the backdrop term agreement. Give consultants the opportunity to update their qualifications which are on file with the campus.
  - 2. Using the qualifications which are on file with the campus, and any updated qualifications received in response to the project notification, evaluate the consultants and select the most qualified consultant. Document justification for selection in the procurement record using the Backdrop Term Contract Mini Selection [Form 7555-07](#). A selection committee is not required.
- F. Campuses are responsible for ensuring the use of a backdrop term contract is appropriate, and in compliance with the tenants of State Finance Law 136a. The most qualified professional firm shall be selected and a fair and reasonable fee negotiated.
- G. All backdrop term agreements are campus specific unless defined and executed as a multi-campus agreement.
- H. When pursuing a term or backdrop agreement consultation with University Counsel is strongly recommended.
- I. Authorization for a consultant to proceed on a project must be given by the campus individual responsible for the funding source ([Form 7555-14](#)) after the necessary approvals are received.

### VIII. General Requirements

- A. New York State Contract Reporter
  - 1. Advertisement in the New York State Contract Reporter requirements are as follows.
    - i. Up to \$10,000: no publication is required.
    - ii. \$10,000.01 to less than \$50,000: quarterly publication of a list of projected procurements by commodity and/or service, together with an explanation of how to apply for placement on any bidder lists and the procedure for providing advance notice by mail to those on the campus bidders list.
    - iii. \$50,000 and above: An individual notice for each proposed procurement must be published at least 15 business days in advance of the date on which a bid or proposal is due, unless a shorter period is specifically authorized by law. The New York State Contract Reporter accepts only online submissions through its web site.
    - iv. If the fee is estimated to be under the advertisement requirement and the negotiated fee is over that threshold all proposals must be rejected and the project advertised.
  - 2. The notice must contain instructions on how to apply for placement on the campus's list and how advance notice by mail will be provided to those consultants by the campus. Upon preparation of a Request for Qualifications, the campus shall notify by mail all consultants that responded to the quarterly listing.
  - 3. Exemption
    - i. A waiver of competitive solicitation and prior publication in the Contract Reporter is allowed provided adequate documentation is provided to support the declaration that



advertisement in the NYSCR is not feasible and reasonableness of prices is established. The declaration shall be signed by the campus President, or President's designee and sent to OSC for approval.

- ii. The campus must document for OSC 1.) that the selected consultant is the most qualified firm or individual to complete the project and would be selected to do the work even in the event the project were advertised, and 2.) the basis for the determination of reasonableness of cost. Consultation with University Counsel is strongly recommended in this situation.
- iii. For more details on exemptions to NYSCR advertising requirements see SUNY Procedure "Purchasing and Contracting (Procurement) ([Procedure Item #7553](#))
- iv. For those projects which were granted an exemption from the pre-award publication requirements the campus must provide OSC with proof confirming that the Department of Economic Development has been requested to publish the notice of the exemption in the New York State Contract Reporter. The notice must state the reason for the exemption and be placed as soon as practical.

4. Consultant Services Reporting: State Finance Law Sections 8 and 163 require that for contracts greater than \$15,000 State contractors 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 includes information on any persons working under any subcontracts with the State contractor. The consultant must also report actual expenditures on consultant contracts on an annual basis and language regarding this requirement must be included in the contract terms. Links to OSC forms can be found in the forms section of this document.

B. Two or Fewer Responses (for contracts exceeding \$25,000)

1. When only one or two responses are received in response to an RFQ, the campus must demonstrate that all reasonable steps were taken to ensure that competition was maintained and reasonableness of price was established. When two or fewer responses are received, the following steps must occur and be documented in the procurement record.
  - i. Conduct an independent review the Request for Qualifications and determine if it contained any restrictive, unclear, and/or ambiguous content which would have caused limited competition.
  - ii. Determine if sufficient time was provided to enable proper preparation and submission of responses.
  - iii. Determine if any other reason may have inhibited responses.
2. If any of the above conditions exist, or if there is any other irregularity, the solicitation shall be re-advertised and the process repeated.
3. If none of the above conditions exist, the project may be awarded subject to Campus President, or President's designee, approval.

C. Payments to the Consultant

1. Multiple Payments: Not more than two (2) Standard Vouchers (AC 92's) can be processed per Purchase Order. In the event more than two (2) payments are required the effort must be placed using a contract. For a contract an AC 340 must be used to encumber funds and a "TXXXXX" contract number assigned.
2. For contracts greater than \$25,000 ensure the requirements of "Participation by Minority Group Members and Women (MWBs) with Respect to State University of New York Contracts" (Procedure Item #7557) and "Participation by Service-Disabled Veteran-Owned Business (SDVOBs) with Respect to State University of New York Contracts" (Procedure Item #7564) are followed. This includes the submittal of monthly utilization reports with application for payment.
3. At the payment interval indicated in the Agreement, submit the following to the Office of the State

Comptroller:

- i. Consultants Application for Payment ([Form 7555-12](#))
- ii. A properly executed Standard Voucher (AC 92).

D. Changes and Amendments

1. If during the course of the project unforeseen conditions arise which alter the Agreement or the Scope of Services a formal amendment to the contract shall be executed. Amendments are intended to cover changes to the existing scope of services which are within the intent of the original project. For changes increasing the contract value, the following shall be included in the procurement record.
  - i. Applicable campus approvals
  - ii. DOB B-1184 approval (*if applicable*)
  - iii. Revised AC340 (*if applicable*)
  - iv. Vendor Responsibility (*if applicable, see [OSC website](#) for applicability requirements*)
  - v. Change description / scope
  - vi. Signed amendment with acknowledgment ([Form 7555-11](#))
2. If a change is outside the intent of the original project a separate procurement shall be executed.
3. Changes Process
  - i. Sequentially number each Contract Amendment
  - ii. Funding Approval
    - a. After conferring with the consultant, submit a written description of the proposed change, the reason for the change, and its impact on the project budget and basic fee for applicable campus approval. If applicable obtain Division of Budget B-1184 approval.
  - iii. Amendment Approval
    - a. Amendments shall be signed on behalf of the University by the campus President or President's designee.
    - b. Have three copies of the Agreement signed by the Consultant. The campus will retain two file copies of the agreement (one at the Business Office and one at the Facilities Office) and send one copy to the consultant.

E. Emergencies

1. When an emergency exists a waiver of the selection process may be granted. An emergency declaration is to be signed by the campus President, or President's designee. Exemption from advertisement must be approved by OSC. In situations where it is not feasible to advertise in the NYSCR, an exemption may be requested from OSC in accordance with the NYSCR exemption process set forth in this procedure. Reasonableness of price must be demonstrated and a formal agreement or amendment must be executed before work may begin.
2. An emergency exemption relieves the campus of the solicitation and selection requirements set forth in this procedure, with the exception of fee negotiation. All other applicable requirements, documentation, and approvals set forth in this procedure apply.
3. Definition
  - i. A Construction Emergency is defined as "...damage to, or a malfunction in buildings or property of the State of New York caused by an unanticipated, sudden and unexpected occurrence which involves a pressing necessity for immediate repair, reconstruction or maintenance in order to permit the safe continuation of a necessary public use or function, or to protect the property of the State of New York, or the life, health or safety of any person."
  - ii. An "Emergency" as it applies to these Procedures shall comply with the above definition in that the circumstances requiring professional assistance shall be "unanticipated, sudden and unexpected" and the situation threatens "the safe continuation of a necessary public use or function, or action is necessary to protect the property of the State of New York, or the life, health or safety of any person."

4. Overview of Initiation/Approval Process for Emergencies:
  - i. Identify the emergency. Document the time, date, place, location and what occurred. If applicable, indicate whether the emergency was caused by an insured/non-insured outside entity. Indicate why it conforms to the above emergency definition and why alternative actions are not viable in this situation. To the degree possible, estimate the cost of the services.
  - ii. Have the campus President, or President's designee, approve and sign the written emergency declaration. If the estimated value of the design services is in excess of \$50,000 fax a copy of the signed emergency declaration to OSC to request an exemption from having to advertise the work in the NYSCR. The text of the declaration must formally request this exemption.
  - iii. If feasible contact at least three Consultants, then select the most qualified, negotiate a fee, and process the agreement. Document for the procurement record the process used to select the firm and reasonableness of price.
  - iv. Authorize the consultant to proceed with the work. Verbal authorization must be followed by written authorization.

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## Forms

- [7555-00](#) - Consultant Procurement Checklist (PDF)
- [7555-00](#) - Consultant Procurement Checklist (Word)
- [7555-01](#) - Request for Qualifications
- [7555-02](#) - RFQ Transmittal Letter
- [7555-03](#) - Short List Rating Form (PDF)
- [7555-03](#) - Short List Rating Form (Word)
- [7555-04](#) - Short List Summary Form (PDF)
- [7555-04](#) - Short List Summary Form (Word)
- [7555-05](#) - Consultant References Form (PDF)
- [7555-05](#) - Consultant References Form (Word)
- [7555-06](#) - Consultant Selection Rating Form (PDF)
- [7555-06](#) - Consultant Selection Rating Form (Word)
- [7555-07](#) - Backdrop Term Agreement Mini Selection Form (PDF)
- [7555-07](#) - Backdrop Term Agreement Mini Selection Form (Word)
- [7555-08](#) - Letter of Intent
- [7555-09](#) - Certificate of Insurance Instructions and Checklist
- [7555-10](#) - Consultant Agreement
- [7555-10A](#) - Consultant Term Agreement
- [7555-10B](#) - Consultant Agreement for Studies

[7555-10C](#) - Consultant Agreement and RFP for Contracts Less than \$25K

[7555-11](#) - Contract Amendment

[7555-12](#) - Consultant Application for Payment

[7555-13](#) - Term Agreement Project Initiation

[7555-14](#) - Term Agreement Authorization to Proceed

[7555-15](#) - Sub-Consultant Staffing List - Architecture and Engineering

[7555-16](#) - Sub-Consultant Staffing List - Construction Management

[7555-17](#) - Sub-Consultant Staffing List - Commissioning

### Additional Forms

1. State Finance Law §§139-j and 139-k *from SUNY Procedure Item #7552 "Procurement Lobbying Procedure for State University of New York" (applies >\$15,000)*
  - a. [Form A](#) - Summary: Policy and Procedure of the State University of New York Relating to State Finance Law §§139-j and 139-k
  - b. [Form B](#) - Affirmation with respect to State Finance Law §§139-j and 139-k
  - c. [Form C](#) - Disclosure and Certification with respect to State Finance Law §§139-j and 139-k
  - d. [Form D](#) - State University of New York Procurement Lobbying Law Record of Contact
  - e. [Governmental Entity Representation Concerning Compliance with State Finance Law §§139-j and 139-k](#)
2. Procurement Forms *from SUNY Procedure Item #7553 "Purchasing and Contracting (Procurement)*
  - a. [Form I](#) Omnibus Procurement Act of 1992 (*applies >\$1,000,000*)
  - b. [Form II](#) Omnibus Procurement Act of 1992, Out of state firms (*applies >\$1,000,000*)
  - c. [Form XIII](#) Public Officers Law Compliance
  - d. [Form XV](#) - Campus Procurement Certification
3. Affirmative Action and Minority & Women Owned Business Enterprises from SUNY Procedure Item #7557 "Participation by Minority Group Members and Women (MWBES) with Respect to State University of New York Contract (applies >\$25,000); and Service Disabled Veteran-owned Business Enterprise from SUNY Procedure Item #7564 "Participation by Service-Disabled Veteran-Owned Business (SDVOBs) with Respect to State University of New York Contract (applies >\$25,000)
  - a. Subconsultant Staffing List
    1. [7555-15](#) - Architecture and Engineering
    2. [7555-16](#) - Construction Management
    3. [7555-17](#) - Commissioning
  - b. [Form 7557-104](#) - MWBE-EEO Policy Statement
4. Vendor Responsibility
  - a. OSC's [Vendrep - Online System](#) or [Link to paper forms](#) (*form applies ≥ \$100,000*)
5. State Consultant Services Reporting
  - a. [Procedure 7553, Form V](#) (required prior to contract award) (*applies >\$15,000; applicable to salaries, does not include travel or reimburseables*)
  - b. [Procedure 7553, Form VI](#) (required annually)

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### Related Procedures

[Procedure 7552](#) - Procurement Lobbying Procedure for State University of New York

[Procedure 7553](#) - Purchasing and Contracting (Procurement)

[Procedure 7554](#) - Construction Contracting

[Procedure 7557](#) - Participation by Minority Group Members and Women (MWBEs) with Respect to State University of New York Contracts

[Procedure 7564](#) - Participation by Service-Disabled Veteran-Owned Business (SDVOBs) with Respect to State University of New York Contracts

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## Other Related Information

There is no other information relevant to this procedure.

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## Authority

The following link to [New York State Laws](#) is provided for users' convenience. Any questions regarding applicability of the law should be directed to University Counsel.

NYS Public Officers Law

Article 4 - ([§§60 - 79](#)) Powers and Duties of Public Officers

§73(4) (Business or professional activities)

§74 (Code of ethics)

NYS Education Law

Article 8 – ([§§350 - 365](#)) State University and State Financial Assistance for Higher Education

§355 (Powers and duties of trustees.)

§376 (Letting of construction contracts)

Article 147 – Architecture

[§7307](#) (Architecture – Special Provisions)

NYS State Finance Law

Article 9 - ([§§135 - 146](#)) Contracts

§139i (Obligations with respect to procurement contracts with New York state and foreign business enterprises)

§139j (Restrictions on contacts during the procurement process)

§139k (Disclosure of contacts and responsibility of offerers)

Article 8 ([§§125 - 128](#)) Fiscal Supervision of Certain Institutions

Article 11 ([§§160 - 168](#)) State Purchasing

[NYS Labor Law](#)

[NYS Tax Law](#)

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## History

January 2017 – updates incorporate references to Procedure 7564 and the Service Disabled Veteran-owned Business Enterprises Program.

November 17, 2015 – updates adopt the ACORD 25 form as the required certificate of insurance form, changes the conflict of interest look back period from five years to two years, and amends the Consultant Selection Training to be completed with SUNY or SUCF.

September 17, 2014 – Changes incorporate subconsultant staffing lists and updated MWBE form requirements.

January 10, 2013 - Comprehensive updates to Procedure Item #7555 were issued. Updates included changes for legislative changes, clarification of documentation requirements, term contract requirements and updated forms.

Procedure Item #7555 was issued on April 20, 2007. Procedures were based on and updated from legacy Office for Capital Facilities Procedure 530.9.

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## Appendices

[Appendix A](#) - Standard Contract Clauses State University of New York - Exhibit A

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[Appendix B](#) - Standard Contract Clauses - Affirmative Action Clauses - Exhibit A-1