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PART 316

STATE UNIVERSITY OF NEW YORK RULES AND REGULATIONS FOR PURCHASING AND CONTRACTING

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§ 316.1 Application.

(a) These rules and regulations are promulgated pursuant to authority vested in the State University of New York Board of Trustees in section 355 of the Education Law, as amended by chapters 552-555 of the Laws of 1985, and shall apply to all purchases and contracts made by the State-operated campuses and System Administration of State University. These procedures apply to consultant contracts but not to employment contracts.

(b) The chancellor or designee is authorized to establish such guidelines and procedures, consistent herewith, as may be necessary for the proper administration of State University purchasing and contracting.

(c) The conflict of interest and code of ethics provisions of sections 73 and 74 of the Public Officers Law shall apply to all purchasing activities of the State University under these rules and regulations. Campuses are therefore required to inquire as to the status of entities with which they intend to contract or lease. If an officer or employee of the State University owns or controls over 10 percent of an entity with which the State University desires to do business, a formal public competitive selection process must be used before a valid agreement may be entered into with such individual or organization, in order to comply with provisions of POL 73.

§ 316.2 Objectives and standards.

(a) It is the policy of the State University of New York to take affirmative action to ensure that minority- and women-owned business enterprises (M/WBEs) are given the opportunity to demonstrate their ability to provide the university with commodities and services at competitive prices.

(b) It is the declared policy of the State University that utilization of preferred sources occur whenever possible. In accordance with the provisions of the State Finance Law, section 162 and section 184 of the State Corrections Law, the university is required to make purchases of commodities and services from preferred sources such as the correctional industries program of the New York State Department of Corrections, approved charitable non-profit agencies for the blind, any employment program serving mentally ill persons which is operated by the New York State Office of Mental Health, any qualified charitable non-profit-making agency for severely disabled persons approved by the New York State Commissioner of Education, or veterans workshops operated by the United States Department of Veterans Affairs and approved by the New York State Commissioner of Education. Preferred sources must be considered whenever purchases of commodities or services are required. Form, function and utility requirements may be considered. Where a preferred source is to be used for the provision of commodities or services, no competitive selection process or publication in the New York State Contract Reporter is required. In the event a specific preferred source is to be rejected, that source must be given prior written notice with an explanation and an opportunity to respond.

(c) State University's basic procurement objective is to secure the most appropriate materials, supplies, equipment, services, and construction at the lowest available price, consistent with quality requirements and delivery needs as will best promote the interests of State University. Competitive bidding, whether formal (sealed bids or proposals) or informal (quotations) should be used to the extent practicable. All bids may be rejected at the discretion of the university. Purchases may be made directly by a campus or pursuant to any contract let by the Office of General

Services, a consortium or any other State or Federal agency.

(d) Standard State contract clauses (Exhibit A) are generally attached to all State University contracts and purchase orders. In the alternative, purchase orders may contain a statement that the provisions of Exhibit A are incorporated by reference. These clauses include provisions mandated by State law, and also provide notice to vendors that they must comply with the requirements of the MacBride Fair Employment Principles and the provisions of the Omnibus Procurement Act. In addition, detailed affirmative action provisions (Exhibit A-1) should be attached to every contract, subcontract or purchase order exceeding \$25,000, construction contract exceeding \$100,000, or construction subcontract exceeding \$25,000.

(e) The State University may generally not purchase tropical hardwoods or products, as defined in the State Finance Law, section 165(1), in any form for any purpose. Any bid or response which calls for the use of any tropical hardwood or wood product in its performance shall be considered non-responsive.

(f) The State University is required to purchase recycled, remanufactured or recyclable commodities when such commodities meet form, function and utility requirements, taking into consideration the cost of the commodity over its life cycle. The State University shall also have the authority to determine that for reasons of public health or safety, a recycled, remanufactured or recyclable commodity should not be purchased. Such determinations shall be documented in the procurement record. If the cost of a recycled commodity (but not recyclable or remanufactured commodity unless also recycled) does not exceed the cost of a commodity made without recycled content by 10 percent (or by 15 percent if over 50 percent of the recycled materials are generated from the New York State waste stream), the recycled commodity must be purchased. For purposes of this subdivision:

(1) a recycled commodity is a commodity that has been manufactured from secondary materials as defined in the Economic Development Law and that meets the secondary material content requirements of the Office of General Services;

(2) a remanufactured commodity is a commodity that has been restored to its original performance standards and function and is thereby diverted from the solid waste stream, retaining, to the extent practicable, components that have been through at least one life cycle and replacing consumable or normal wear components; and

(3) a recyclable commodity is a commodity that can be collected, separated, or otherwise recovered from the solid waste stream for reuse, remanufacture or assembly of another commodity, through a widely available and easily accessible program.

(g) When letting contracts for the purchase of food products, the State University may require products that are grown, produced, harvested or processed in New York State.

(h) MacBride Fair Employment Principles. State University purchases must comply with the requirements of section 165(5) of the State Finance Law. The section establishes the MacBride Fair Employment Principles as standards for employment in Northern Ireland. Every prospective university vendor will be required to stipulate that either it has no business operations in Northern Ireland, or it will conduct its business in Northern Ireland in accordance with the MacBride Principles relating to non-discrimination in employment and freedom of workplace opportunity and shall permit independent monitoring of its compliance with such principles. Refusal to stipulate to one of the above will result in further review of the vendor's proposal, as follows:

(1) In the case of contracts let by a competitive process, when there is another bidder which has agreed to stipulate to such conditions and which has submitted a bid within five percent of the lowest responsible bid, a campus shall refer such bids to the Commissioner of General Services for consultation, after which the State University may determine that it is in the best interest of the State University that the contract be awarded to other than the lowest price or best value offer.

(2) In the case of contracts let by other than competitive process for commodities or services in excess of \$30,000 or for construction in excess of \$15,000, the campus may not award to such vendor unless it is determined that there is no other responsible contractor who can supply commodities, services or construction of comparable quality at a comparable price.

(i) New York State vendors. In accordance with section 139-I of the State Finance Law (Omnibus Procurement Act of 1992), all bid documents must include a statement that information concerning the availability of New York State subcontractors and suppliers is available from the New York State Empire

State Development agency, which shall include the directory of certified minority- and women-owned businesses, and that it is the policy of New York State to encourage the use of New York State subcontractors and suppliers, and to promote the participation of minority- and women-owned businesses where possible, in the procurement of commodities and services.

(1) It is further required that subsequent to the award of procurement contracts of \$1 million or more, all State agencies shall ensure that:

(i) contractors have documented their efforts to encourage the participation of the New York State business enterprises as suppliers and subcontractors;

(ii) contractors have attested to compliance with the Federal Equal Employment Opportunity Act of 1972 (P.L. 92-261), as amended;

(iii) contractors have documented their efforts to provide notification to New York State residents of employment opportunities through listing any positions with the Community Services Division of the New York State Department of Labor or provide for such notification in such a manner as is consistent with existing collective bargaining agreements.

(2) For contracts of \$1 million or more for the purchase of commodities and services from a foreign business enterprise, section 139-i requires notification to the Commissioner of the Empire State Development agency of the award simultaneously with notifying the successful bidder. Such notice shall be at least 15 business days prior to contract signing (except for contracts awarded on an emergency or critical basis or where the Commissioner of the Empire State Development agency has waived this requirement) and shall include: firm name, address, telephone number, facsimile number, brief description of the commodities or services, the amount and term of the proposed contract and the name of the principal contact person at the firm.

(3) All bid documents shall contain a statement notifying bidders located in foreign countries that the State University may assign or otherwise transfer offset credits created by any procurement contract of \$1 million or more to third parties located in New York State, and the contractor must agree to cooperate with the State in this effort.

(j) Section 165(6) requires the Commissioner of the Empire State Development agency to maintain a list of states which discriminate against New York vendors. State agencies are prohibited from soliciting proposals from, or entering into contracts with, businesses from such states. Such prohibition is subject to waiver, in writing, by a campus president, if in the best interest of the State.

§ 316.3 Authority to execute contracts.

The State University Board of Trustees has authorized the chancellor, and the chancellor's designees on the State University system administration staff, as well as chief administrative officers at State-operated campuses and their duly appointed designees, to execute specific types of contracts, revocable permits and agreements for and in the chancellor's name, place and stead, in accordance with guidelines to be issued by the chancellor.

§ 316.4 Contracting and purchasing materials, supplies, equipment, services and construction.

(a) New York State Contract Reporter.

(1) Contracts up to \$10,000, contracts from preferred sources, and emergency, sole or single source contracts require no prior publication. Post-publication is required for those contracts described in paragraph (5) of this subdivision.

(2) Contracts from \$10,000.01 to less than \$20,000 require 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.

(3) Contracts from \$20,000 to \$30,000 for commodities purchased under the authority of the New York State Office of General Services require no publication.

(4) Contracts for all other purchases from \$20,000 and above require publication 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.

(5) Campuses receiving an emergency, sole or single source exemption from publication must subsequently publish a notice of either the letting or award of the purchase/contract, and the reasons for such exemption, in the New York State Contract Reporter.

(b) *Competitive selection process.*

(1) Up to \$50,000, a campus may purchase commodities or services directly from a responsible vendor of its choice without formal competitive bidding. While no competitive bidding is required, a campus should take the steps necessary to ensure that prices are reasonable.

(2) Over \$50,000 up to \$125,000, a campus must solicit a minimum of three informal quotations or proposals from responsible vendors.

(3) Over \$125,000, a campus must solicit a minimum of five sealed bids or proposals.

(4) The following types of contracts/purchases are exempt from the above bidding requirements:

(i) purchases from existing New York State Office of General Services centralized State contracts;

(ii) sole source, single source or emergency contracts;

(iii) contracts under which the university provides consideration other than money;

(iv) Intercollegiate Athletics NCAA Division 1 Program procurements up to \$250,000, upon written determination that competition is not feasible due to the unique nature of the program or circumstances. Such determination must be consistent with standard NCAA Division 1 practices used for intercollegiate athletics programs nationally. The selection must be justified and the prices demonstrated to be reasonable and competitive;

(v) purchases not exceeding \$125,000 from small business and certified minority-and women-owned business enterprises, and of a commodity or technology that is recycled or manufactured, provided that the campus shall purchase from a responsible vendor and should take steps necessary to ensure that prices are reasonable; and

(vi) the purchase of New York State labeled wine, produced by a winery licensed in accordance with the requirements of section 76 of the Alcohol Beverage Control Law shall be exempt from competitive requirements, regardless of amount. For the purposes of this subparagraph,

New York State labeled wine is made from grapes, at least 75 percent of the volume of which were grown in New York State.

(c) *Competitive bid or proposal considerations.*

(1) The University only awards contracts to responsible vendors. In the event a question of responsibility exists, the vendor is given the opportunity to submit a proposal. During the evaluation period, a review of that vendor's responsibility will be made a part of the final evaluation and award process.

(2) Where factors in addition to cost will be evaluated when making a contract award, offerors must be apprised of the relative importance or weight of the cost criteria compared with all non-cost criteria.

(3) The following provisions are required to be included in State solicitations.

(i) Every offer shall be firm and not revocable for a period of 60 days from the bid opening, or such other period of time specified in the solicitation. Subsequent to such 60-day or other specified period, an offer may be withdrawn in writing.

(ii) Any response to a solicitation which proposes or requires the use of any tropical hardwood or wood product in the performance of a contract shall be deemed non-responsive.

(4) Evaluation of proposals. When cost factors (e.g., extended warranty coverage, maintenance, supply costs, etc.) are to be considered in an Invitation for Bids (IFB) in addition to the base bid price, each such factor must

be identified in the IFB. When evaluating bids, the cost of each such factor must be calculated and added to the base in order to determine the lowest price.

(d) Notification. Campuses are encouraged to notify all offerors as to whether they are successful or unsuccessful. Upon request, it is recommended that an unsuccessful offeror should be provided a debriefing as to why it was unsuccessful.

(e) *External agency contract and purchase order approvals.*

(1) Contracts and purchase orders up to \$250,000 shall require no prior approval by any State agency in order to be binding on the State University, subject to the following exceptions:

- (i) a bid protest has been received prior to the time the contract or purchase order is fully executed;
- (ii) the apparent low bid or best value is not selected;
- (iii) the award is not made in accordance with the provisions of the IFB or RFP; or
- (iv) a single or sole source procurement.

(2) In the case of the exceptions in subparagraphs (1)(i)-(iv) of this subdivision, the prior approval of the Attorney General and the Office of the State Comptroller, but no other State agency, will be required for contracts in excess of \$125,000.

(3) For all intercollegiate athletics NCAA Division 1 agreements, the exceptions in subparagraphs (1)(i)-(iv) of this subdivision shall not apply, and no approval shall be required by any State agency for such transactions up to \$250,000.

(4) For those campuses which have been determined by the Vice Chancellor and Chief Financial Officer to lack adequate internal controls, the approval of the Attorney General and Office of the State Comptroller, but no other State agency, will be required for all contracts and purchase orders (other than intercollegiate athletics NCAA Division I agreements) in excess of \$50,000, or in excess of \$75,000 for hospital contracts and purchase orders, until such time as the adequacy of internal controls can be certified.

(5) Contracts exceeding \$250,000 are subject to the approval of the Attorney General and the Office of the State Comptroller, after consultation with, but not prior approval of, any other State agency, in order to be binding on the State University.

(6) The approval of the Office of the State Comptroller is required for contracts where the State University provides consideration other than money having a reasonably estimated value in excess of \$10,000.

(7) Contracts for the acquisition of facilities suitable for the delivery of health services by purchase, lease, sublease, transfer of jurisdiction or otherwise, and for the repair, maintenance, equipping, rehabilitation or improvement of any such facilities, shall be subject to the prior approval of the Attorney General, Director of the Budget and the Office of the State Comptroller, regardless of amount.