



Procedure Title:
Purchasing and Contracting (Procurement)

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This procedure item applies to:
State-Operated Campuses

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Financial
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Responsible Office:
[University-wide Procurement](#)

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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 materials, supplies, equipment and services (including printing). Specifically, it outlines procedures necessary to enter into valid, binding contracts on behalf of the University, describes the steps appropriate for internal and external review, where required, prior to execution; and specifies those officers authorized to execute contracts and other documents on behalf of the University. This procedure applies to consultant contracts but does not apply to employment contracts. Institutions conducting procurement for construction projects (see [Item 7554](#)) or for construction-related consulting services (see [Item 7555](#)) must follow those procedures where they differ from this document.

Process

Should you have question regarding this procedure please contact your [campus counsel](#).

I. Objectives and Standards

- A. The University's basic procurement objective is to secure the most appropriate materials, supplies, equipment and services from the most reasonable and responsible sources, consistent with quality requirements and delivery needs as will best promote the interests of the University. The practice of competitive bidding, whether formal (sealed bids or proposals) or informal (quotations), not only tends to assure reasonable prices, but also guards against favoritism, improvidence and fraud, and should therefore be used to the extent practicable, as provided herein. Purchases may be made directly by a campus or pursuant to any contract for commodities or services let by the Office of General Services, the Office of System-wide Procurement, a consortium or any other state or federal agency.
- B. In addition to possible review and approval by the Offices of the Attorney General (OAG) and the State Comptroller (OSC) (see Section III. A.), certain procurements shall require program approval by system administration as listed below. Campuses should forward details of those proposed procurements directly

to the appropriate system administration office described below. Approval and/or recommendations will be sent to the campus in writing by the reviewing office. After approval, all resulting contracts shall be executed by an authorized campus officer, except as otherwise provided in Section II. G. 2. & 3. below.

1. The University Provost:
 - a. Academic program contracts which:
 - i. affect the Master Plan of the University in any way;
 - ii. affect the relationship between the University and the New York State Education Department or the Board of Regents in any way; and
 - iii. would make use of institutions external to the University when the services needed are conveniently available at another University institution.
 - b. University/industry cooperative research contracts entered into pursuant to University policy, involving use of University equipment exceeding \$20,000, or use of University real property, exceeding \$50,000. The provost must be informed of these; however, his/her prior approval is not required.
2. The Chancellor or designee:
 - a. Multi-campus or System-wide contracts (e.g., overseas programs, System-wide technology systems).
 - b. Leases of real property by the University as lessee, where the University intends or has the option to purchase the real property.
 - i. Pursuant to the requirement of Section II (H), all leases require review by the office of University Counsel. I
 - ii. For recording purpose campuses must provide System Administration a complete electronic copy of each executed lease or permit by emailing that information to RealEstate@SUNY.edu
 - c. All deeds, maps, adjustment agreements or other documents relating to the acquisition or disposal of real property.
3. University Controller
 - a. Contracts with campus related organizations (e.g., college foundations, alumni associations, auxiliary service foundations).
4. While no prior review is required, copies of contracts of the following kinds shall be sent to the following offices after completion, for information and record keeping purposes.
 - a. assistant vice chancellor for University life or chancellor's designee:
 - i. campus contracts for student health insurance.
 - b. associate vice chancellor for health sciences and hospitals or chancellor's designee:
 - i. academic program affiliation contracts which are clinical in nature; and
 - ii. medical equipment purchases or leases exceeding \$150,000 per unit.
- C. It is the declared policy of the University that utilization of preferred sources (Corcraft, New York State Preferred Source Program For People Who Are Blind, Inc., New York State Industries for the Disabled, Inc., New York State Office of Mental Health) occur whenever possible. In accordance with the provisions of the NYS Finance Law §162 and NYS State Corrections Law §184, preferred sources must be considered whenever purchases of commodities or services are required. Form, function and utility requirements may be considered. [See NYS Procurement Bulletin: Preferred Source Guidelines](#) for steps to comply with this requirement. 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 (NYSCR) is required. In the event a preferred source is to be rejected, that source must be given prior written notice with an explanation and an opportunity to respond.
- D. It is the University's policy to take affirmative action to ensure that New York State certified minority and women owned business enterprises ("M/WBEs") and service disabled veteran owned business enterprises ("SDVOBEs), as defined by NYS Executive Laws 15-A and 17-B, respectively, are given the opportunity to demonstrate their ability to provide the University with commodities and services at competitive prices.
- E. The standard State University of New York contract clauses ("Exhibit A") shall be made a part of all the University's contracts and purchase orders. In the alternative, purchase orders may contain a statement that

the provisions of Exhibit A are incorporated by reference, in accordance with [OSC Guide to Financial Operations](#). These clauses include provisions mandated by state law, and provide notice to vendors that they must comply with various laws, including but not limited to, the requirements of the MacBride Fair Employment Principles and the provisions of the Omnibus Procurement Act. In addition, the provisions of Exhibit A-1 (Affirmative Action Clauses) should be attached to every contract or purchase order exceeding \$25,000, construction contract exceeding \$100,000. Exhibit A-1 need not be attached to contracts under which the University provides consideration other than money, regardless of amount. (See Appendix Section for Exhibit A and Exhibit A-1).

- F. NYS Finance Law §165(2) provides that, with very limited exceptions, the University, as a state agency, may not purchase tropical hardwoods or products in any form for any purpose. Every RFP or IFB must contain a statement that any bid or response which calls for the use of any tropical hardwood or wood product in its performance shall be considered non-responsive. (NYS Finance Law §165(2) (c) (i)).
- G. Consistent with the provisions of Section I. C. & D. above, campuses shall purchase recycled, remanufactured or recyclable commodities when such commodities meet their form, function and utility requirements, taking into consideration the cost of the commodity over its life cycle. If the cost of a recycled product (but not recyclable or remanufactured commodities unless also recycled) does not exceed the cost of a product made without recycled content by 10% (or by 15% if over 50% of the recycled materials are generated from the New York State waste stream), the recycled product must be purchased. (NYS Finance Law §165(3)). Campuses shall 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.
- H. In accordance with Executive Orders directing state agencies to be more energy efficient and environmentally aware:
 - 1. Consistent with the provisions of Sections I. C. & D. above, campuses shall purchase energy-efficient commodities (ENERGY STAR) when acquiring new energy-using products or replacing existing equipment. All products must meet the efficiency standards as specified in Executive Order 111 and the State Energy Law. Campuses shall procure increasing percentages of alternative-fuel vehicles, including hybrid electric vehicles. At least 50% of new light-duty vehicles acquired by each campus shall be alternative-fueled vehicles. 100% of all new light-duty vehicles shall be alternative-fueled vehicles, with the exception of specialty, police or emergency vehicles as designated by the New York State Division of the Budget.
 - 2. Campuses shall seek to purchase sufficient quantities of energy generated from renewable sources so that 20% of the overall annual electric energy requirements of buildings owned, leased or operated by the campus are met through renewable sources currently.
 - 3. In the design, construction, operation and maintenance of new buildings, campuses shall, to the maximum extent practicable, follow guidelines for the construction of "Green Buildings" including guidelines set forth in the NYS Tax Law §19, which created the Green Buildings Tax Credit, and the United States Green Buildings Council's Leadership on Energy and Environmental Design (LEED) rating system. Campuses engaged in the construction of new buildings shall achieve at least a 20% improvement in energy efficiency performance relative to levels required by New York State's Energy Conservation Construction Code. For substantial renovation of existing buildings campuses shall achieve at least a 10% improvement. Campuses shall incorporate energy efficient criteria consistent with ENERGY STAR and any other energy efficiency levels as may be designated by New York State Energy Research and Development Authority (NYSERDA) into all specifications developed for new construction and renovation.
- I. When letting contracts for the purchase of food products, the University may require products that are grown, produced, harvested or processed in New York State, in accordance with the NYS Finance Law §165(4).
- J. MacBride Fair Employment Principles:
University purchases, as described in Subparts 1 and 2 below, must comply with the requirements of NYS Finance Law §165(5), which establishes the MacBride Fair Employment Principles as standards for employment in Northern Ireland. Every prospective University vendor will be required to stipulate that

either (1) it has no business operations in Northern Ireland, or (2) 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 5% of the lowest responsible bid, a campus shall refer such bids to the New York State Commissioner of General Services for consultation, after which the University may determine that it is in the University's best interest for the contract to 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 \$50,000 or for construction in excess of \$15,000, the campus may not award to such vendor unless it is determined in writing that the commodities, services or construction are necessary, and there is no other responsible contractor who can supply commodities, services or construction of comparable quality at a comparable price.

K. New York State Vendors:

1. In accordance with NYS Finance Law §139-i (Omnibus Procurement Act, referred to as "Section 139-i"), 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 M/WBEs, 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 certified M/WBEs where possible, in the procurement of commodities and services.
2. It is further required that subsequent to the award of procurement contracts of \$1 million or more, all state agencies shall ensure that:
 - a. contractors have documented their efforts to encourage the participation of the New York State business enterprises as suppliers and subcontractors by showing that they have:
 - i. solicited bids in a timely and adequate manner from New York business enterprises including New York State certified M/WBEs; or
 - ii. contacted the New York State Empire State Development agency to obtain listings of New York business enterprises; or
 - iii. placed notices for subcontractors or suppliers in newspapers, journals or other trade publications distributed in New York State; or
 - iv. participated in bidder outreach conferences.If a contractor determines that New York business enterprises are not available to participate in such contract, the contractor shall provide a statement indicating the method by which such determination was made. If a contractor does not intend to use subcontractors, the contractor shall provide a statement verifying such intent.
 - b. contractors have attested to compliance with the Federal Equal Employment Opportunity Act of 1972 (P.L. 92 261), as amended.
 - c. 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 manner as is consistent with existing collective bargaining agreements.
 - d. Form I is a suggested document to be completed and returned by contractors to fulfill the campus's responsibility to assure contractor compliance with terms (a) - (c) above on contracts of \$1 million or more.
3. 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 New York State 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 (See Form II for a proposed Standard 15 Day Notification form).

4. All bid documents shall contain a statement notifying bidders located in foreign countries that the University may assign or otherwise transfer offset credits created by any procurement contract of \$1,000,000 or more to third parties located in New York State.
 5. Section 139-i requires that all state agencies annually report to the Empire State Development agency, before the first business day each June, all procurement contracts of \$100,000 or more during the previous year. This report is produced by system administration based on information entered into the University online purchasing module.
 6. In addition, NYS Economic Development Law §142 requires that every notice in the NYSCR must contain a statement as to whether the commodities or services sought, had in the immediately preceding three-year period, been supplied by a foreign (out-of-state) business enterprise.
 7. NYS Finance Law §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.
- L. Procurement Lobbying: The Procurement Lobbying Law restricts communications between a potential vendor, or person acting on behalf of a vendor, and officers or employees of the procuring agency, between the time a procurement/contract procedure begins and the time it is completed. The agency must record all Contacts. Vendors must certify that they understand the agency's policies and procedures with regard to this law and disclose whether they have been found, by any other State agency, to be non-responsible because of violations of this law. No contract shall be awarded to any offerer found to be in violation of this law or that intentionally provided false or incomplete information unless the award of the procurement contract to the offerer is necessary to protect public property or public health or safety, and that the offerer is the only source capable of supplying the required article of procurement within the necessary timeframe. In addition, all contracts must include a certification that the vendor has complied for purposes of this agreement law and a provision that the contract may be terminated if this is found not to be the case. More complete information is available at Procurement Lobbying Procedure for State University of New York.
- M. Tax Law Section 5-a requires certain contractors awarded certain state contracts (e.g., real property leases are exempt, as are construction contracts and construction-related consultant contracts) valued at more than \$100,000 to certify to the Tax Department that they are registered to collect New York State and local sales and compensating use taxes, if they made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000, measured over the prior four quarters. In addition, contractors must certify to the Tax Department that each affiliate and subcontractor of such contractor exceeding such sales threshold during a specified period is registered to collect New York State and local sales and compensating use taxes. See Form III. Contractors must also certify to the procuring state entity that they filed the certification with the Tax Department and that it is correct and complete. See Form IV. For more information, see [Department of Taxation Publication 223](#).
- N. Vendor Responsibility: Section 163 of the State Finance Law requires that contracts for services and commodities be awarded "to a responsive and responsible offerer." Section 163 (9) f of the SFL requires that prior to making an award of a contract; each contracting agency shall make a determination of responsibility of the proposed contractor. [The Office of the State Comptroller \(OSC\) Guide to Financial Operations](#) requires a contracting agency to make a determination of responsibility prior to the award of a contract as follows:
1. for all contracts, the agency must consider any information that has come to its attention that raises issues concerning the proposed contractor's responsibility, and,
 2. for contracts exceeding \$100,000, the agency must require written disclosure by the contractor of all information that the agency deems relevant to a responsibility determination;

3. for all contracts, the agency must include in the procurement record certification that it has reasonable assurances that the contractor is responsible and documentation of the basis for its determination. Additional information about vendor responsibility, including suggested forms and templates, and links to useful resources, can be found at the [OSC web site on Vendor Responsibility](#).

O. Consulting Services Reporting: State Finance Law Sections 8 and 163 require that 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. A contract for consulting services is defined as any contract entered into by a State agency for analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal, or similar services.

1. Campuses must include Form V in the Procurement Record submitted to OSC for new consultant contracts. The completed form must include information for all employees providing service under the contract whether employed by the contractor or a subcontractor. Please note that the form captures the necessary planned employment information prospectively from the start date of the contract through the end of the contract term.
2. Campuses must require State contractors to report annually on the employment information described above, including work performed by subcontractors. Form VI will be submitted each year the contract is in effect and will capture historical information, detailing actual employment data for the most recently concluded State fiscal year (April 1 – March 31).
3. Additional information can be found in [OSC Guide to Financial Operations](#).

P. Vendor's Proof of Insurance

1. Workers' Compensation Law (WCL) requires the University ensure that businesses entering into a contract carry workers' compensation and disability benefits insurance. This requirement applies to both original issuances and renewals. (Refer to the NYS WCB [Manual](#) for details.)
2. Any out-of-state employer with employees working in NYS needs a full NYS workers' compensation insurance policy.

II. Procedures Governing Procurements of Commodities, Services, and Printing.

A. Procurement Hierarchy

- a. Procurements must be made in accordance with the Order of Purchasing Priority (NY State Finance Law §163.3 and 4) as outlined below, if it meets a campus' form, function and utility requirements:
 - a. Preferred Sources (see instructions in NYS Procurement Bulletin: Preferred Source Guidelines):
 - i. Commodities, approved by the NYS Procurement Council, (in this order)
 - a. Corcraft
 - b. NYSPSP
 - c. NYSID
 - ii. Services, approved by the NYS Procurement Council
 - a. Either NYSPSP or NYSID (based on best value)
 - b. Office of General Service's Centralized Contracts
 - i. commodity contracts (mandatory use unless an eligible cooperative contract has a lower price, see NYS Procurement Bulletin: Consortia Purchasing Guidelines)
 - ii. service and technology contracts (may utilize but not mandatory).
 - c. SUNY System-wide Contracts (including consortia contracts adopted by the Office of System-wide Procurement).
 - i. Written request for exemption from this requirement must be sent (using Form XV below) to the Assistant Vice Chancellor for Procurement (AVC) or designee at System Administration.
 - ii. The exemption request must be received by the AVC or designee ten (10) business days prior to action needed by the campus.

- d. Open Market
 - i. Discretionary purchase (solicit quotes)
 - a. Must establish reasonableness of price and
 - b. Justification of the selection of the vendor
 - c. Thresholds are
 - 1. Up to \$125K for general procurements or
 - 2. Up to \$200k for NYS grown food, milk and wine or
 - 3. Up to \$500K if for remanufactured or recycled products or from a NYS Small Business enterprise (as defined by NY State Finance Law §160.8) or one of these NYS certified business enterprises as defined by NYS Executive Law Articles 15-A and 17-B:
 - Minority-owned;
 - Woman-owned; or
 - Service Disables Veteran-owned.
 - ii. Using Other Existing Contracts (see OGS Piggybacking Guidelines) This allows SUNY, with certain external approvals, to use an existing contract from another public entity to acquire the same commodities or services at the same or lower price.
 - iii. Formal process (require sealed bids or proposals)
 - a. Invitation for Bids (IFB)
 - Used for procuring a commodity
 - Selection of award based on low price or
 - b. Request for Proposals (RFP)
 - Used for procuring a service or technology
 - Selection of award based on best value

B. Solicitation of Procurements

1. Campuses are required to place an advertisement in the New York State Contract Reporter (NYSCR) for procurements:
 - a. up to \$10,000: no publication is required.
 - b. valued \$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.
 - c. valued at \$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 NYSCR accepts only online submissions through its web site.
2. Campus procurements for \$50,000 or more exempted from publication in the NYSCR:
 - a. Sole Source, Single Source and Emergency Procurements for \$50,000 or more:
 - i. Where publication would otherwise be required, but is not feasible due to the sole source, single source or emergency nature of a commodity or service, the campus must make a prior written request for an exemption and provide supporting documentation to OSC, in accordance with the Guide to Financial Operations.
 - ii. For emergency purchases, subsequent to approval by a campus senior officer, a verbal request for approval of an exemption, followed up with a written request, may be made to OSC, which will respond verbally as soon as practicable, and follow up with a written confirmation of its determination.
 - iii. Campuses receiving an 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 NYSCR. For purchases/contracts which received an exemption, and which require OSC approval, the campus must provide to OSC, prior to OSC approval, proof that the campus has requested the Empire State Development agency to publish the notice of exemption in the NYSCR. The notice should be placed as soon as

practicable. Campuses granted an exemption must maintain documented proof of compliance with the foregoing and, per SFL §163.10.b.ii, must, not later than thirty days after the contract award, post on the campus website, a summary of the circumstances and reasons why a competitive procurement was not feasible

- b. commodities or services approved by the NYS Procurement Council from NYS Preferred Sources (as identified in NY State Finance Law §162);
- c. from Office of General Service's Centralized Contracts; and
- d. from established SUNY System-wide Contracts

C. Procurement Methodology:

1. Discretionary Purchases

- a. Purchases/Contracts up to \$125,000 or \$200,000 (for NYS grown food and wine) or \$500,000 (for purchases from S/MWBE/SDVOBEs) see Section II. A. d. i. above: A campus may purchase commodities or services directly from a responsible vendor of its choice. While no competition is required, a campus should take the steps necessary to ensure that prices are reasonable and document the process for selecting the vendor.
 - i. If the anticipated purchase is for \$50,000 or more, a campus must solicit a minimum of three (3) quotations from responsible vendors offering such commodity/services. At the campus' option and depending upon the situation, a more formal process may be used, but is not required.
 - ii. For purchases above \$2,500.00 written documentation should be maintained by the campus to support both the selection of the vendor and the reasonableness of the price.
- b. NY State Finance Law §163 6-b, obligates the University to consider the reasonably expected aggregate amount for purchases for the same commodities or services within twelve months from the date of purchase to determine whether the procurement falls within the discretionary threshold. This section of State Finance Law also prohibits split ordering. It is important to note that when determining the contract value, the total contract term must be considered. A change to or a renewal of a discretionary purchase shall not be permitted if it would bring the reasonably expected aggregate amount of all purchases of the same commodities or services from the same provider within the twelve-month period to an amount greater than the discretionary buying threshold amount.

2. Formal Procurements

Purchases/Contracts of \$125,000 or more: A campus must solicit a minimum of five (5) formal sealed bids or proposals from responsible vendors. Where the solicitation of sealed bids or proposals is not practical, the campus may solicit, with the written approval of the campus president or designee, a minimum of five (5) formal written quotations. Written documentation of such approval shall be maintained by the campus.

3. Exemptions from competitive selection requirements:

Consistent with State Finance Law Section 163, except where otherwise provided by law, procurements shall be competitive. NYSCR notification is still required as applicable. Exemptions are as follows:

- a. NYS Preferred Sources: The acquisition of commodities and services approved by the NYS Procurement Council from preferred sources is exempted from statutory competitive procurement requirements. Commodities and services not on the approved list must be procured using NYS and SUNY procurement rules.
- b. Centralized State Contracts: A campus may elect to purchase any commodities or services, regardless of amount, from an existing Office of General Services (OGS) centralized state contract following the procedures and requirements established by OGS, as appropriate for the University.
- c. Campus Submitted "Filed Requirement" with OGS: Where a campus has previously submitted a "filed requirement" with OGS under a specific term contract (e.g. fuel oil, college catalogues), the campus must honor its commitment to the centralized State contract vendor in accordance with the provisions of the term contract.

- d. Campus Requests OGS to Purchase: A campus may at any time request OGS to purchase a required commodity or service. The campus should submit the appropriate information to OGS and request that OGS complete the purchasing process, subject to OGS' agreement to do so.
- e. New York State Labeled Wines: New York State labeled wines, produced by a winery licensed in accordance with the requirements of NYS Alcoholic Beverage Control Law §76, shall be exempt from competitive requirements, regardless of amount. (State Finance Law §165(4-a)). A list of currently eligible wines shall be maintained by the Office of General Services.
- f. Sole Source, Single Source or Emergency Contracts: Where competition would otherwise be required, but is not feasible due to the sole source, single source or emergency nature of a commodity or service, the campus must be able to justify and document the selection of the vendor and establish the reasonableness of the price. In accordance with the State Finance Law, exceptions to the general requirement for competitive selection shall only be made under unusual circumstances. The campus must maintain in its Procurement Record written justification supporting the sole source, single source or emergency determination. An example of substantiating single source procurement (limited number of suppliers) might be written documentation detailing prior substantial experience of the contractor in provision of the products or services customized to the University environment or a certain service that only one contractor provides in addition to the service or technology being procured. The term of a single source procurement contract shall be limited to the minimum period of time necessary to ameliorate the circumstances which created the reasons for the single source award. An example of substantiating sole source procurement (only one supplier) would be written documentation detailing the unique nature of the requirement, how it was determined only one vendor could meet the need, and how it was determined the cost is reasonable. One method available to supplement the sole source status is to advertise in the NYSCR and only receive one response. A NYSCRER still requires an explanation substantiating the sole source designation.
- g. Revenue Contracts greater than \$25,000: Under many circumstances, contracts which require the University to provide consideration other than money (generally, "revenue contracts") do not require a formal competitive selection process. While the State Finance Law does not expressly require competitive bidding for revenue contracts as it does for expenditure contracts, it is good practice to seek competition unless there is strong justification for proceeding with a "single" or sole source award. In those instances in which the campus determines that competition is appropriate, the procedures in Paragraph II. B. above shall apply.
- h. Intercollegiate Athletics NCAA Division 1 program contracts up to \$250,000, as described in Section III. E. below.

D. Competitive Bid or Proposal Considerations:

- 1. An initial review of the services or commodities required must be made in order to determine whether a Request for Proposals (RFP) for services or technology or an Invitation for Bid (IFB) for commodities
- 2. is to be used. ([Refer to NYS Procurement Guidelines](#)).
- 3. When competitive bidding is required, in accordance with New York State Labor Law for a procurement of apparel or textiles or sports equipment, campuses must add a statement to their bid documents that the campus will not enter into a contract to purchase or obtain for any purpose any apparel or textiles or sports equipment with a bidder unable or unwilling to provide documentation that:
 - a. Such apparel or sports equipment was manufactured in compliance with all applicable labor and occupational safety laws, including, but not limited to, child labor laws, wage and hour laws and workplace safety laws;
 - b. If known, the name and address of each subcontractor to be utilized and all manufacturing

- plants utilized by the bidder or subcontractor.
- c. Form VII is a vendor certification statement that should be included in all apparel or textiles or sports equipment bids to ensure compliance with the fair labor conditions.
 - d. The above provisions may be waived by the campus president or his/her duly appointed designee (See Paragraph G.1. below) where it is determined in writing and included in the procurement record that it is in the best interests of the state to do so.
4. Pursuant to NYS Finance Law §165(7), campuses (and their not-for-profit affiliates) have the "option" to decide, on the basis of the campus' or affiliates' local determination of what constitutes appropriate labor standards, that a prospective supplier on a contract for the purchase of apparel or sports equipment is not a responsible bidder under NYS Finance Law §163 (9)(f). Such a determination applies whether or not the procurement must be competitively bid. The following criteria may be used by the campus or affiliate to determine whether or not the bidder is "responsible":
- a. The labor standards, including but not limited to employee compensation, working conditions, employee rights to form unions, and the use of child labor; or
 - b. The bidder's failure to provide information sufficient for the campus or affiliate to determine the labor conditions applicable to the manufacture of the apparel or sports equipment.
 - c. See also SUNY Item 7560 [Anti-Sweatshop Procedure](#) for additional requirements for all purchases (both non-competitive and competitive processes).
5. When making an award based on best value pursuant to a competitive proposal, offerers must be apprised of the relative importance or weight of the cost criteria compared with all non-cost criteria. Failure to provide this information will result in rejection of the contract by OSC. Every effort should be made to provide sufficient information on the evaluation criteria that will be applied to technical proposals to aid bidders in appropriately developing their responses.
6. The following provisions are either recommended or required to be included in state solicitations:
- a. "The State University reserves the right to request clarifications from offerers for purposes of assuring a full understanding of responsiveness and further reserves the right to permit revisions from all offerers determined to be susceptible to being selected for contract award, prior to award." (Strongly recommended - in the absence of this statement the University is not allowed to consider revisions or clarifications).
 - b. "The State University reserves the right to reject separable portions of any offer, to negotiate terms and conditions consistent with the solicitation, and to make an award for any or all remaining portions." (Recommended - in the absence of this statement the University is not allowed to reject or award separate portions of an offer).
 - c. "The University reserves the right to eliminate mandatory requirements unmet by all offerers." (Recommended - in the absence of this provision no mandatory requirement may be waived. Please note that a mandatory requirement unmet by all offerers can only be waived if: (1) doing so is of benefit to the State; (2) doing so does not either advantage or disadvantage any offerers; and (3) potential bidders were not discouraged from submitting proposals because of that mandatory requirement.)
 - d. A copy of or hyperlink to Exhibit A, (and Exhibit A-1 if the contract exceeds \$25,000). (Required).
 - e. "Any additional vendor terms which are attached or referenced with a submission shall not be considered part of the bid or proposal, but shall be deemed included for informational purposes only." (Recommended - will reduce the need for lengthy negotiations after receipt of bids or proposals, and avoids claims of favoritism).
 - f. "The University reserves the right to terminate any resulting contract in the event it is found that (1) the certification filed by the offerer in accordance with State Finance Law Sections 139-j and 139-k was intentionally false or intentionally incomplete; and/or (2) the submission of offerer in accordance with Tax Law Section 5-a was false or incomplete. Upon such finding, the University may exercise its termination right by providing written notification to the contractor in accordance with the written notification terms of the contract." (Required)

- g. The Federal Trade Commission (FTC) promulgated the Safeguards Rule pursuant to the Gramm-Leach-Bliley Act to insure the security and confidentiality of customer records and information emanating from such customer's receipt of a campus' financial product or service (i.e., loans or "affinity" credit cards). Campuses must require service providers by contract to implement and maintain safeguards of nonpublic personal information they possess. Relevant contracts that campuses enter into must include the required safeguarding provision:

"In performing any resulting contract, you will receive, maintain, process or otherwise will have access to confidential information on students and/or customers (Name of Campus). Pursuant to the Gramm-Leach-Bliley Act (P.L. 106-102) and the Federal Trade Commission's Safeguards Rule (16 CFR Part 314), you must implement and maintain a written Information Security Program in order to protect such customer information. Customer Information is defined in relevant part under the Safeguards Rule as 'any record containing nonpublic personal customer information as defined in 16 CFR §313(n)' (the FTC's Privacy Rule)' about a customer of a financial institution, whether in paper, electronic, or other form' (16 CFR §314.2). Examples of nonpublic personal customer information include, but are not limited to, name, address, phone number, social security number, bank and credit card account numbers and student identification numbers. The safeguards that you implement under the Program must comply with the elements set forth in 16 CFR §314.4 and must achieve the objectives enunciated in 16 CFR §314.3, namely to: 1) insure the security and confidentiality of student and/or campus customer records and information; 2) protect against any anticipated threats or hazards to the security or integrity of such records; and 3) protect against unauthorized access to or use of such records or information which could result in substantial harm or inconvenience to any student and/or campus customer. If you subcontract with a third party for any of the services that you are required to undertake in furtherance of this contract, you must ensure that such third parties implement practices, which protect nonpublic personal information of students and/or campus customers with which they receive, maintain, process or otherwise are permitted access. You are required to (return) or (destroy) (Campus to choose method) all customer information in your possession upon your completion of this contract. Furthermore, the safeguarding requirements set forth above shall survive termination of this contract."

- h. The following language should be included in contracts in which the offerer will have access to nonpublic personal information: "Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208). Contractor shall be liable for the costs associated with such breach if caused by Contractor's negligent or willful acts or omissions, or the negligent or willful acts or omissions of Contractor's agents, officers, employees or subcontractors."
- i. The following language should be included in consultant contracts: "State Finance Law Section 163(4)(g) imposes certain reporting requirements on contractors doing business with New York State. In furtherance of these reporting requirements the Consultant agrees to complete and submit an initial planned employment data report and an annual employment report, which are attached as Consulting Reporting Forms A and B respectively."

E. Evaluation of Proposals:

1. Written evaluation criteria must be established prior to initial receipt of proposals, must be applied uniformly, and may not be changed after receipt of proposals. (Refer to the NYS Procurement Guidelines, for guidance).
2. When cost factors (e.g., extended warranty coverage, maintenance, supply costs, etc.) in addition to the base bid price are to be considered in an IFB or RFP, each factor must be identified in the IFB or RFP. When evaluating bids, the cost of each such factor must be calculated and added to the base

in order to determine the lowest price. For RFPs, See NYS Procurement Guidelines for guidance on considering "life cycle costs" in the evaluation process.

F. Notification of Award and Debriefing:

Campuses are required to notify all offerers as to whether they are successful or unsuccessful. For procurements let through the RFP or IFB process, upon request, an unsuccessful offerer must be provided a debriefing as to why it was unsuccessful (NY State Finance Law §163(9)(c)).

G. Authority to Execute Contracts on Behalf of the University

1. Resolution 83 17 of the University Board of Trustees authorizes the chancellor and the chancellor's designees on the system administration staff, as well as presidents of 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.
 - a. The chancellor has designated and authorized the University provost, the chief financial officer, the vice chancellor and chief of staff, and the presidents of state operated campuses or designees of said presidents duly appointed in accordance with and subject to the chancellor's guidelines, to execute contracts necessary or proper for the conduct of the University's business.
 - b. The chancellor has also authorized the chief financial officer, or the chancellor's designee to execute any and all contracts, deeds, maps, adjustment agreements, leases, permits or any other documents in relation to the acquisition or disposal of real property and leasehold interests.
 - c. The chief financial officer, or the chancellor's designee has been authorized to execute documents necessary for properly carrying out the functions or operation of the facilities of system administration.
 - d. Exceptions to the above, and guidelines governing appointment of designees by the campus presidents, appear below.
2. All contracts of the following nature are to be executed on behalf of the University by the chief financial officer, or the chancellor's designee:
 - a. Multi campus contracts (in the alternative, such contracts may also be executed by each campus involved); and
 - b. System-wide wide contracts.
 - c. Leases of real property by the University as lessee, where the University intends or has the option to purchase the real property.
 - i. Pursuant to the requirement of Section II (H), all leases require review by the office of University Counsel.
 - ii. For recording purpose campuses must provide System Administration a complete electronic copy of each executed lease or permit by emailing that information to RealEstate@SUNY.edu
 - d. Deeds, maps, adjustment agreements or other documents relating to the acquisition or disposal of real property.
3. The following contracts are to be executed by the University Controller:
 - a. Contracts between the University and campus-related organizations, such as college foundations.
4. The following shall constitute the guidelines under which the campus president may appoint designees who shall have the authority to execute contracts on behalf of the University:
 - a. The number of presidential designees. In order to expedite approval of contracts by external agencies and to assure an appropriate level of coordination, the number of campus officials to be designated by the campus president should ordinarily not exceed four per campus.
 - b. The organizational level of designees. In order to assure that designees have up to date knowledge of University and campus fiscal and program directives and goals, the designees appointed by the campus presidents should ordinarily occupy positions which are the vice-presidential level or equivalent.
 - c. Method of appointment of designees. The president of each state operated campus shall make

all appointments of designees in writing and shall ensure that appropriate evidence of such appointments is maintained in campus files. Changes in assignments or other personnel actions should be updated periodically. Presidential designees shall not further delegate such authority.

- d. Notice of appointment of designees.
 - i. As required by Trustee Resolution 50 106, as last amended by Trustee Resolution 83 17, each state operated campus president shall provide the secretary of the University and the office of the University counsel with a list of the names and titles of campus officers appointed as designees to sign University contracts.
 - ii. Each campus shall file a signature authorization form with OSC and the office of University counsel containing the signature of each campus official authorized to sign University contracts. (See Form VIII, AC 1782, Authorized Signatures for Contract Execution.)
- e. Certification of authority of designees to sign contracts. Whenever it shall be necessary to provide formal certification that a campus designee has been appointed to sign contracts such certification may be provided by the secretary of the University in such form as the secretary shall determine. Campus shall submit to OSC signing authority designation as prescribed by OSC Guide to Financial Operations. XI.2.K.

H. Review by the Office of General Counsel. Prior to execution, contracts must be reviewed and approved by the Office of General Counsel. Counsel review ensures campuses receive appropriate legal advice on contracts entered into on behalf of the University. Contract review shall be performed by personnel assigned to the Office of General Counsel, unless otherwise provided in writing by the General Counsel or designee.

1. Proposed contracts utilizing language previously reviewed and approved in substantially similar form do not require further review by the Office of General Counsel, unless any of the following applies:
 - a. A substantial and material change has been made to the terms and conditions as determined by the Director of Purchasing (or equivalent);
 - b. Laws, regulations and/or University policies have changed in a manner that must be reflected in the contract; or
 - c. The General Counsel or the appropriate Senior Managing Counsel determines that such contracts must be reviewed.
2. All other contracts must be reviewed by the Office of General Counsel, unless the General Counsel or the appropriate Senior Managing Counsel determines that certain individual contracts or categories of contracts need not be reviewed. Such determination of excluded contracts shall be made in writing no less than on an annual basis to have occurred on or before July 1 (or next University workday if such day falls on the weekend and/or University holiday).

Contracts requiring review should be submitted to the Office of General Counsel as soon as possible, in accordance with the following procedures:

1. If it is necessary to have a contract drafted by the Office of General Counsel, all information relevant to the contract should be submitted to the Office. Such information should include at a minimum: the name and address of the vendor; the vendor's state of incorporation (if applicable); a copy of the solicitation or bid document issued by the University (if applicable); a copy of the vendor's bid proposal (if applicable); a description of the commodities or services to be provided; anticipated dates of performance; conditions of payment; the term of the contract; and, any other business matters or information deemed pertinent to the contractual relationship.
 - a. If a draft of a written contract requiring review is already available, a copy should be sent to the Office of General Counsel for review.
 - b. The Office of General Counsel will draft the requested contract and return it to the

campus or will return the reviewed contracts with appropriate comments. Response may be made by phone.

III. Approvals of Contracts and Purchase Orders:

A. Contract work should not begin until all necessary approvals are received. Authorizing the start of work before all approvals are received is beyond the scope of a State employee's authority, and the employee may be held personally liable.

B. Required External Agency Approvals:

1. The following Contracts and Purchase Orders shall be subject to the OAG and then the OSC pre-audit review and approval, per a Procurement Memorandum of Understanding (MOU) signed August 15, 2019, to which SUNY is a party:
 - a. All SUNY contracts valued at \$250,000 or more, for construction, commodities, computer equipment (inclusive of software and hardware), printing, and non-construction related services that are awarded pursuant to a solicitation or other procurement vehicle issued on or after February 7, 2020.
 - b. Mini-bids awarded by SUNY under an OGS centralized contract are subject to pre-review and approval as outlined in the MOU if the outcome of such mini-bids will result in rates, contract periods, or other specific objective provisions of the contract which are inconsistent with the OGS contract under which they were bid. No other mini-bids awarded by SUNY shall be subject to the provisions of the MOU.
 - c. Significant amendments of existing contracts and solicitations (prior to February 7, 2020) will be subject to OSC pre-audit review.
2. OSC shall have thirty (30) days from the submission of a Complete Procurement Record to review and approve such submission. For all energy contracts, OSC shall have forty-eight (48) hours from the submission of a Complete Procurement Record to review and approve such submission.
 - a. If OSC fails to act on the submission of a contract within the timeframes set forth above, the respective SUNY contract shall become valid and enforceable without OSC's approval.
 - b. SUNY may agree to an extension of the 30-day review period in the event of extraordinary circumstances, such as a bid protest.
3. Contracts excluded from this MOU are SUNY hospital emergency contracts for health and safety and SUNY construction-related service contracts, regardless of dollar amount, and any other SUNY contract valued at less than \$250,000.
4. OSC approval is required for contracts where the University provides consideration other than money (generally revenue contracts), with a reasonably estimated value in excess of \$25,000.
5. Intercollegiate Athletics NCAA Division I Programs: For service procurements related to Intercollegiate Athletics, NCAA Division I programs, OSC has advised the University that the campus president or designee may, upon written determination, decide that competition is not feasible due to the unique nature of the program or circumstances, and authorize a procurement without competition, except that such authority shall not exist for contracts funded by personal service appropriations.
 - a. The circumstances supporting such determination must be consistent with standard NCAA Division I practices used for intercollegiate athletics programs nationally. The selection must be justified and the prices demonstrated to be reasonable and competitive. This authority shall apply to intercollegiate athletics program agreements up to \$250,000.
 - b. For all intercollegiate athletics NCAA Division I agreements, the exceptions noted in Paragraph B.1. above shall not apply, and no approval shall be required by any state agency for such transactions up to \$250,000.

C. No Required External Agency Approvals:

1. After selection of the appropriate vendor, the campus shall enter into a contract for the commodities or services required.
2. Upon execution of such contract by the vendor and an authorized campus or system administration officer, the contract shall be binding without further processing. Note, that an acknowledgment by a notary public is desirable, but not required on such contracts.

3. Contracts between \$5,000 and the approval levels in Section III. B. above, requiring more than two payments in a fiscal year must be encumbered by a Contract Encumbrance Request (AC340) using the appropriate "T" contract prefix.
4. Contracts up to the approval levels in Section III B. above, which do not require more than two payments in a fiscal year, or contracts below \$5,000 requiring any number of payments may be encumbered either by a purchase order or an AC340, at the option of the campus.

IV. Submission of Contracts and Procurement Record Requirements:

A. Contracts Requiring Outside Agency Approvals (see Section III above)

1. After selection of the appropriate vendor, the campus shall enter into a contract which shall include the standard State contract provisions when applicable (see Section II.D.5.d. above). Upon execution of such contract by the vendor and acknowledgment by a notary (See Form IX), and execution by an authorized campus or system administration officer, the contract shall be prepared for submission for approvals by OAG and OSC. Without such approvals, the contract will not be binding on the University or the contractor.
2. All Copy Purchase Orders, Purchase Authorization agreements and contract amendments where there is no change in scope do not require approval of the Attorney General.

B. NYSCR Documentation

1. Purchases over \$10,000 to less than \$50,000 must contain a certification of compliance with the requirements for publication in the NYSCR. The campus must maintain documentation that a quarterly listing of projected procurement purchases was published. If the campus instead chooses to publish a planned procurement not exceeding \$50,000, then proof of publication is to be submitted with the voucher package.
2. Purchases over \$50,000 must include proof of publication in either of the following forms:
 - a. a statement specifying the date of appearance and other relevant information related to the notice in the NYSCR, or
 - b. a copy of the original notice.
 - c. Where an exemption from pre-award publication requirements has been granted by the Office of the State Comptroller, regardless of amount, the campus must maintain documentation that a request to publish a notice stating the reason for the exemption has or will be submitted as soon as practicable.

C. The Procurement Record

1. The Record shall include:
 - a. all associated documentation required by NY State laws and SUNY policies and procedures;
 - b. for contracts (not purchase orders) with a total value of \$125,000.00 or greater, the completed Procurement Record Checklist (Form XII) or a campus specific checklist that, at minimum, includes the information in the Office of the State Comptroller Bureau of Contracts Procurement Record Checklist.
 - c. for contracts (not purchase orders) with a total value of \$250,000.00 or greater:
2. At the time payment is required for those contracts described in Section IV.B.5.or 6. above, notice of publication as described in Section IV.A above, and an appropriate invoice must be submitted to OSC. If the invoice does not clearly indicate the commodity or service being purchased, the purchase order or AC340 should also be submitted.
3. The campus must ensure that the contract contains:
 - a. A notary acknowledgment of the Vendor's signature
 - b. Exhibit A, State University of New York Standard Contract Clauses
 - c. Exhibit A-1, Affirmative Action Clauses, State University of New York (if contract exceeds \$25,000.00)
 - d. A termination clause that, at a minimum, gives SUNY the right to terminate the contract in the event of the following:
 - i. it is determined that the vendor's submissions with respect to State Finance Law §§ 139-j and 139-k were intentionally false or intentionally incomplete.
 - ii. it is determined that the vendor's submissions with regard to Tax Law § 5-a were false

or incomplete.

4. Only one original contract document along with additional signature pages (at least one for each signatory) should be submitted to the Attorney General utilizing a transmittal letter similar to that illustrated in Form X. This submission should comply with the provisions of OSC Guide to Financial Operations and should include the appropriate system generated Batch Control Listing (BCL), Batch Transmittal Document (AC 2387), and AC 340.
5. The following information must accompany the proposed contract; since this list may not be all inclusive, please check the MOU checklist for the contract you are submitting:
 - a. A transmittal letter to the Office of the State Comptroller similar to that provided here as Form XI.
 - b. Where bids or proposals have not been competitively solicited, based on a sole source, single source or emergency transaction: justification for the selection of the vendor and reasonableness of price must be provided
 - c. Notice of publication as described in Section IV.A above or documentation of exemption from publication.
 - d. Certification of Bid Opening, if appropriate.
 - e. Bid Tabulation listing in tabular form all pertinent information including a description of commodities or services to be provided, the identity of each bidder, the quoted unit and total price if appropriate. Notation should be made where prospective vendors have not returned a bid or have declined to bid.
 - f. Supporting justification if the proposed contract is not awarded to the lowest cost bidder under an IFB.
 - g. Original copies of bids or proposals as required by OSC Guide to Financial Operations.
 - h. The following forms in connection with Vendor Responsibility:
 - i. Vendor Responsibility Questionnaire (if appropriate)
 - ii. Vendor Responsibility Profile
 - iii. Agency Certification and supporting documentation of Vendor Responsibility
 - i. The following in connection with Procurement Lobbying Law:
 - i. Vendor's Affirmation of Understanding of and Agreement pursuant to State Finance Law §139-j(6)(b)
 - ii. Vendor's Disclosure and Certification with respect to State Finance Law §139-k(5)
 - iii. Governmental Entity Representation Concerning Compliance with State Finance Law Sections 139-j and 139-k
 - iv. Record of Contact forms, if applicable
 - j. Form ST-220-CA, Contractor Certification to Covered Agency (not leases) in accordance with Tax Law Section 5-a.
 - k. State Consultant Services Contractor's Planned Employment From Contract Start Date Through the End of the Contract Term (if applicable).
 1. The completed Procurement Record Checklist (See Form XII).
 - m. Proof of Vendor's Insurance

Upon receipt of the above, the attorney general's office will review the proposed contract as to form.

 - a. Upon approval, attorney general's office will return the documents to the campus.
 - b. If not approved, the proposed contract will be returned by the attorney general with an explanation. The campus may respond directly to the attorney general with appropriate information. If contract terms require modification the office of the University counsel must be consulted, in accordance with Section II.H., above. All revisions of the proposed contract must be initialed by the vendor and the campus or system administration official who executed the contract on behalf of the University, prior to return to the attorney general. After approval, all materials will be forwarded by the attorney general directly to OSC.
6. SUNY must submit a Complete Procurement Record to OSC using the OSC Electronic Document Submission System ("EDSS"). Complete Procurement Record shall mean a procurement record which contains:

- a. all of the documents and information identified in appropriate checklist; and
 - b. the completed appropriate checklist.
7. OSC will review the proposed contract and upon approval, will return a signature page via the EDSS to the designated SUNY individual. If not approved, the proposed contract will be returned to the campus by OSC with an explanation. The campus may respond directly to OSC with appropriate information or may make such change(s) in supporting documentation as required. If contract terms require modification the office of the University counsel must be consulted, in accordance with Section II. H., above. All revisions to the proposed contract must be initialed by the vendor and the campus or system administration official who executed the contract on behalf of the University, prior to return to OSC. – Resubmission will be done through the EDSS.
 8. Upon receipt of the approved contract and/or signature pages, the campus will attach the signature pages to additional copies of the contract and will provide both the vendor and the office of the University counsel with a complete copy of the approved contract, and will retain the remaining copy(s) as required.
 9. At the time payment is required for contracts in Section C, the campus will forward a completed Standard State Voucher (AC92) to OSC, accompanied by the associated Batch Transmittal Document (AC2387) and an error-free Batch Control Listing (BCL).

V. General

- A. Chapters 552-555 of the Laws of 1985, amending NYS Education Law §§350 et seq., authorized the University to enter into contracts and make purchases in a more efficient and timely manner than under the prior law. This statutory authorization required the University Board of Trustees to establish rules and regulations, subject to the approval of the office of the New York State Comptroller (OSC), governing the procedures to be followed when entering into such contracts or making such purchases. Accordingly, these rules and regulations apply to all purchases under the University's flexibility program, made by state-operated campuses and by the University's system administration.
- B. The Procurement Stewardship Act of 1995 (Chapter 83 of the Laws of 1995), as most recently amended by Part D of Chapter 56 of the Laws of 2006, recodified those provisions of the NYS Finance Law which govern state procurement, clarified the procedures for technology acquisitions and added procedures for the acquisition of services. (NYS Finance Law §§160 et seq). The provisions of the Act will continue to apply to the University's procurements which fall outside the scope of this procedure, that is, those contracts in excess of the level described in Sections III.B through III.E. above.
- C. The conflict of interest and code of ethics provisions of NYS Public Officers Law §§73 & 74 shall apply to all purchasing activities of the University. Campuses are required to inquire as to the status of entities with which they intend to contract or lease. To accomplish this, campuses must utilize Form XIII in the initial phase of the purchasing/contracting process. Form XIII is a standard form designed in accordance with NYS Public Officers Law §73(4) to ascertain ownership of or a controlling interest of greater than 10% by an officer or employee of the State of New York in a prospective vendor/contractor or a public benefit corporation of the State of New York. If the answer to such inquiry is in the affirmative, campuses must use the formal competitive bidding process described in Section II.C.2. above or the State Procurement Guidelines, if applicable, before a valid agreement may be entered into with such individual or organization, in order to comply with provisions of NYS Public Officers Law §73.
- D. Chapter 58 of the Laws of 2011 amended Education Law § 355.5 by removing the requirement for prior approval by any other state officer or agency for contracts made for or by the University for the purchase of: (i) materials, equipment and supplies, including computer equipment; (ii) motor vehicles; (iii) construction and construction-related services contracts; and (iv) printing. This amendment is effective through June 30, 2016).

VI. Definitions (from NY State Finance Law and the NY State Procurement Guidelines)

Amount of contract - The total financial obligation incurred by the University. In a multi-year contract, the obligation incurred over the entire set term must be considered, rather than the annual amount alone.

Apparel - Apparel shall mean goods, such as, but not limited to sports uniforms, including gym uniforms,

required school uniforms, shoes, including, but not limited to athletic shoes or sneakers, sweatshirts, caps, hats and other clothing, whether or not imprinted with a school's name or logo, academic regalia, lab coats and staff uniforms. This definition is applicable to Section II (D)(2).

Apparel or Textiles - All articles of clothing or goods produced by weaving, knitting or felting or any similar production process for such articles of clothing and all goods produced by the apparel industry as defined by sub division (c) of section three hundred forty of the labor law. This definition is applicable for requirements denoted in Section II D)(2).

Best Value - The basis for awarding contracts for services and technology that optimizes quality, cost and efficiency, among responsive and responsible offerers, which shall reflect, wherever possible, objective and quantifiable analysis.

Certificate of Bid Opening - A certification by the person conducting a bid opening that the opening of all timely proposals received was held at the specified time and place.

Commodity- Material goods, supplies, products, construction items, electronic information resources or other standard articles of commerce which are the subject of any purchase or other exchange. The State Finance law requires commodity contracts to be awarded based on lowest price from a responsive and responsible offerer.

Contract - A new agreement, permit, memorandum of understanding or lease, or an amendment of same.

Contractor - A vendor from whom the University obtains commodities, services or technology.

Discretionary Purchase – Purchases below an established dollar level that are authorized by law to be made without a formal competitive process.

Emergency - Is defined as "an urgent and unexpected requirement where health and public safety or the conservation of public resources is at risk." A failure to properly and timely plan in advance for a procurement, which then results in a situation in which normal procurement practices cannot be followed, will not constitute an "emergency."

Encumbrance – An amount set aside to reserve all, or a portion, of an appropriation for payment of future expenses i.e., payments for capital construction, monthly lease or maintenance agreements, or other contracts (including purchase orders).

Energy Efficient - Is defined as meeting ENERGY STAR criteria and therefore qualifying for the ENERGY STAR label or meeting New York State Energy Research Development Authority (NYSERDA) guidelines for target efficiency levels.

Invitation for Bid (IFB) - A form of solicitation used for procurements where the needed commodities, services or technology can be translated into exact specifications and the award can be made on the basis of lowest price or best value when the best value determination can be made on price alone.

Lowest Price - The basis for awarding contracts for commodities among responsive and responsible offerers.
New York State Labeled Wine - Wine made from grapes, at least seventy-five percent (75%) of the volume of which were grown in New York State.

Procurement Record - Documentation of the decisions made and the approach taken in the procurement process and summarized in the Procurement Record Checklist.

Proposal - A bid or other form of written or oral submission of a quotation by a contractor, upon purchaser's request, usually in competition with other contractors. Proposals are usually opened publicly at a specific time

and place.

Reasonableness of Price (methods of establishing) – including, but not limited to comparing the quoted price with the price for the same or similar services within the last six months; comparing the price with other quoted prices; comparing the quoted price with prices in various procurement publications; reviewing the type of work that was previously accepted by the campus at a similar price; comparing the quoted price with cost to other governmental entities.

Recyclable - Any 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.

Recycled Commodity - Any commodity that has been manufactured from secondary materials as defined in the NYS Economic Development Law and that meets the secondary material content requirements of the office of general services.

Remanufactured - Any 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.

Renewable Sources - Are the following energy generating technologies: wind, solar thermal, photovoltaics, sustainably managed biomass, tidal, geothermal, methane waste and fuel cells.

Request for Proposals (RFP) - A form of solicitation used for procurements of services and/or technology where factors in addition to cost are considered and a comparative evaluation of the proposals is necessary. Service(s) - The performance of a task or tasks, except for architectural, engineering or surveying services, and may include a material good or a quantity of material commodities, and which is the subject of any purchase or other exchange.

Single Source - a procurement in which although there are two or more potential offerers, the agency has determined that it is in the best interest of the State to procure from a particular vendor. OSC approval must be obtained for a single source contract if SUNY is seeking a waiver from advertising in the New York State Contract Reporter and/or if the contract's value is over SUNY's discretionary threshold.

Small Business - Is defined as one which is resident in this state, independently owned and operated, not dominant in its field and employs one hundred or less persons.

Sole Source - a procurement in which only one offerer is capable of supplying the required commodities or services. OSC approval must be obtained for a sole source contract if SUNY is seeking a waiver from advertising in the New York State Contract Reporter and/or if the contract's value is over SUNY's discretionary threshold.

Sports Equipment – Is defined as equipment, such as, but not limited to, balls, bats and other goods intended for use by those participating in sports and games.

Tabulation - A tabular format listing of all pertinent information from contractors' proposals, including a description of the commodities and/or services to be provided, which permits a comparison of proposals received and a determination of the lowest responsible vendor.

Technology - means either a good or a service or a combination thereof, used in the application of any computer or electronic information or interconnected system that is used in the acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or voice including, but not limited to, hardware, software, information appliances, firmware, programs, systems,

networks, infrastructure, media, and related material used to automatically and electronically collect, receive, access, transmit, display, store, record, retrieve, analyze, evaluate, process, classify, manipulate, manage, assimilate, control, communicate, exchange, convert, coverage, interface, switch, or disseminate data of any kind or form, and shall include all associated consulting, management, facilities, maintenance and training. Goods may be either new or used.

Forms

[Form I](#) - Contractor Compliance with Omnibus Procurement Act

[Form II](#) - Omnibus Procurement Act - 15 Day Notification Form

[Form III](#) - ST-220TD: Contractor Certification

[Form IV](#) - ST-220CA: Contractor Certification to Covered Agency

[Form V](#) - Consulting Reporting Form A: State Consultant Services - Contractor's Planned Employment From Contract Start Date Through The End Of The Contract Term

[Form VI](#) - Consulting Reporting Form B: State Consultant Services Contractor's Annual Employment Report

[Form VII](#) - Certification of Compliance with Fair Labor Conditions

[Form VIII](#) - AC 1782, Authorized Signatures for Contract Execution

[Form IX](#) - Acknowledgment by Notary

[Form X](#) - Attorney General Transmittal Letter

[Form XI](#) - State Comptroller Transmittal Letter

[Form XII](#) - Procurement Record Checklist

[Form XIII](#) - Public Officers Law Form - Ownership of Controlling Interest

[Form XIV](#) - NYS Tax Exempt Letter

[Form XV](#) - Request for Exemption from Using a System-wide Contract

Related Procedures

[Construction Contracting](#)

[Construction-Related Consultant Contracting Procedures](#)

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

[Contract Award Protest Procedure](#)

Other Related Information

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

[Procurement Opportunities for New York State Certified Minority- and Women-Owned Businesses](#)

Authority

In case of questions, readers are advised to refer to visit the [Laws of New York](#).

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 §355 (Powers of Trustees)

NYS State Finance Law Article 2 - (§§2 - 19) General Fiscal Provisions

§8 (Duties of the comptroller)

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)

NYS State Finance Law Article 11 (§§160 -168) State Purchasing

§§160 et seq. (State Purchasing)

§162 (Preferred Sources)

§163(9) (Soliciting and Accepting Offers)

§165(2) (Prohibition of Tropical Hardwoods)

§165(3) (Recyclable commodities)

§165(4) (Food Products)

§165(4-a) (NYS Labeled Wines)

§165(5) (MacBride Fair Employment Principles)

§165(6) (Discriminatory Jurisdictions)

§165(7) (Purchase of Apparel)

NYS Labor Law §349 (September 11 Bidders Registry)

NYS Corrections Law §184 (Articles Made at Correctional Institutions)

NYS Tax Law Article 1 - (§§1 - 28*2) Definitions: Miscellaneous

§5-a (Certification of registration to collect sales and compensating use taxes by certain contractors, affiliates and subcontractors)

§19 (Green building credit)

NY State Alcoholic Beverage Control Law §76

NY State Economic Development Law §142

NY State Energy Law

Executive Order 21, dated August 3, 1983

Executive Order 142, dated January 16, 1991

Executive Order 111, dated June 10, 2001

Federal Equal Employment Opportunity Act of 1972 (P.L. 92-261)

[Federal Trade Commission's Safeguard Rule \(16CFR Part 314\)](#)

[Federal Trade Commission's Privacy Rule \(16CFR Part 313\(n\)\)](#)

[Gramm-Leach-Bliley Act/Financial Services Modernization Act of 1999 FTC Safeguards Rule](#)

Chapter 58 of the Laws of 2011

Chapter 562 of the Laws of 2003

Chapter 350 of the Laws of 2002

Chapter 95 of the Laws of 2000

Chapter 83 of the Laws of 1995

Chapter 531 of the Laws of 1993

Chapter 844 of the Laws of 1992

Chapter 807 of the Laws of 1992

Chapter 319 of the Laws of 1992

Chapter 346 of the Laws of 1991

Chapter 862 of the Laws of 1990

Chapter 386 of the Laws of 1989

Chapter 564 of the Laws of 1988

Chapters 552-555 of the Laws of 1985

[OSC Guide to Financial Operations](#)

[Memorandum of Understanding \(MOU\)](#)

[Budget Bulletin H-1034 | NYS DOB - Division of the Budget](#)

History

Amended – February 2020

- Memorandum of Understanding (MOU) signed by the Office of Governor, Office of the State Comptroller, the City University, the City University Construction Fund, the State University and the State University Construction Fund to require, among other provisions, all SUNY and SUNYCF procurements contracts, except construction related service contracts, of \$250,000 or more to be reviewed and approved by the Office of the Attorney General and the State Comptroller before they are officially executed contracts.

Amended - April 1, 2011

- Removed the requirement for prior approval by any other state officer or agency for the purchase of materials, equipment and supplies, including computer equipment; motor vehicles; construction and construction-related services contracts; and printing.
- Effective through June 30, 2016.

Amended - October 15, 2011

- Included updated information on Anti Sweatshop language and requirements to be in line with NY State Finance Law Article 11 §165(7) (Purchase of Apparel) .

Amended – April 20, 2007

- Reflects increased threshold to \$250,000 and related levels.
- Reflects requirements for Vendor Responsibility, Procurement Lobbying and Consulting Reporting
- General update and clarification of procedures

Amended – March 31, 2004

- Reflects requirements of Chapter 562 of the Laws of 2003 – “Sweatshop Legislation” extended to sports equipment.

Amended – September 30, 2003

- Reflects requirements of Executive Order 127.
- Reflects requirements of Gramm-Leach Bliley Act and the FTC Safeguards Rule.

Amended – June 30, 2003

- Reflects requirements of Chapter 350 of the Laws of 2002 – “Sweatshop Legislation”
- Reflects requirements of Executive Order 111 – “Green and Clean State Buildings and Vehicles”
- Increase dollar levels for system administration program approvals for facilities contracts.
- References the Procurement Record Checklist as OSC requirement for contract approval package.

Amended – October 10, 2001

- Reflects increase thresholds from \$30,000 to \$50,000 for purchase of commodities/services from NYS small businesses or certified Minority or Women-owned Business Enterprises.
- NYS Procurement guidelines become applicable for transactions exceeding \$150,000.
- OSC required documentation at time of payment for "T" contract transactions.

Amended – November 17, 1999

- Item 310 Processing Proposed Contracts is combined into Item 300.
- Reflects increased dollar levels for competitive bidding requirements.
- Increase in dollar level for purchases which require prior review /approval of AGO and OSC.

Amended - April 5, 1996

- Incorporates a process to ensure compliance with the conflict-of interest provision of Public Officers Law § 73.

Amended - October 13, 1993

- Increase dollar thresholds above which the approval of OSC and AGO are required.
- Increase OGS consultation levels.
- Encompasses '92/'93 legislative mandates for the MacBride Fair Employment Principles and Omnibus Procurement Act.

Amended – October 16, 1989

- Incorporates the requirements of Article 4C of the Economic Development Law.

Amended – September 25, 1986

- Encompasses rules and regulations governing contracting for services in accordance with the authority provided to State University in Chapters 552-555 of the Laws of 1985.
- Revised to include payment procedures for the purchase of materials, equipment and supplies including computer equipment and motor vehicles .

Amended – May 30, 1986

- Reflects additional purchasing authority provided to the State University as a result of Chapter 552-555 of the Laws of 1985.

Supersedes – October 12, 1979

- Item 300 Purchasing and Contracting (Procurement) replaces and updates Procedure Items 320.1 Purchasing - Items Not on Contract and 321 - Purchasing Small Items.

State University of New York Board of Trustees Resolution 01-116 adopted September 25, 2001

State University of New York Board of Trustees Resolution 99-121 adopted June 22, 1999.

State University of New York Board of Trustees Resolution 93-204 adopted September 23, 1993.

State University of New York Board of Trustees Resolution 93-135 adopted June 24, 1993.

State University of New York Board of Trustees Resolution 92-17 adopted January 16, 1992.

State University of New York Board of Trustees Resolution 89-128 adopted June 21, 1989.

State University of New York Board of Trustees Resolution 86-51 adopted March 26, 1986.

State University of New York Board of Trustees Resolution 85-151 adopted June 26, 1985.

State University of New York Board of Trustees Resolution 83-17 adopted January 26, 1983.

State University of New York Board of Trustees Resolution 80-275 adopted November 25, 1980.

State University of New York Board of Trustees Resolution 78-331 adopted December 20, 1978.

State University of New York Board of Trustees Resolution 50-106 adopted on September 11, 1950

Letter to presidents from the office of University counsel, dated July 3, 2003.

Letter to presidents from the office of University counsel, dated May 13, 2003.

Letter to presidents from the office of the vice chancellor and chief operating officer, dated November 5, 2002.

Letter to the vice chancellor for finance and business from the assistant deputy comptroller, dated February 18, 1999.

Delegation of Authority signed by the chancellor, dated November 20, 1997.

Letter to University auditor from office of the University counsel, dated February 6, 1996.

Letter to presidents from the office of the vice chancellor for capital facilities, dated December 28, 1992

Appendices

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

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