



Frequently Asked Questions  
(FAQs)  
about Procurement  
at  
The City University of New York

*The following are answers to frequently asked questions  
about how to buy goods and services for  
The City University of New York.*

Promulgated by Office of University Controller in conjunction with the Office of the General Counsel

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# Frequently Asked Questions (FAQs) About Procurement at CUNY

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*This document was originally created in 2007 by a committee of College purchasing agents. It has now been updated to reflect changes in law, requirements, and practices since the date of its original publication. This document is a work-in-progress, and we welcome your input and will incorporate corrections and updates in future versions.*

*– November, 2015*

## **INTRODUCTION**

This document is directed to members of the University community who have questions on how the Purchasing Departments at the University and at the Colleges purchase goods and services. The Purchasing Departments (also referred to as Procurement Departments) at the Colleges of the University would like to provide you with the best possible service. The more you know about the purchasing process, the better we can work together to achieve timely deliveries of goods and services. For this reason, we have put together answers to some frequently asked questions. We hope this overview of purchasing will help us work together, as a team, to facilitate our common goal of providing excellent education to our students.

As you browse through this document in search of answers to particular questions that may arise, you may notice that we have adopted a somewhat “colloquial” style in our responses. This was a deliberate choice. We have endeavored to create a user-friendly tool for your use, and we hope thereby to extend to all members of our University family a friendly offer of assistance in your navigation through the sometimes confusing procurement process.

## **WHO HELPS ME GET STUFF?**

- 1) **What is stuff? Who and what is Purchasing? What is Purchasing's purpose? Why does the process at the University seem so cumbersome?**
  - A. “Stuff” includes commodities (e.g. pens, furniture, lab equipment and other tangible goods) and services (e.g. consultants, security guards, maintenance).
  - B. We are here to facilitate and execute the buying function of commodities and services. The Purchasing Department staff is here to serve our constituents with quality service, timely delivery, and “best value” available in the marketplace, while fostering sound business controls to protect the assets of the University.
  - C. Why does purchasing at the University seem so cumbersome? As a governmental entity, the University is subject to New York State laws, audit, and public scrutiny. Also, the University is committed to fiduciary responsibility to protect its public assets and fairness to vendors, which mandates transparency of processes unique to a publicly-funded institution. Remember, the source of the funds that we spend is predominantly taxpayer dollars and student tuition dollars.
  - D. Although you may feel overwhelmed by all the purchasing requirements and procedures, bear in mind that the requirements are not intended to confuse or hinder but to encourage competition, ensure transparency of operations and to deter favoritism and malfeasance. It is important also to remember that your

College's Purchasing Department staff is available to execute all purchases and to assist you in navigating the overall process.

- E. The Purchasing Department is here to help save you money (so that you can spend it on other things your department needs). The practice of competitive solicitation tends to drive prices downward and ensures participation of a representative cross section of qualified vendors, thereby guarding against favoritism and fraud. We are a public university, and we are firmly committed to prudent and effective stewardship of resources.
- F. Purchasing is here to help you avoid incurring personal liability and negative publicity and to ensure an open process and compliance with laws. To guarantee effective buying of commodities and services for the Colleges of the University, it is essential that the authority to purchase and the responsibility for purchasing be clearly defined: the University has charged Purchasing Departments with the responsibility of buying commodities and services for the Colleges of the University while following state laws and university guidelines.

NOTA BENE: Commitments made by an unauthorized individual are subject to non-payment by the University and **personal payment by the unauthorized individual**. If you have not been specifically granted authority to commit the College or the University, then you are not authorized to make commitments on behalf of the College/University. In other words, unless there is a memo on file with the University that specifically grants you authority to sign, you may not sign any agreement, sales acknowledgment, license, or any other document.

The Purchasing Departments at the Colleges ensure compliance with State laws and regulations governing purchasing, ensure cost controls in obtaining reasonable prices, and maintain internal control procedures and maintenance of purchase orders and contracts.

## 2) Who may make purchases? Who may not make purchases?

- A. Who may make purchases?
  - 1. Only the Purchasing Department at your College has authority to make purchases of commodities and services on your behalf.
- B. Who may not make purchases?
  - 1. Faculty, staff, and administrators do **not** have authorization to procure commodities or services or to enter into contractual relationships with vendors or to make any commitments on behalf of the College/University.
  - 2. While it is often appropriate and necessary for faculty, staff, and administrators to provide information regarding an anticipated procurement to the Purchasing Department, only the Purchasing Director or his/her designee may sign a purchase order or a procurement contract. The signature of an authorized member of the Purchasing Department staff certifies that applicable policies have been followed.

3. Commitments through quotes, work statements, letters, or memoranda, whether made orally or in writing, made by an unauthorized individual are subject to non-payment by the University and personal payment by the unauthorized individual.

NOTA BENE: It is a violation of New York State Finance laws to procure a service or commodity without acquiring necessary approvals and documents in advance.

**3) May I sign any purchasing-related documents on behalf of the College? May I sign documents provided by vendors? May I accept “click-through” agreements? May I purchase IT hardware, software, or services with a P-card?**

- A. No; you may not sign any purchasing-related documents on behalf of the College or the University unless you have been specifically delegated authority to do so by the College’s Purchasing Director and the document has been approved by the Office of the General Counsel.

No; you may not sign any documents provided by vendors, regardless of what the documents are called. You may not sign a vendor’s proposal. You may not sign a scope of work (SOW). You may not sign a quote, a work order, a sales acknowledgment, a description of an item’s specifications, an invoice, an order form, a credit reference or application form, an application from a vendor to purchase an item on credit, a letter of intent, or a memorandum of understanding, or any other document presented to you by a vendor.

No; you may not accept “click-through” (“click-wrap”, “click-and-accept”) agreements; that would be the equivalent to signing a vendor’s agreement that has not been approved as to form by the Office of the General Counsel.

No; you may not purchase IT hardware, software, or services with a P-card, since these typically include a vendor agreement that you are deemed to have signed and accepted by making the purchase and using the product or services. For more information, you can review the State’s Purchasing Card Guidelines at <http://www.ogs.ny.gov/purchase/snt/awardnotes/7900822712can.htm> (click “Resources & Forms”).

- B. In accordance with the Advisory Memo from General Counsel and Senior Vice Chancellor for Legal Affairs Frederick P. Schaffer to the Chancellor, Council of Presidents, Cabinet, Administrative Council, University Controller, Legal Affairs Designees, and Purchasing Directors dated January 31, 2011 attached here as Exhibit A, only the following individuals have been delegated the authority to sign documents on behalf of Colleges and/or the University, provided that any such document has first been approved by the Office of the General Counsel:

- a. General Counsel
- b. Associate Vice Chancellor & University Chief Information Officer
- c. University Controller
- d. Associate Controller for Procurement (and designees)
- e. Vice Chancellor for Facilities Planning, Construction & Management

- f. Executive Director of Fiscal Management in the Department of Facilities, Planning, Construction and Management
- g. College Presidents
- h. College Vice Presidents for Finance & Administration
- i. College Purchasing Director (and designees)

NOTA BENE: As a general rule - **do not sign anything**. Anything in writing can be deemed a contract or a commitment – quotes, invoices, letters, letters of intent, memoranda of understanding, purchase orders, work scopes, work orders, service agreements, vendor letters, vendor terms and conditions, agreements, letter agreements, vendor agreements, etc. *Generally, College staff not in the Purchasing Department is only authorized to sign purchase requisitions and receiving reports.*

- C. Under the Contract Signing Authority memo, the dollar amount of an agreement will often determine who at the University, among the above-listed individuals, has authority to sign an agreement. The value of an agreement is determined by the total amount of the purchase during the entire term of the agreement, including all renewal and option periods.
- D. No one (except authorized Purchasing Department staff after receiving approval from CUNY’s Central Office of General Counsel) is permitted to sign any documents provided by vendors under any circumstance. It is rare that the University signs a vendor's form of agreement; Purchasing Departments are obliged to seek CUNY Central OGC review, OGC negotiation (if necessary), and OGC approval as to form before signing any vendor documents.

**4) Who does the buying for me?**

The Purchasing Department functions as the buyer of commodities and services. Some Purchasing Departments assign the buying function to particular staff members with skills and experience that are commodity-specific or service-specific. Please contact your Purchasing Department to find out the name of the staff member most likely to be assigned procurement of a particular commodity group and/or service appropriate to your needs. (Not all Colleges designate specific individuals for particular areas).

**5) Who me? Am I required to follow Public Officers' Law? Am I required to follow Executive Orders?**

- A. Yes, all CUNY employees (including employees of any of the Colleges of CUNY and regardless of the funding source of your salary) are covered by the provisions of the New York State Public Officers Law. A copy of the Public Officers Law Handbook for State employees and officials can be downloaded from: <http://jcope.ny.gov/pubs/POL/pol.html>. Among other things, the Public Officers Law prohibits former CUNY employees from being compensated for providing services to CUNY within two years following the employee’s separation from service with CUNY.



NOTA BENE: It is a violation of New York State Finance laws for any employee of CUNY to accept gifts or gratuities of more than a nominal value or take part in any hiring or contracting decision relating to a family member.

- B. Yes, all employees of the City University of New York (“CUNY”) (including employees of any of the Colleges of CUNY) are covered by the provisions of the Governor’s Executive Order No 1: Establishment of Ethical Conduct Guidelines.
1. Prohibition Against the Receipt of Gifts - Subject to certain conditions, all employees and the Board of Trustees of CUNY are prohibited from accepting gifts or gratuities of more than nominal value (e.g. a baseball cap embroidered with the vendor’s name and logo) where the circumstances would permit the inference that: (a) the gift was intended to influence the individual in the performance of official business; or (b) the gift constituted a tip, reward, or sign of appreciation for any official act by the employee.
  2. No employee of CUNY may take part in any hiring or contracting decision relating to a family member. If any hiring or contracting matter arises relating to a family member, then the employee must advise his or her supervisor of the relationship. See Executive Order No 1: Establishment of Ethical Conduct Guidelines.

**6) Who else is involved in purchasing? What are their roles?**

- A. What is the role of the OFFICE OF THE GENERAL COUNSEL (“OGC”)? The OGC:
1. reviews and approves as to form draft solicitation documents (Invitations for Bids; Requests for Proposals), Requests for Quotation, and contracts to ensure that all required components are included and that prescribed forms are adhered to (in other words, the OGC approves documents as to form, sometimes referred to as “signing off” on a document, which is not the same as the General Counsel “signing” (executing) a document);
  2. develops and issues form documents, including Invitation for Bids (IFB), Telephone Quotations (TQ), Request for Quotation (RFQ), Request for Proposals (RFP), and Independent Consulting Agreements (ICA);
  3. interprets and assists the University in complying with rules, laws, and regulations to protect the State, City, and the University;
  4. advises on policies and practices to ensure transparency in purchasing and a level playing field for vendors;
  5. assists in the enforcement of contracts;
  6. reviews draft Board Resolutions for conformity, appropriateness, and correct procurement method; and
  7. through its paralegal staff: reviews vendor-signed contracts - verifies proper execution by vendor; checks for OGC review of solicitation and contract; and verifies approved board resolutions before signature by the General Counsel;
  8. obtains the General Counsel’s signature for contracts.

Note that the above items are the specific responsibility of the Office of the General Counsel; College attorneys are not attorneys in the Office of the General Counsel.

- B. What is the role of the OFFICE OF THE UNIVERSITY CONTROLLER (“OUC”)? The OUC:
1. manages the procurement and accounts payable functions for CUNY’s Central Office and certain professional schools and Colleges;
  2. conducts University-wide procurements as necessary and appropriate;
  3. promulgates policies and procedures for the procurement and payment of goods and services in accordance with CUNY and New York State laws, rules and regulations;
  4. together with the OGC, interprets New York State laws and New York State and New York City procedures and practices;
  5. acts as the liaison between CUNY and the New York City Comptroller’s Office / Office of the New York State Comptroller on University procurement-related and accounts payable-related matters;
  6. manages the process for Central Office and University-wide contracts that require New York State Attorney General and/or New York State Comptroller approvals;
  7. negotiates with the New York State Comptroller with respect to the University’s pre-approval threshold ceilings;
  8. provides guidance and training to College Purchasing Directors regarding compliance with procurement policies and procedures;
  9. oversees the CUNY vendor management system including interfaces to the New York State and New York City vendor systems;
  10. manages the University’s Minority and Women Owned Business Enterprise (MWBE) NYS-certified service disabled veteran owned business (SDVOB) programs in compliance with CUNY policy and State-mandated requirements, as well other social policy initiatives that may be identified by New York State;
  11. serves as the University’s business owner for the procure-to-pay function of the University’s Enterprise Resource Planning (ERP) system, CUNYfirst.
- C. What is the role of the Central Office/College Budget Office?
1. allocates and administers city and state tax levy and budget appropriations in support of college and University priorities and activities;
  2. monitors University and/or College expenditures and college revenue collections to ensure consistency with approved financial plans and adherence to state and city budgetary guidelines.
- D. What is the role of the university’s Board of Trustees (“BOT”)?
1. Under Education Law Section 6206(6), the BOT has the power and the duty to purchase materials, services, equipment and supplies and to control and keep up the buildings and grounds occupied and used by the colleges.
  2. The BOT authorizes purchases that involve expenditures of \$20,000 or more.

- a. The BOT has authorized<sup>1</sup> the Chancellor or his/her designee to approve all contracts for the purchase of goods and services for amounts greater than twenty thousand dollars (\$20,000) and less than five hundred thousand dollars (\$500,000) that are awarded in accordance with law and University regulations after approval as to form by the University Office of the General Counsel.
  - b. The BOT authorizes purchases of at least five hundred thousand dollars (\$500,000) by approving board resolutions presented at regular meetings held throughout the calendar year.
3. The BOT Bylaws authorizes the General Counsel to sign all contracts for the purchase of goods and services:
- a. for amounts greater than twenty thousand dollars (\$20,000) and less than five hundred thousand dollars (\$500,000) that are awarded in accordance with law and University regulations after approval as to form by the University Office of the General Counsel.
  - b. for amounts greater than five hundred thousand dollars (\$500,000) that have been authorized by the BOT by board resolution and are awarded in accordance with law and University regulations after approval as to form by the University Office of the General Counsel.

To find the Board of Trustees meeting schedule, go to [www.cuny.edu](http://www.cuny.edu), click “about” in the left-hand column, click “Trustees” in the left-hand column, and then click “Schedule of the Board.”

- E. What is the role of the University’s Office of Internal Audit (“OIA”)?
- 1. conducts compliance audits and quality assurance appraisals;
  - 2. provides recommendations concerning University operation and programs to assist in ensuring that organizational goals and objectives are achieved and that University resources are safeguarded against loss due to waste, fraud, or abuse, as well as ensuring that University is in compliance with applicable laws and regulations;
  - 3. coordinates and prepares responses to federal, state and city audit reports;
  - 4. conducts implementation audits and reviews to ensure that University has complied with recommendations contained in prior audit reports as well as applicable recommendations suggested by federal, state and city agencies; and
  - 5. participates, with the Office of General Counsel and the University Office of Public Safety in special investigations of alleged irregularities or improper practices and assists in any subsequent adjudication.
- F. What is the role of the Attorney General's Office?
- 1. represents the interests of the State of New York and its subsidiaries, including CUNY; and

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<sup>1</sup> The board resolution that delegated this authority to the Chancellor or his/her designee was approved on April 30, 2007; until then, all purchases of \$20,000 or more required an approved board resolution.

2. represents CUNY when there are claims or disputes (*e.g.* if a lawsuit is filed); and
  3. reviews and approves contract documents that are subject to state pre-approval.
- G. What is the role of the New York State Office of General Services (“NYS OGS” or “OGS”)?
1. it is the state's equivalent of New York City's Department of Citywide Administrative Services; and
  2. establishes state-wide contracts for various commodities and services on behalf of state agencies and other authorized entities (CUNY is an authorized user of OGC contracts);
  3. reviews and approves piggybacking requests to use another government entity's contract; and
  4. advises State agencies on State Finance Law and state procurement practices and procedures, and issues related guidelines and advisories
- H. What is the role of the New York State Office of the State Comptroller (OSC)? -
1. conducts a “worth and wisdom” evaluation
  2. pre-audits state tax levy procurements that meet certain dollar thresholds;
  3. reviews and approves state tax levy-funded emergency procurements;
  4. reviews and approves requests for exemptions from advertising;
  5. initiates and conducts procurement and voucher audits
  6. issues determinations on vendor protests of state tax levy-funded procurements;
  7. checks that references to State contracts are correct;
  8. reviews piggyback contracts that have received OGS approval, if subject to pre-audit;
  9. verifies validity of sole source/single source procurement designation; and
  10. signs contracts requiring OSC approval (such contracts are not fully-executed until and unless approved and signed by the OSC).
- I. What is the role of the Office of (New York) City Comptroller?
1. the City Comptroller has thirty days to review each contract award and may only object to the award if s/he believes that there is possible corruption in the solicitation or that the proposed contractor is involved in corrupt activity. The registration process can take 6-8 weeks or longer; and
  2. the City Comptroller does not have authority to determine the “worth and wisdom” of a contract award made by the University, but may choose to post-audit a contract.
- J. What is the role of the New York City Corporation Counsel (“Corp Counsel”)?
1. reviews contracts awarded to CUNY by a city agency; and
  2. protects the interests of the City of New York

Note: Corp Counsel no longer reviews draft solicitation documents (for City-funded projects) before the College advertises and issues solicitations.

- K. What is the role of the Department of Citywide Administrative Services (“DCAS”, often referred to as “DEE kass”)?
  - 1. it is city's equivalent of New York State's Office of General Services (OGS); and
  - 2. it is the purchasing arm for The City of New York (and the University may make purchases from DCAS's contracts).
  
- L. What is the role of the Department of Information Technology & Telecommunications (“DOITT”)?
  - 1. provides network infrastructure services, security, application and new technology development services and is responsible for the management and overall strategic technology planning for New York City agencies; and
  - 2. the University may in some circumstances request to use DOITT contracts (end-users should contact the Purchasing Department regarding specific requests).
  
- M. What is the role of the Financial Information Services Agency (“FISA”)?
  - 1. It is the owner of New York City's accounting system.
  
- N. What is the role of the New York State Contract Reporter and the City Record?
  - 1. State law requires the University and its Colleges to advertise public solicitations that exceed certain dollar thresholds in New York State Contract Reporter; and
  - 2. University policy requires that we also advertise solicitations in the City Record (and it simply makes sense for us to do so since CUNY is in NYC).

**7) Who's going to help me resolve problems with deliveries?**

- A. If you are unable to resolve a delivery problem after pursuing the College’s regular procedures for tracking deliveries, call your Receiving Department (if you have one) and then Purchasing for assistance.
  
- B. Once the Purchasing Department has issued the purchase order, information regarding the purchase will be available in CUNYfirst (you may also receive a copy). You are responsible for verifying that the quantity and quality of goods or services received match the specifications on the original order.
  
- C. If you need the goods or services by a specific date, specifically indicate that on the purchase requisition and it will be stated on the purchase order. The designation “ASAP” or “RUSH” on a requisition is meaningless.

## WHAT HELPS ME GET STUFF?

### 8) What do I need to know about the purchasing process?

Understanding university purchasing policies can be challenging. The Purchasing Department is here to guide you through the process and to assist you in obtaining the goods and services needed while following laws and regulations that protect the University's assets (including money and time).

- A. All purchases made using tuition funds or public/taxpayer dollars (State and City funds) are subject to New York State laws (especially Finance and Education Laws), the rules and regulations promulgated by the Office of the State Comptroller, and the official policies mandated by the Board of Trustees of the City University of New York. In addition, the offices of the State and City Comptrollers have the authority to approve or deny payments and/or contracts and perform audits on various transactions processed by Purchasing.
- B. The key to effective purchasing is careful planning. While it is true that on occasion the unanticipated may occur (and often a crisis results merely from a lack of forethought), there is no substitute for thorough planning. Purchasing is committed to this principle and to providing you with full assistance in every way. If the unanticipated does occur, call your Purchasing Department for help in determining proper action. They are equipped to provide you with guidance and assistance. If there is a life-threatening emergency (e.g. fire or flood), see FAQ #23 - "It's an emergency!" What should I do?" *below*.

NOTA BENE: CUNY employees shall not direct a vendor to provide commodities or services without following proper procedures through the Purchasing Department. Doing so puts the vendor at risk for not getting paid. CUNY employees who are not authorized to make commitments to vendors also **may be responsible for personally paying vendors**.

- C. CUNY employees who direct a vendor to provide commodities or services without following proper procedures through the Purchasing Department may be personally liable, and vendors who provide commodities or services without following proper procedures through the Purchasing Department may be subject to non-payment.

### 9) What is the role of the requester with respect to preparation of specifications?

- A. Every instance of smart buying involves clear, detailed specifications. The requester must provide a clear, accurate description of the goods (commodities) and services.
  - 1. Specifications, including such information as dimensions, materials, capacities, performance, and warranties, need to be established and written clearly and unambiguously in order to accurately and objectively compare competing products and services and to ensure desired product acquisition.

2. Ask your Purchasing Department for a specifications outline or the questions you must answer in order to provide the Purchasing Department with the clear, detailed specifications necessary.
- B. Solicitation of competitive quotes or bids from vendors is possible only by supplying clear specifications which are sufficiently generic to avoid exclusionary consequences, whether inadvertent or deliberate.
- C. Purchasing Department staff, having the responsibility for executing the procurement of a wide variety of products and services, cannot have full expertise across the full purchasing spectrum and must, at times, seek the assistance of initiating departmental staff or others in specification development. External expertise for specification development may also be sought, whether from OGS, other Colleges, or the private sector, all toward the goal of prudent and proper purchasing. **Note however, that a vendor with whom you consult in developing specifications for a purchase must be disqualified from participating in the procurement directly on its own behalf or indirectly on behalf of another vendor.**

**10) What role do I play in the purchasing process? What do I need to do to make the purchasing process work for me?**

You are very important to the purchasing process because you are our customer: you are responsible for prudently requesting the supplies, services, or equipment needed for the effective operation of the College and the university. Purchasing is here to both help you and to serve you. Although we exist in a bureaucratic environment with many rules and regulations (which generally reflect good intentions and serve a meaningful purpose), here's how you can help us so that we can work together to meet your needs and navigate the rules and regulations:

- A. **Plan ahead.** Submit your requisitions for major purchases as early in the fiscal year as possible.
  1. Involve and communicate with Purchasing as soon as you have identified your needs. Contact Purchasing when you are first considering a purchase; we may be able to save you time and effort (by guiding you towards the best procurement method early on).
  2. The CUNY fiscal year runs from July 1st - June 30th. All requisitions must be submitted to Purchasing no later than the year-end deadline that is mandated by your College (often April 1, but may be even earlier). Please note that purchases that require a competitive solicitation process may not be completed by fiscal year end if requisitions are not submitted in a timely manner.
  3. Please note that the CUNY Board of Trustees must approve a Board Resolution for each and every purchase that exceeds \$500,000. Board resolutions must be submitted by the College six weeks in advance of each of six Board meetings that take place annually. The Board generally meets on the last Monday of the following months: September, November, January, February, April, June.

To find the Board of Trustees meeting schedule, go to:

- [www.cuny.edu](http://www.cuny.edu)
- then click “about” in the left-hand column
- then click “Trustees” in left-hand column
- and then click “Schedule of the Board”

- B. **Share your expertise;** it is needed to facilitate the purchasing process.
1. Educate us! Share your product/vendor research.
  2. Base your request and specification on the need being addressed, including required performance standards, rather than brand, vendor preference or loyalty.
  3. Provide Purchasing with a proper description and detailed information regarding the requested purchase so that Purchasing can specify the correct merchandise and services, consistent with quality requirements. The more information you provide to us and the better we understand your needs, the easier it will be for us to help you get the stuff you need.
  4. Be available for a “needs interview”. Note: sometimes, we may ask you for information that may seem irrelevant (at first); but there's usually a good reason for the questions.
  5. Indicate timing requirements/constraints early.
- C. **Learn the system.** There are laws and policies that govern how we purchase. As CUNY employees, we are obligated to abide by State laws and University policies.
- D. **Work with(in) the system.** Don't try to make purchases on your own and then ask for help (forgiveness) afterwards; it's inefficient and frustrating for everyone and often takes longer than if done properly to begin with. The job will get done faster when we work together.
- E. **Contract us** if you have any questions or concerns. We are here to help you obtain the goods and services that you need and expect.
- F. **Tell us right away** (and take notes!) if you are unhappy with the goods/services or a selected vendor in any way. Send Purchasing a list of specific reasons for dissatisfaction so your concerns and issues can be included in the Purchasing Department's files and can help provide a basis for not selecting this vendor in a future procurement effort. If the problem is not resolved through an informal discussion with the vendor, the vendor must be given written notice of the College's dissatisfaction and provided an opportunity to address the issues raised and/or to fix the problem(s). Take detailed notes regarding the conversations you have with a vendor who has provided unsatisfactory goods or services, including the date and time of such conversations. Always include name(s) of the individual(s) you speak to. Forward copies of notes to Purchasing. Remember that the State generally frowns upon disqualifying vendors, so strong evidence of dissatisfaction is necessary to disqualify a vendor. If you don't develop and record



such evidence, the college may have no basis for giving a low score or negative evaluation to the vendor in a new solicitation.

**11) What does Purchasing do for me? What service(s) does the Purchasing Department provide?**

- A. Purchasing can, with information and assistance from the requester:
1. direct requesters to information about products, suppliers, market prices, and product availability, and possible alternative resources;
  2. determine best procurement method;
  3. ensure best value for the College and the University (where the University is not awarding based on the lowest price without regard to other qualifications such as product quality or service);
  4. save you (your department, your College) money;
  5. provide an effective interface with vendors and potential suppliers;
  6. ensure compliance with applicable state laws and regulations, in tandem with CUNY policy and practices;
  7. conduct requests for quotes and solicitations, evaluate quotes, bid submissions, conduct vendor reference checks;
  8. facilitate the timely delivery of goods and services;
  9. resolve disputes and discrepancies between items ordered and items received;
  10. maintain relationships with vendors;
  11. help you avoid pitfalls when dealing with vendors;
  12. protect the College against legal actions;
  13. avoid complaints by vendors; avoid challenges to purchases; and
  14. maintain vendor relationships.
- B. The primary function of the Purchasing Departments at the Colleges is to serve our constituents in securing the commodities and services needed, while complying with applicable laws and regulations. The Purchasing Departments at the Colleges secure the most appropriate materials, supplies, equipment, and services at the lowest available price, consistent with quality requirements and delivery needs. Purchasing at CUNY is considered a vital function, integrally supportive of the University's mission as a premier educational and research institution committed to academic excellence and the provision of equal access and opportunity.

**12) What laws apply to College purchases – State laws or City laws?**

- A. What laws does CUNY follow?
1. CUNY, including all of the senior Colleges and community Colleges, follows State laws and University regulations. CUNY is an independent corporate body that is considered to be an instrumentality of the State, and although it is not a State agency, it may be treated like a State agency under certain circumstances.
  2. CUNY is not a part of the City of New York (nor is it a City agency), and it is not bound by NYC Procurement Policy Board ("PPB") rules.

- B. Are senior Colleges and community Colleges subject to different laws?
  - 1. All of the Colleges of the University follow the same laws and rules, but the source of funding (City or State) may subject Colleges to different review processes and contract registration processes by either the State or the City, respectively.
  - 2. In addition, the community Colleges are mandated to follow certain City procedures unique to affiliates of the City.

**13) What's a Preferred Source? Are we required to make purchases from Preferred Sources?**

- A. In order to facilitate and advance State-initiated social and economic goals, certain providers have been granted “Preferred Source” status under law by the State of New York. The University is required to purchase approved products and services from these sources in lieu of other available sources of supply. Procurement from a Preferred Source precludes competitive procurement procedures and eliminates the need to advertise the procurement.
- B. New York State Finance Law has designated three (3) entities as Preferred Sources (as of October 2014):
  - 1. CORCRAFT, New York State Department of Correctional Services
  - 2. NYS Preferred Source Program for People Who Are Blind (NYSPSP)
  - 3. New York State Industries for the Disabled, Inc.
- C. For commodities, Preferred Sources must be given priority in the order they are listed above. For services, Preferred Sources are provided equal priority. If more than one Preferred Source can meet the requirement, cost is the determining factor.
- D. *When a commodity or service is available from a Preferred Source in the form and with the function and utility required, and the price is no more than 15% greater than the prevailing market rate<sup>2</sup>, the University is required to purchase from the Preferred Source.* If the College wishes to purchase a particular service or commodity through a competitive solicitation even when the commodity or service is available from a Preferred Source, CUNY Contract, and/or State Contract, then the College must compile defensible documents and evidence justifying why the Preferred Source, CUNY Contract, or State Contract was not selected. If a Preferred Source is not selected, then that Preferred Source also must be given prior written notice with an explanation and an opportunity to respond.

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<sup>2</sup> Methods for determining prevailing market rate include: quotes (oral or written); comparison with competitive, published catalogs, price lists, market prices of commodities, indexes, etc., for the same or similar items; comparison of historical prices paid by CUNY and/or other governmental entities with current proposed prices for the same or similar items; and comparison of proposed prices with independent, internal cost estimates.

- E. There is no requirement to seek competitive pricing when using these vendors, although the price the College pays to these vendors may not be more than 15 percent higher than the prevailing market rate. The Purchasing Department should contact the Office of State Funded Purchasing & Contract staff in the early stages of any planned purchases (such as office furnishings) that may be affected by these regulations.
- F. Guidelines governing the use of Preferred Sources are available at the following website link <http://www.ogs.state.ny.us/procurecounc/pdfdoc/psguide.pdf>.
- G. A list of Preferred Source Offerings can be found at the following link <http://www.ogs.state.ny.us/procurecounc/pdfdoc/pslist.pdf>.
- H. Your Purchasing Department is familiar with the required procedures to follow when making a purchase using a Preferred Source and will provide guidance when making the determination on what is the most appropriate source to meet your needs.
- I. Contact Information:

**CORCRAFT**

New York State Department of Correctional Services  
Division of Industries  
550 Broadway  
Menands, NY 12204  
Phone: (518) 436-6321; (800) 436-6321  
Fax: (518) 436-6007; (800) 898-5895  
Web Address: <http://www.corcraft.org>

Department of Correctional Services (Corcraft) provides furniture, including landscape modular systems, desks chairs, classroom furniture, lockers, and file cabinets.

**NYS Preferred Source Program for People Who Are Blind (NYSPSP)**

296 Washington Avenue Extension  
Albany, NY 12203-5346  
Phone: (518) 456-8671; (800) 421-9010;  
Fax: (518) 456-3587  
Web Address:  
[http://www.abilityone.com/OA\\_HTML/ibeCZzpHome.jsp?minisite=10102&respid=22372&grp=NIB\\_NYSPSP\\_SITES](http://www.abilityone.com/OA_HTML/ibeCZzpHome.jsp?minisite=10102&respid=22372&grp=NIB_NYSPSP_SITES)

State Account Manager, Larry Mirro (518) 621-0633

The New York State Preferred Source Program (NYSPSP) for People Who Are Blind is a state-mandated initiative to create and sustain employment opportunities for New Yorkers who are blind or visually impaired. The commodities are produced by eight affiliated nonprofit agencies in New York that employ people who are blind or visually impaired. NYSPSP can provide: office supplies (manila file folders, toner cartridges, self-stick notepads), cleaning products (mops, brooms, cleaning solution products), work clothing (safety vests, jerseys, textiles), exam gloves, and flags; and services including: switchboard operations, contact center operations, and computer technology training.

NEW YORK STATE INDUSTRIES FOR THE DISABLED, INC. (NYSID)  
155 Washington Avenue, Suite 400  
Albany, NY 12210  
Phone: (518) 463-9706  
Fax: (518) 463-9708  
Email: [admin@nysid.org](mailto:admin@nysid.org)  
Web Address: <http://www.nysid.org>

Industries for the Disabled provides janitorial and housekeeping supplies, field marking paint, printed apparel as well as certain office and school supplies.

NYSID acts as a “virtual storefront” for a statewide network of 155 community rehabilitation agencies and corporate partners that employ skilled people with disabilities in both facility-based settings and community-based jobs

**14) What's a University-wide contract? Are we required to use it?**

- A. A University-wide contract is an agreement that originates as the result of a solicitation conducted by the University. Colleges are required to use University-wide contracts whenever possible (assuming no satisfactory Preferred Source is available). Only when the subject of these contracts deviates substantially from a College’s requirements should an alternative procurement method be considered.
- B. Examples of University-wide contracts include contracts for: enterprise information technology, on-line/electronic library resources, armored car services, unarmed security guard services, and hazardous waste removal services.

**15) What's a State Contract? OGS (Office of General Services) Contract? Are there other government contracts that we can “buy off of”?**

- A. Throughout the University, generic terms are used to refer to various forms of contracts that we use, such as “State Contract”. A State Contract can be either:
  - 1. a University-wide contract that has been registered with the Office of the State Comptroller; or

2. a contract solicited and negotiated by New York State Office of General Services, also referred to as an “OGS Contract”.

The University, including all the Colleges, is required to use these State Contracts whenever they are available after considering Preferred Sources and finding that Preferred Sources do not meet the form, function, and utility requirements of the desired product and/or service.

- B. The Office of General Services is the central purchasing agency for New York State. OGS negotiates regional and state-wide commodity contracts with vendors through a formal competitive process for a variety of consumable supplies, equipment, services and technology (“OGS Contracts”). Besides the usual price advantage gained through the power of volume purchasing and formal competition that OGS Contracts offer, duplicative competitive solicitation efforts can be avoided at the campus level, saving a great deal of time and effort.

The OGS web site is very useful in determining if an item is available under an OGS Contract. OGS Contracts are available for services as well as commodities, including temp service personnel and computer consultants, to name a few. Unlike OGS Contracts for commodities, CUNY is not required to make purchases off of OGS Contracts for services and technology; it is, however, University policy that State and City centralized contracts be afforded next priority after Preferred Sources where there is no existing University-wide contract already in place. When using OGS Contracts, it is important to ensure that you review the latest amendments to each contract. To do so, it is suggested that you search first by description to find the commodity or group number and then go back to the search engine and repeat the search using the commodity group number in the box provided. The OGS contracts may be searched through the following link:  
<<http://www.ogs.state.ny.us/Purchase/Search/default.asp>>.

- C. CUNY also is permitted to make purchases from current, valid New York City Department of Citywide Administrative Services (DCAS) contracts, New York City Department of Education (DOE, formerly known as Board of Education) contracts, , and, in certain limited circumstances, General Services Administration (GSA) contracts and New York City Department of Information Technology and Telecommunications (DOITT) contracts.

**16) What's “piggybacking”? What are consortia contracts? Are these available for my purchase? What steps are involved?**

- A. Piggybacking is a method of procurement executed by making a purchase based on an existing, current contract that another government entity within the United States (other than NYS OGS, NYC DCAS, NYC DOE, NYC DOITT or federal GSA contracts, under which CUNY may make purchases without piggybacking (See 15C, above)), including any state or other political subdivision or district, has entered into following a competitive solicitation process permitted by its local laws. The commodities/services being purchased must exactly match the contract

you are trying to “piggyback” with respect to form, function and utility. The Purchasing Department must obtain written approval from New York State OGS before making such a purchase. Note that, because a consortia is not a governmental entity (see paragraph D, below), CUNY may not “piggyback” on consortia contracts. Similarly, not-for-profit organizations (e.g. BOCES) are not governmental entities, so CUNY may not “piggyback” on not-for-profit organization contracts.

- B. To explore the possibility of piggybacking, consult with Purchasing. Please note that piggyback purchases require State review that may take one month or more.
  
- C. The University follows these procedures for piggybacking; your Purchasing Department will implement the various steps listed, but may require your assistance with expediting the process:
  - 1. Purchasing will determine if there is an existing contract issued by a government entity to a vendor offering the commodities/services that the College wishes to buy and, if so, whether the contract was a result of a public procurement process.
  - 2. Purchasing will obtain a copy of the original contract from the issuing governmental entity and verify that it is a currently valid contract.
  - 3. Purchasing will verify that the vendor meets State requirements for “responsibility”; check VENDEX and/or the State VendRep System; obtain and verify references and financials.
  - 4. Purchasing will work with the end-user to verify that there is equivalency (quantity, size, and scope) between the College’s requirement for commodities/services offered by the vendor and the commodities/services in the original (government) contract.
  - 5. Purchasing will request and obtain a letter of consent from the originating governmental entity to piggyback.
  - 6. Purchasing will request and obtain a letter of consent from the vendor to piggyback. The vendor's consent to the piggyback request must be in written legal form separate from a purchase order, setting forth the agreed-upon terms of the piggyback.
  - 7. Requestor must provide information to Purchasing so Purchasing can prepare a written justification explaining the requirement for the commodities/services and the rationale for piggybacking, including a determination of need, consideration of the procurement method by which the contract was originally awarded, and an analysis of alternative procurement sources, including an explanation of why the use of an existing centralized contract or a competitive procurement is not in the best interest of the state. This justification must be addressed to the New York State Office of General Services (NYS OGS).
  - 8. Purchasing will include with the written justification to NYS OGS evidence that the pricing offered is reasonable.
  - 9. Purchasing must complete the piggyback “Contract Use Request Form”. This document can be accessed on the OGS link:  
<http://www.ogs.state.ny.us/procurecounc/pdfdoc/PGBReqForm.pdf>

10. Upon completion of the form, Purchasing must submit the Contract Use Request Form to NYS OGS for review and approval.
11. Purchasing will prepare a purchase order or contract document, including specifications regarding the commodities/services to be purchased and prices, as well as standard CUNY terms and conditions.
12. Purchasing will obtain signature by the vendor and the University.
13. After approval is received from NYS OGS, Purchasing will submit the University's contract for registration by the City Comptroller or, if required, for pre-audit approval by the State Comptroller.
14. After registration, Purchasing may issue a purchase order and provide notice to the vendor to begin work.

D. A consortium is a group of similar entities that agree to collectively purchase commodities in order to obtain a lower price and better terms and conditions than those otherwise available through individual purchases. State Finance Law allows purchasing from a consortia contract when justified by price. Purchases from consortia contracts may be made for commodities only; services may not be purchased through consortia contracts except in certain circumstances. Consult with your Purchasing office to see if purchasing through a consortium is possible.

1. Use of consortia contract(s) requires membership in the relevant consortium. Note that consortia contracts are not government contracts, and piggybacking on consortia contracts is not permitted.
2. If the commodity can be purchased through a Preferred Source, you must purchase the commodity from the Preferred Source rather than through a consortia contract. Consortia contract purchases of commodities are allowed instead of purchases through centralized contracts when justified by price **only** if the commodity is not available from a Preferred Source.

#### 17) What's an “approved equal”?

When making a purchase, we are permitted to name a particular brand, model number, manufacturer, or standard in the specifications, but vendors must be permitted to offer, as part of its bid submission or proposal, an alternative product as a proposed substitute. The salient characteristics of the brand name product (e.g. functionality, style or capacity) must be identified and described in the solicitation. Vendors must provide supporting evidence that the proposed substitute has the salient characteristics specifically identified in the solicitation. The Purchasing Department will work with the end user to evaluate the proposed substitute product and determine whether it can be deemed an “approved equal”, i.e. an acceptable substitute for the specified product. However, please remember that “approved equal” is a legal standard; if a proposed substitute is offered by a vendor, and the end user does not want to accept it, then Purchasing must consult OGC in making a determination as to whether they may refuse to deem such substitute an approved equal.

**18) What’s the difference between Informal Purchasing and Formal Purchasing? What’s an RFQ (Request for Quotations)? What’s an IFB (Invitation for Bids)? What’s an RFP (Request for Proposals)?**

“Formal Purchasing” and “Informal Purchasing” differ in the type of documents used, the rules and regulations governing the procurement, and the dollar value of the goods and services being procured (see summary table below). Both Formal Purchasing and Informal Purchasing are methods of procurement that may be used when neither a Preferred Source nor a centralized contract (University-wide<sup>3</sup>, OGS, DCAS, DOE, DOITT or GSA) are available for a purchase.

A. Formal Purchasing is required for purchases of goods, of services, or of a combination of goods and services, in each case with a total value of \$100,000 or more. Formal Purchasing also may be an appropriate method of procurement for lower dollar values.

1. Formal Purchasing requires the use of a competitive, sealed solicitation process, involving issuing either a Request for Proposals (“RFP”) solicitation document or an Invitation for Bids (“IFB”) solicitation document. Colleges may issue:

- a Request for Proposals (“RFP”) solicitation document seeking sealed proposals from vendors so that an award can be made to the best overall proposal. And RFP solicitation allows the University to choose a vendor based on multiple factors. The technical portion of the proposals are evaluated by an evaluation committee in accordance with criteria set forth in the RFP, and price proposals are evaluated separately by the business office (technical evaluation committee members may not be provided with proposed costs until after their evaluation is complete).

or

- an Invitation for Bids (“IFB”) solicitation document seeking sealed bid submissions pursuant to which an award must be made to the responsive and responsible bidder offering the lowest Bid Price (“responsive” and “responsible” are terms defined under New York State laws).

All purchases of \$50,000 or more must be individually advertised. Your Purchasing Department will determine the appropriate procurement method for each proposed purchase.

2. Formal Purchasing solicitation documents must include information on debriefings. Debriefings are meetings offered to unsuccessful bidders or proposers to address why their submissions were not selected for an award. Debriefings are to be offered within a reasonable time after a contractor is selected for a contract award, and should be completed prior to any required

<sup>3</sup> Please note that CUNY has entered into a number of University-wide contracts on an exclusive basis with vendors for certain commodities or services, and in these instances colleges are prohibited from purchasing such commodities or services from other sources. Colleges must direct any questions to the Office of University Controller.



contract appeals. A debriefing will address the reasons that the proposal or bid submitted by the unsuccessful bidder/proposer was not selected for an award. A debriefing may be conducted in person, by video conference, over the phone, or through written summaries. During a debriefing, the College may do one or more of the following:

- limit the discussion to the reasons why the bid/proposal was not successful;
- discuss the reasons why the successful bid/proposal was selected; and/or
- offer advice and guidance to the bidder/proposer to improve future bids/proposals.

B. Informal Purchasing may be used as a method of procurement for purchases of goods, services, or a combination of goods and services, that have a total value of less than \$100,000 when neither a Preferred Source nor a centralized contract (University-wide, OGS, DCAS, DOE, DOITT or GSA) is available for a purchase. For purchases from State-certified minority-owned or women-owned businesses (MWBs) the dollar limit for Informal Purchasing rises to \$200,000.

1. Informal Purchasing is sometimes referred to as “discretionary purchasing” because the Purchasing Department, after following appropriate procurement procedures, may exercise its discretion to choose any vendor who is responsive and responsible (as those two terms are defined by law) and has offered a reasonable price. As with all procurements not being made from a Preferred Source or under a centralized contract, the Purchasing Department is required to create and maintain a file demonstrating that neither a Preferred Source nor a centralized contract was available and providing evidence that the price being paid for the purchase is reasonable. Purchases of \$50,000 or more must be individually advertised. Proposed purchases made using the Informal Purchasing method are subject to greater scrutiny since the College has discretion to award to a vendor other than the one offering the lowest price.
2. A Request for Quotations (“RFQ”) is a document that can be used in Informal Purchasing as one method to determine fair and reasonable prices. All requests for quotes from vendors must be made using the OGC-approved RFQ form so that potential vendors offer and sign their respective price quotes in response to the same specifications and the same terms and conditions. Quotes from vendors on vendors’ letterhead cannot be accepted as a response to an RFQ.

If you are interested in obtaining quotes from vendors for a product or service you need, contact your Purchasing Department beforehand, and find out if your college permits end users to request quotes from vendors. Make sure that you provide the Purchasing Department with specifications (written details of the goods and/or services) that are clear, unambiguous, and conform to College requirements. The Colleges/University cannot accept quotes offered by vendors in any form except on the OGC-issued RFQ document.

**NOTA BENE:** When seeking quotes, use the RFQ form document provided by your College Purchasing Department; College may accept only quotes offered on the University’s RFQ form. Quotes from a vendor on its letterhead cannot be accepted.

Remember that no one outside of the business office is authorized to sign or agree to vendor quotes on behalf of the College/University or permitted to ask a vendor to begin work; only the business office can ask a vendor to begin work pursuant to a valid Purchase Order.

The following charts highlight the differences between formal and informal purchasing methods, and the various requirements at the specified dollar thresholds. Keep in mind that these charts do not address the “purchasing hierarchy”, i.e. the rules governing the order in which various procurement sources and methods (e.g. Preferred Sources, Centralized Contacts) must be considered for all purchases (see Exhibit D, CUNY Purchasing Hierarchy).

**Thresholds and General Purchasing Requirements (for commodities and services)<sup>4</sup>**

**Informal (Discretionary) Purchases**

<p><b>Purchases up to \$20,000</b></p>	<p>Discretionary authority of procurement officer who must:</p> <ul style="list-style-type: none"> <li>• Document reasonableness of price (through competition, if appropriate; Telephone Quotes may be used);</li> <li>• Justify selection of vendor in procurement record</li> </ul>
<p><b>Purchases \$20,000 to \$50,000</b></p>	<p>Discretionary authority of procurement officer who must:</p> <ul style="list-style-type: none"> <li>• Obtain minimum of three (3) quotes using OGC-approved Request for Quotations document;</li> <li>• Document reasonableness of price (through competition, if appropriate);</li> <li>• Justify selection of vendor in procurement record;</li> <li>• Complete all required forms</li> </ul>
<p><b>Purchases \$50,000 to \$100,000</b> (and up to \$200,000 for procurements made from an NYS Small Business or MWBE; or procurements of recycled or remanufactured commodities or technology; or procurements of food, including milk and milk products, that are</p>	<p>Discretionary authority of procurement officer who must:</p> <ul style="list-style-type: none"> <li>• Advertise or secure exemption from advertising;</li> <li>• Obtain minimum of five (5) quotes using OGC-approved Request for Quotations document</li> </ul>

<sup>4</sup> Note that this summary chart does not include all NYS or CUNY requirements and that these thresholds do not apply to construction projects, architecture, engineering or surveying services.

grown, produced or harvested in NYS)	<ul style="list-style-type: none"> <li>• Document reasonableness of price (through competition, if appropriate);</li> <li>• Justify selection of vendor in procurement record;</li> <li>• Complete all required forms</li> </ul>
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### **Formal Competitive Purchasing**

<b>Purchases \$100,000 and greater Commodities and Printing</b>	<p>Procurement officer must execute formal competitive solicitation (either Invitation for Bids or Request for Proposals) and:</p> <ul style="list-style-type: none"> <li>• Complete procurement record including vendor selection and price justification;</li> <li>• Complete all required forms;</li> <li>• Obtain Board of Trustees approval for purchases \$500,000 and above</li> </ul>
Services (Senior Colleges Only)	<ul style="list-style-type: none"> <li>• Obtain Attorney General (AG) and State Comptroller (OSC) pre-approval for services.</li> </ul>
Single/Sole Source Procurements	<ul style="list-style-type: none"> <li>• Advertise or secure exemption from advertising;</li> <li>• Obtain Attorney General (AG) and State Comptroller (OSC) pre-approval for services</li> </ul>

#### **19) What's a site visit or a pre-bid (pre-proposal) conference?**

- A. A “pre-bid conference” or “pre-proposal conference” is an opportunity for prospective vendors to visit the campus location where a project is to be completed or where some work is to be performed during a time scheduled by the University.
- B. A pre-bid / pre-proposal conference is intended to:
1. facilitate the bidding / proposal process by allowing vendors to appraise first-hand the scope of a given project or requirement;
  2. allow for questions not anticipated by Purchasing Department staff or other College administrators;
  3. provide an opportunity for prospective vendors to find potential subcontractors (if allowed);
  4. inform the College of the level of interest in the marketplace;
  5. provide an early assessment to the adequacy of written specifications, since attendees at the event generally will have had the opportunity to review and ask questions about the solicitation; and
  6. describe the project and the procurement process to vendors so that they may better understand the University’s goals and objectives.

- C. A prospective vendor's attendance at a pre-bid / pre-proposal conference is rarely mandatory; the Purchasing Department should seek OGC advice before deciding to make any pre-bid /pre-proposal conference a mandatory event. The written solicitation document and any addenda must include all pertinent information so that prospective vendors are able to submit their bid submissions or proposals regardless of whether they attend the site visit / pre-bid conference.
- D. Questions that arise during the course of the site visit/pre-bid conference are recorded by Purchasing Department staff. Answers to the questions are provided together with answers to questions received in writing as an addendum to the solicitation document provided to all prospective vendors who received the solicitation document.

**20) What's the Public Bid Opening and Public Reading of Bid Prices?**

- A. The Bid Opening and Public Reading of Bid Prices ("Bid Opening") is the event at which the University opens and publicly reads each bid submission received in response to an IFB by the deadline and records on a Bid Tabulation Sheet each bidder's name and the Bid Price offered. No other information is publicly announced or shared until after the bid submissions have been reviewed and evaluated by the Purchasing Department afterwards.

After the Bid Opening and Public Reading of Bid Prices, the Purchasing Department reviews and evaluates the bid submissions to determine whether the vendor offering the "apparent low bid" (the vendor who submitted the bid submission offering the lowest price) is responsible and whether the bid submission is responsive to the solicitation. Contract award will then be made to the "responsive and responsible" bidder offering the lowest price.

- B. Purchasing Department staff will announce as a reminder to the attendees of the "Bid Opening" that the Bid Prices read aloud are not final results and are subject to review and evaluation before contract award.
- C. In all cases, the selected vendor's bid submission must respond to the minimum bidder requirements included in the IFB solicitation document (this determines whether the bidder is "responsive") and the bidder also must be found "responsible," which generally means that the vendor must meet three criteria: a demonstrated ability to perform, fiscal integrity, and moral integrity.

*NOTA BENE:* A vendor that offers the lowest price in response to an IFB but is not selected may feel justified in lodging a formal complaint in writing to a senior administrator of the College or CUNY and may even initiate legal action against the College or the University. Should such a complaint arise, it is important to have adequate documentation supporting the selection of an awardee that has not offered the lowest price.

## 21) What are FOIL Requests?

- A. New York State's Freedom of Information Law ("FOIL") allows members of the public to access records of governmental entities, including CUNY. FOIL provides a process for the review and copying of an agency's records. When there is a request for documents, records, or statistical information, requesters should be directed to send a written request to the Campus Records Access Officer of your college.

Note that if the Purchasing Department receives a request after the Bid submission deadline for the results of an IFB solicitation, the Purchasing Department may send a copy of the Bid Tabulation Sheet that was compiled at the Public Bid Opening and Reading of Bid Prices for the IFB without a FOIL request.

- B. Purchasing Offices must direct all FOIL requests for information, such as for former contracts and bid prices for previously issued solicitations (Invitations for Bids and Requests for Proposals,) to the Campus Records Access Officer. Campus Records Access Officers may request assistance on questions relating to FOIL requests from OGC (646-664-9200).
- C. FOIL is generally interpreted in favor of providing access to the public, but includes specific provisions under which access to records may be denied. For example, if a ("bid") solicitation is in progress, then the University may deny release of certain documents on the basis that such release may "impair present or imminent contract awards."

## HOW DO I GET STUFF?

### 22) How do I get stuff?

- A. A requisition submitted in CUNYfirst is the only way to start the procurement process (verbal discussions and email exchanges do not constitute a requisition). End users submit requisitions for goods and services needed, and the Purchasing Department chooses the appropriate procurement method and makes the purchase. **End users may not make purchases or engage vendors directly.**
  1. Submit a requisition in CUNYfirst, attaching all pertinent documents (e.g. scope of work, specifications, suggested vendor list). CUNYfirst will send your request to your (CUNYfirst) supervisor; the supervisor must approve your requisition within CUNYfirst. Then, after the supervisor (and any other approver required by your campus, department, division, etc.) has approved of the requisition, the CUNYfirst system performs a budget check (at the top of the next hour) to verify availability of funds.

**NOTA BENE:** A purchase requisition is required in advance of all commitments of expenditures with rare exceptions. Contact your Purchasing Department if you have questions about this topic.

2. Note that if your requisition does not clear the CUNYfirst budget check, your requisition will **not** get forwarded to the Purchasing Department, and CUNYfirst does not automatically notify anyone that your requisition is not moving forward. Once your supervisor has approved the requisition, the status will still say “approved” even if the requisition does not clear budget. After submitting your requisition, you should check that your requisition has been approved and has cleared the CUNYfirst budget check; you will need to run a query to determine whether your requisition has actually passed the budget check or use the requisition life cycle field in the Manage Requisitions link in CUNYfirst to see the current status of your requisition. If your requisition does not clear the budget check, it will be sent to Commitment Control, where it may be funded or denied funding.

**NOTA BENE:** Even if your requisition is “approved”, if your requisition does not clear budget, your requisition will **not** be forwarded to Purchasing. It is the end user’s responsibility to ensure that the requisition has passed all checks and that it gets to Purchasing.

- B. Every instance of smart buying involves clear, detailed specifications. The requester must provide a clear, accurate description of the goods (commodities) and services.
  1. Specifications – including such information as dimensions, materials, capacities, performance, and warranties – must be established and written clearly and unambiguously in order to accurately and objectively compare competing products and services and to ensure acquisition of the desired product.
  2. Ask your Purchasing Department for a specification outline or a list of questions you must answer in order to provide the Purchasing Department with the clear, detailed specifications necessary.
- C. “Do it Yourself” Purchases. At some campuses, certain (limited) purchases can be made directly, by:
  1. Using blanket purchase orders, also called “Amounts Only” orders in CUNYfirst. Certain vendors supply goods/services on an as-needed basis (not to exceed a specific dollar amount for the fiscal year) under such blank purchase orders. Once a requisition for the required amount of such goods or services has been made and approved and budget checked, your Purchasing Department will issue purchase orders to these vendors for the required amount.

For example, a College may issue a \$1,500 order to an art supply store for the Design Department. As items are needed, the art supply store delivers against the order throughout the year. If this type of order would be appropriate for your department, contact your Purchasing Department who will assist you in setting one up. Bear in mind that blanket orders are subject to the same purchasing laws and regulations as any other purchase.

2. using a procurement card (“P-card”), if your college has provided one to you or your department, in accordance with the stated limitations and procedures and never for services, software or IT hardware.

### 23) “It’s an emergency!” What should I do?

*First, ask yourself -- is it really an emergency?* The law defines “emergency” for the purposes of procurement as an unforeseen occurrence or condition or situation where a threat to health, safety, life or limb exists, or where a necessary service is threatened with material damage or suspension, or where College or University buildings or property are threatened. If not, Purchasing cannot treat the purchase on an emergency basis. Lack of planning does not constitute an emergency.

- A. If it is an immediate emergency event – such as a fire, an explosion, a flood, then:
  1. call 911;
  2. call Security, Facilities, and/or VP for Finance so that they can work with the Purchasing Department who will make whatever purchases are necessary ;
  3. fix what needs to be fixed (this is not an excuse to install new decorative landscaping); coordinate with the Purchasing Department to procure the required commodities and/or services necessary to address the emergency;
  4. act prudently! ask yourself, what if I (personally) had to pay for it?
  5. work with Purchasing to produce specifications and the information required for a contract to be signed by the vendor and the University that must then be submitted to (depending on funding source) NYS Comptroller or NYC Comptroller for registration. The Purchasing Director will, as appropriate, notify the State Comptroller and/or the City Comptroller to discuss the emergency situation and the procurement plan. A follow-up written communication to the State Comptroller is required when state tax levy funds are to be used.
  6. you’ll need to assist in writing a “Declaration of Emergency” memo for your College VP who will need to send it under his/her signature to the Vice Chancellor of Budget and Finance and the General Counsel and Senior Vice Chancellor of Legal Affairs to advise them of emergency purchase(s) made. The Declaration of Emergency memo must:
    - a. explain the situation – why emergency procurement is necessary;
    - b. what the college plans to do and why the plan is reasonable;
    - c. provide assurance that it is a one-time occurrence; and

d. provide assurance that the emergency procurement procedure is not being used to avoid normal competitive solicitation.

- B. If it's not an immediate emergency event, but is nevertheless a threat to health and safety, life or limb, damage to necessary service, or to a College or University building or property, Purchasing may, in appropriate circumstances, treat the purchase on an emergency basis – the Purchasing Department refers to this type of situation as a “Priority Event”.
1. call your Purchasing Department, who will call OGC for guidance
  2. Purchasing will need to devise a plan for determining how the College will solicit goods and services. The plan must articulate:
    - a. how are you determining that College is getting fair prices?
    - b. how are you determining that College is getting fair terms?
    - c. how are you determining which vendors to invite to participate?
  3. depending on the circumstances, the Purchasing Department may need your help in preparing a Declaration of Emergency memo to advise them of an intended emergency purchase.
  4. Purchasing will conduct a solicitation following “emergency” procedures.
  5. Purchasing will conduct an abbreviated review of the vendor’s credentials and references.
  6. The Purchasing Director will, as appropriate, notify the State Comptroller and/or the City Comptroller to discuss the emergency situation and the procurement plan. A follow-up written communication to the State Comptroller is required when state tax levy funds are to be used.
  7. Purchasing will submit the proposed contract to (depending on funding source) NYS Comptroller or NYC Comptroller for registration. Be advised that even in the case of these “Priority Events”, it may take a number of weeks to complete this process.

<p><i>NOTA BENE:</i> State laws and University-wide policy recognizes states of emergency in only the rarest of circumstances, and declarations of emergency require the College’s Vice President’s consultation with the University’s Office of General Counsel.</p>
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- C. The Declaration of Emergency memo must include an explanation as to the reason why no contract is in place and state clearly what the College is doing to make sure that the emergency procurement is a temporary one and that it is not being used to avoid normal competitive bidding.
- D. Bear in mind that asking a vendor to provide goods or services without a Purchase Order in hand puts the vendor at risk of not being paid.
- E. Bear in mind that the legal standard for bypassing normal required competitive bidding is that there be an “unforeseen occurrence or condition.” An unforeseen occurrence or condition is one that is not anticipated or one that cannot be remedied by the exercise of reasonable care (e.g. expiration of a contract is not considered an emergency since it should have been foreseen).



## 24) How does the University/College engage consultants?

Engaging a consultant is handled just like other purchases of services; Purchasing is required to follow all procurement procedures for the procurement of consultant services (note, however, that there are special procedures for engaging an IT Consultant; contact the OGC for more information). CUNY employees cannot simply request a specific consultant; instead, in order to purchase services from a specific consultant, the end-user must provide substantive reasons why that specific consultant is being identified for the required services, and the Purchasing Department must determine from the information it receives from the end user that a “single source” or “sole source” procurement method is appropriate (see section C, below, and FAQ #43 - “Do we have to go through a public procurement/bid solicitation process? There's only one vendor who can provide me with the goods and services I need. Why can't I just buy the item that I need?” for more on these procurement methods). In addition, reasonableness of price is always a consideration. See FAQ #22 - “How Do I Get Stuff” and FAQ #41 - “Why aren’t there consistent regulations governing ALL purchases?”.

- A. The first step is to provide Purchasing with a (complete and accurate<sup>5</sup>) purchase requisition stating the detailed scope of work, including required deliverables, the specific qualifications required of the consultant needed, and a proposed payment method/schedule (the University pays for goods and services received, so paying for deliverables received from a consultant is a typical payment method). This information is needed for any solicitation effort and for the contract. The scope of work must be prepared by the CUNY employee requesting the services; the scope of work can never be prepared by the consultant who will be providing the services.
- B. Before a consultant can be engaged, the requesting party is responsible for determining that there is no current employee who (is able and qualified and) can fulfill the requirements as part of his/her duties and that hiring a consultant is less expensive and more economically advantageous than hiring a new or additional employee.

If no current employee can fulfill the requirements as part of his/her duties, then Purchasing will recommend an appropriate procurement procedure and assist you in identifying potential consultants who meet your requirements. Purchasing Department staff will consult with the CUNY Office of General Counsel for the purpose of obtaining advice and counsel in the preparation of solicitation documents and contract documents, when appropriate.

- C. If the requestor believes that one consultant is the only entity that provides the required services or is otherwise uniquely qualified to perform the required services, then the end user must provide to the Purchasing Department (a) an

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<sup>5</sup> Detailed specifications are an essential part of a complete and accurate purchase requisition. Ask your Purchasing Department for a specifications outline or specifications questionnaire to help you prepare your specifications and see FAQ # 9 above. In some instances samples of specifications for similar commodities or services may be available from your Purchasing Department.

explanation as to why this one specific consultant is uniquely qualified or the only option to perform the services, (b) identify which other consultants were considered, (c) explain why each of the other consultants considered were determined to be inadequate, and (d) explain how you determined that the price being charged is reasonable. Please note that proposed purchases of consultant services via the single source or sole source procurement method are subject to greater scrutiny since this is a procurement method that could be used to circumvent other procurement methods that can appear to be more open, fair, and transparent.

The Purchasing Department is responsible for making the determination of whether or not a sole source procurement or a single source procurement is appropriate when engaging consultants, and the Purchasing Department is required to create and maintain a file and prepare a non-competitive justification memo indicating that such a purchase is justifiable and appropriate based on information provided by the requestor and based on its research and independent determination.

- D. The Purchasing Department will prepare a solicitation document for the consultant services if the College is not using a single source procurement or a sole source procurement method.
1. To solicit for a consultant for an amount of \$50,000 or more, where no centralized contract is available, the Purchasing Department staff will prepare an advertisement that must run for fifteen business days. To solicit for a consultant for an amount of less than \$50,000, no advertisement is required.
  2. For solicitations of consulting services valued at less than \$100,000, the Purchasing Department may use an informal procurement method, such as a Request for Quotes. A draft of the advertisement and a draft of the RFQ must be submitted to CUNY OGC for review and approval before placing the advertisement and before issuing the RFQ document to potential consultants.
  3. For solicitations of consulting services valued at \$100,000 or more, the Purchasing Department will prepare an Invitation for Bids or Request for Proposals document with the scope of work, deliverables, specific qualifications, and payment terms provided by the end user, which the Purchasing Department will distribute to at least five qualified consultants, including consultants who respond to the advertisement. A draft of the advertisement and a draft of the IFB or RFP solicitation must be submitted to CUNY OGC for review and approval before placing the advertisement and before issuing the IFB or RFP solicitation document to potential consultants.
  4. Before engaging any consultant for an amount of \$100,000 or more on behalf of a senior college, the Purchasing Department staff is required to submit the contract to the State for pre-approval and maintain a procurement record reflecting a rational basis for the purchase and to include in such record reasonableness of price and evidence that the purchase represents best value.

5. As with all contracts valued at \$500,000 or more, consultant contracts that are for an amount of \$500,000 or more require the approval of a board resolution by the CUNY Board of Trustees.
- E. After a consultant is selected, the Purchasing Department will create the Independent Contractor Agreement, using the Office of General Counsel's form agreement and the detailed scope of work, including required deliverables, the specific qualifications required of the consultant needed, and a proposed payment method/schedule provided by the requisitioner.
  - F. Consultants (independent contractors) must agree to University terms and conditions by signing the Independent Contractor Agreement ("ICA") and agree to and sign various State-required forms.
    1. Consultants must sign a University-standard agreement "ICA"; the University does not sign vendor's consultant agreements.
    2. Consultants must complete, sign, and submit a Claim for Payment form, verifying that work has been completed and that s/he has not been on CUNY, SUNY, City, State, or any other agency payroll, together with each invoice in order to be paid.
    3. If a consultant receives \$20,000 or more from any combination of the University and any State agencies in a given year, then the consultant is required to complete and submit directly to the State various state-required forms (including a Disclosure of Planned Employment before beginning work, an Annual Employment Report each year (April 1 – March 31) that the contract is in effect.
  - G. Consultant agreements that involve expending an amount of \$50,000 or more must be reviewed and approved by the CUNY OGC. Consultant agreements that involve expending an amount of \$100,000 or more must be signed by the General Counsel and submitted to the State for pre-approval.
  - H. Consultants engaged by the University or the Colleges must be qualified to provide services for CUNY, including having appropriate immigration status and tax status.
  - I. **IMPORTANT TO KNOW:** CUNY employees may not take part in any contracting decision relating to a family member, and former CUNY employees are prohibited from being compensated for providing services to CUNY within two years following the employee's separation from service with CUNY. See the CUNY Conflict of Interest policy.

**25) What about hiring contractors for building renovations or repairs? What about hiring architects and engineer consultants?**

- A. No one at the Colleges is authorized to enter into any agreement that is construction-related unless the agreement is first approved by CUNY Central's Facilities, Planning, Construction and Management (FPCM) (formerly referred to as the Office of Design Construction and Management (DDCM)), regardless of

the source of funding (and even if the services are free to the College). The Colleges are prohibited from: making any alteration or change to the physical structure of the campus; making any capital improvements and/or initiating any acquisitions involving renovation, repairs, or improvements to facilities, whether interior or exterior; and/or hiring of architectural and engineer consulting services without prior approval as to form by the FPCM regardless of funding source. Therefore, call Campus Facilities/Planning first. See Chancellor Goldstein's memorandum dated June 4, 2004 with respect to this topic (attached as Exhibit B).

- B. Solicitation (“bidding”) efforts and contracts with architectural consulting services and engineer consulting services, regardless of source of funding, are conducted by FPCM, which will develop a solicitation document that includes contract terms and, as applicable, FPCM-approved specifications and drawings, prevailing wage rates, environmental assessments, insurance and indemnification requirements, external agency approvals, and code compliance requirements. Construction projects, from planning to solicitation efforts to contract administration, require thorough and advance planning and extra time and effort to develop and administer.
- C. Please note that (design) consultants may not respond to solicitations on (or be awarded contracts for) construction projects that they have designed.
- D. Construction services that do not involve making any alteration or change to the physical structure of the campus (for example, furniture, carpeting, window treatments) or making any capital improvements and/or initiating any acquisitions involving renovation, repairs, or improvements to facilities may, in consultation with CUNY OGC, be procured by the College. The College must use the University’s specifications outline form in describing the scope of work (in addition to drawings and the like) and work closely with the Purchasing Department to ensure that the College receives the services needed.

## **26) What if I need computer equipment (hardware), software, or peripherals?**

Call your College’s Information Technology department (“IT”) first. All computer-related procurements require approval by the University’s Chief Information Officer (“CIO”) to prevent duplicative and incompatible purchases. The Purchasing Departments are prohibited from executing requisitions for computer-related goods until approved by the University CIO or its designee.

When software is purchased, please note that no one is permitted to “click through” to agree to user licenses, software licenses, subscriptions, or the like, unless CUNY OGC has reviewed the terms of such agreement and approved them. If you are uncertain whether the click-through terms have been approved by CUNY OGC (or are otherwise overridden by a written agreement between CUNY and the vendor), do not click without first having contacted the Purchasing Department.

Computer equipment (hardware), software, or peripherals cannot be purchased using a P-card (in part because vendor terms and conditions often attach to the purchase, especially in the case of software).

**27) How do I get furniture?**

Call Campus Facilities/Planning first; furniture acquisition generally requires review and approval of the Department of Campus Facilities, which must be consulted before requisitions for furniture are prepared. Requisitions for furniture will be routed to a Category Approver for requisition category workflow approval.

\*Don't forget: lead time for furniture purchases may be significant – often 8 weeks or more. Ask your purchasing department to speak with the furniture representative to discuss lead times that cross holidays, as some areas experience industry-wide closures (such as during late December/early January).

**28) Are there any special requirements with respect to purchasing printing services?**

Yes, the New York State Printing Law applies. An IFB is required for all purchases in excess of \$50,000. Contracts for printing services are limited to two years. Ask your Purchasing Department for the printing specifications outline and use it when requesting printing services. The law requires that Purchasing keep samples of the printed product(s) in the procurement file for inclusion with the voucher (request for payment) and for audit purposes. Many colleges take advantage of existing printing contracts, such as the Master Commercial Printing Requirements Contract that is let by DCAS.

**29) How are purchases related to environmental, health and safety issues made?**

- A. Any health/environmental concerns to students, staff, or visitors and any violations of EPA regulations, must be reported immediately to your College's designated Health & Safety officer.
- B. If purchases or corrective actions are required, then call Purchasing immediately; Purchasing will work with appropriate EH&S staff and determine the appropriate procurement methodology and engagement of vendors.
- C. All purchases must follow required procedures, and purchases that are not made by Purchasing are unauthorized and subject to non-payment by the University and subject to personal payment by the unauthorized individual. If you have not been specifically granted authority to commit the College or the University, then you are not authorized to make commitments on behalf of the College/University.

**30) How should I deal with vendors? sales representatives?**

*NOTA BENE:* It is a violation of New York State Finance laws and University policies to communicate with vendors during the restricted period of a procurement process. If you are not sure when the restricted period is in effect, please speak with your Purchasing office.

- A. Since they are a valuable source of information, you are encouraged to seek information from potential vendors about their products and services. To help you in dealing with suppliers, we offer the following suggestions:
1. You should advise/remind vendors who contact employees of the College early on that all purchases chargeable to the College must be authorized by an official purchase order, signed by the Director of Purchasing or his/her designee.
  2. Whenever possible, contact more than one supplier. The more alternatives you consider, the more likely your final decision will suit your needs.
  3. Provide the same information to all suppliers that you contact for your specific need. New York State laws require that we give every supplier an equal opportunity to compete for our business.
  4. Look at the total cost of ownership (e.g., maintenance, operating costs, useful life, etc.), not just the initial outlay.
  5. Ask for product demonstrations. Most suppliers will be happy to comply.
  6. Seek the skills and knowledge of potential suppliers to identify product capabilities. Specifications should be based on performance. What do you want the product or service to do?
  7. Be mindful of Project Sunlight and the Procurement Lobbying Act and their requirements; they apply to you and to the vendors (see FAQ #42). Violation of the Procurement Lobbying Act will likely result in inability to purchase a product that you want/need. See FAQ #42 and Procurement Lobbying Act - Advisory Memo from Senior Vice Chancellor and General Counsel Frederick P. Schaffer and Controller Barry Kaufman to the Presidents, Provosts, and Vice Presidents of Finance and Administration dated January 23, 2007.
  8. Remember, that in accordance with the NYS Public Officers Law, you are prohibited from accepting gifts or payments from suppliers.
  9. If a vendor's (sales) representative asks you to sign any written document, such as a contract, order, letter, memorandum of understanding, or letter of intent, refuse to do so. Immediately refer the vendor's representative to Purchasing. Refusing to sign a vendor's document protects you, protects the College, and protects the University.

- B. Once a procurement process is underway - that is, once a decision is made to make a purchase, you are prohibited from direct contact with any vendor who may be selected to provide the goods or services. See FAQ #42 and Procurement Lobbying Act - Advisory Memo from Senior Vice Chancellor and General Counsel Frederick P. Schaffer and Controller Barry Kaufman to the Presidents, Provosts, and Vice Presidents of Finance and Administration dated January 23, 2007. Also see:

<http://www.ogs.state.ny.us/aboutogs/regulations/advisoryCouncil/2006PLRules4.11.pps>

1. If a vendor contacts you while a procurement process is underway, you must (politely) advise the vendor that you may not speak with them and that any contact with the College/University must be directed to the

designated individual in Purchasing and terminate the communication. Purchasing designates one individual to be the designated contact person (“Designated Contact”) for each procurement.

2. If a vendor contacts you while a procurement is underway, you must complete a Record of Contact form, which is available on the CUNY website and attached to this document as Exhibit A.
3. If you receive any materials from a vendor while a procurement is underway, immediately forward them (unopened, if possible) to the Purchasing Department.

**31) Private Monies - Are the requirements or procedures different for spending private dollars?**

- A. Purchases made using a College's non-tax levy funds are not governed by State procurement laws and are not covered by these guidelines; however, the College is the entity making the purchase, and sound purchasing procedures must still be followed, demonstrating the College's/University's fiduciary responsibility to protect its public assets and fairness to vendors. This means that the Purchasing Department generally will follow State procurement laws and University regulations. The Purchasing Department will consult with CUNY's Office of General Counsel as necessary. If any contract is funded partially from New York State funds or if a contract is expected to convert (in full or in part) to New York State funding in some future year, full compliance with New York State regulations and these guidelines is required from the outset. It would be wise to remember that purchases made with private monies are a University purchase and look like a University procurement.

<p><i>NOTA BENE:</i> If the College or University is the entity that is named in a contract, then the purchase is a University purchase, regardless of the funding source, and must be signed by an authorized signatory.</p>
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- B. Contracts entered into by separately-incorporated related entities such as auxiliary enterprise corporations and student associations are also outside State procurement laws and these guidelines. Nevertheless, as with a College's non-tax levy money purchases, related entity purchases must be conducted in a fiscally prudent manner and, in the case of auxiliaries and associations, in compliance the CUNY Office of Budget and Finance Financial Management Guidelines for these entities. [Related entity contracts must be procured using the appropriate related entity documents and forms \(e.g., RFQ, PO, RFP, etc.\) and must be signed by an authorized signatory of the entity. A contract procured using College/University documents or forms is a University purchase, even if funded by a related entity.](#) The CUNY Related Entities Group counsel in CUNY's Office of General Counsel can assist with related entity procurements.
- C. Similarly, the regulations and procedures of the State and CUNY do not apply to the CUNY Research Foundation (“CUNY RF”), a legally separate New York

State corporate entity established to administer externally funded grants. The CUNY RF's policies and procedures do reflect sponsor mandates (federal agencies, etc.) and parallel CUNY to the extent feasible. Purchases against CUNY RF grants are processed independently from State-funded purchasing, following CUNY RF procedures and using CUNY RF forms. While not subject to State laws regarding procurement, procurements conducted by the CUNY RF still require diligent stewardship of resources and consideration that the purchases appear to the world as being made by CUNY.

- D. There are cases in which funding for a single purchase may be shared by both State and RF resources. In such a circumstance, both sets of procedures must apply, with the stricter standards (usually State) prevailing. It is vital therefore that good planning and coordination occur to successfully process split-funded purchases.
- E. Be reminded, however, that no construction-related contracts (and that includes architectural, consultant, and engineering services) may be entered into by any University-related entity without FPCM regardless of funding source.

**32) Purchasing says that a formal solicitation is the way we have to go. What does that mean? What must happen?**

- A. A formal solicitation process means that Purchasing will need to conduct a competitive solicitation either in the form of an Invitation for Bids (IFB) or Request for Proposals (RFP) process for the purchase of commodities and/or services that are \$100,000 or more. For a competitive solicitation process, the following steps are required:
  - 1. Purchasing prepares an IFB/RFP document, including detailed specifications provided by and in collaboration with the end user
  - 2. Purchasing submits a draft IFB/RFP to OGC for review
  - 3. Purchasing obtains OGC approval as to form for IFB/RFP  
(Note that no pre-approval by the State or City is required regardless of whether the purchase is for a Community College or Senior College, and regardless of whether the purchase is being made using City funds or State funds)
  - 4. Purchasing submits the draft advertisement to OGC for review and advertise the solicitation in the City Record and NYS Contract Reporter for fifteen business days
  - 5. Purchasing, in collaboration with the end user, prepares a board resolution for OGC review if the related expenditure is anticipated to be \$500,000 or more; submit board resolution for next Board of Trustees meeting
  - 6. Purchasing conducts pre-bid (pre-proposal) conference/site visit (if applicable)
  - 7. Purchasing receives written questions from vendors
  - 8. Purchasing, in collaboration with the end user, prepares written responses to written questions (Addenda); seek assistance from OGC; distribute Addenda to all vendors who received the IFB or RFP solicitation from the College



9. Purchasing receives Bid Submission or Proposal packages from vendors
  10. Purchasing conducts a bid opening and public reading of Bid Prices (there is no corresponding public proposal opening) and prepares a Bid Price Tabulation Sheet (which can be available to the public)
  11. Purchasing conducts a review and analysis of Bid Submissions and Proposals (with OGC help as needed) – completes bid submission/proposal analysis
  12. Purchasing identifies the lowest “responsive and responsible” bidder for IFBs and identifies the most responsive proposal for RFPs on the basis of the evaluation by a committee in accordance with criteria set forth in the RFP
  13. Purchasing checks vendor responsibility - review NYS responsibility questionnaire, check VENDEX and NYS VendRep System, references, financials, insurance coverage
  14. Purchasing prepares a contract document
  15. Purchasing sends an award letter to vendor and asks vendor to sign (several copies of ) contract
  16. Purchasing sends the contract to OGC for signature by General Counsel on behalf of the College/University after, if applicable, confirming that the Board of Trustees passed the board resolution
  17. The external approval process differs depending on source of funding:
    - a. Senior Colleges and purchases using State funds:
      - i. Where required, Purchasing submits contracts valued at \$100,000 or more to the Attorney General for legal oversight review and approval.
      - ii. If the AG approves the contract, it will forward contract package to Office of State Comptroller which will evaluate the contract and the solicitation documents to confirm that that the purchase, including the procurement process, complies with State finance law. OSC will then approve and register the contract. Only upon registration is the contract valid.
    - b. Community Colleges and Senior College purchases using City funds:
      - i. Where required, Purchasing submits contracts valued at \$100,000 or more for review and signature by the City Comptroller's office. The agreement will not be a fully executed contract until after the City Comptroller has (electronically) signed the document.
      - ii. Community Colleges using City capital funds must also have their solicitation and contract documents reviewed by the New York City Law Department.
- B. If the College wishes to purchase a particular service or commodity through a competitive solicitation when the commodity or service is available from a Preferred Source, CUNY Contract, and/or State Contract, then the end user must provide information to the Purchasing Department so that it can compile and maintain in the procurement record defensible documents and evidence justifying

why the Preferred Source Contract, the CUNY Contract, and/or State Contract was not selected. Where a Preferred Source was not selected, that Preferred Source must also be given prior written notice with an explanation and an opportunity to respond.

For more information, see FAQ 18.

**33) How is a bidder disqualified?**

- A. A bidder is considered “not responsive” (as defined under New York State law) to specifications if his/her bid submission/proposal does not “respond” to the IFB/RFP solicitation's requirements, i.e. does not meet minimum requirements.
- B. A bidder is deemed “not responsible” (as defined by New York State law) if he/she does not meet the three criteria of demonstrated ability to perform, fiscal integrity, and moral integrity. The designation “not responsible” may be used when poor past performance has been documented, in which case Purchasing, in consultation with OGC, determines that a bidder/proposer's past performance (for a College of the University) fails to meet the required standard of being “responsible” as defined by New York State law.

**34) What if the stuff I get isn't right? What if I have a problem with the vendor?**

- A. Call Purchasing right away. Provide Purchasing with the purchase order number for reference.
- B. If instructed by Purchasing to do so, take notes: take and keep a detailed log (by date/time and to whom you spoke) regarding what went wrong, and send log to Purchasing.
- C. Give Purchasing support in notifying the vendor of problem(s) encountered and, if appropriate, facilitate efforts to give the vendor an opportunity to fix the problem(s).
- D. If the item(s) ordered were not what the user department wanted, then work with the vendor to have the item(s) returned and work with the department to re-order what is needed.
- E. Note that without “proof” (e.g. a record of poor service, non-delivery, inferior products, non-compliance with terms and conditions agreed upon), the University will not be able to refuse to engage this vendor the next time. Purchasing needs your help and input to create a record of what went wrong for its files.

## WHEN CAN I GET STUFF?

### 35) How long is it going to take (for me to get my stuff)?

- A. The following are approximate time frames for processing (complete and accurate<sup>\*</sup>) purchase requisitions into purchase orders or contracts and the campuses. End-users are encouraged to discuss with the Purchasing Department the anticipated time frame for a particular purchase.
1. Purchases in the following categories generally take 1-2 weeks for Purchasing to process:
    - a. Purchases from Preferred Sources for any amount up to \$500,000.
    - b. Purchases from New York State contracts that do not require additional solicitation steps for any amount up to \$500,000.
    - c. Purchases from CUNY-wide contracts for any amount, provided that a board resolution for the purchase is already in place.
    - d. Purchases directly from New York State or other current government contract (e.g. New York City Department of Citywide Administrative Services, Department of Education, certain schedules of General Services Administration) that require no additional documentation or solicitation efforts for any amount up to \$500,000 (does not include piggybacking purchases).
    - e. Purchases following an informal purchasing process, including those from New York State-certified minority-owned women-owned or small businesses (MWBE) for amounts up to \$50,000 in certain categories (the Purchasing Department staff can advise you as to when this exemption from following a solicitation process is permitted).
    - f. Single source or sole source purchases expending less than \$50,000 for the fiscal year, provided that an order is not being deliberately and artificially split in an attempt to stay below this dollar threshold and provided that the requestor provides sufficient justification for the single source procurement/sole source procurement and evidence of reasonableness of price.
    - g. Purchases for goods valued at less than \$50,000 that are not single source or sole source purchases, provided that there is evidence that the reasonableness of pricing has been determined through appropriate method(s) under the circumstance using informal purchasing methods.
  2. Purchases in the following categories generally take 6-8 weeks to process:
    - a. Purchases from Preferred Sources with a value of \$500,000 or more.
    - b. Purchases up to \$100,000 from New York State contracts that require additional solicitation steps (e.g., conducting a mini-bid) or additional documentation or with a value of \$500,000 or more.

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<sup>\*</sup> Detailed specifications are an essential part of a complete and accurate purchase requisition. Ask your Purchasing Department for a specifications outline or specifications questionnaire to help you prepare your specifications and see FAQ #9 above.

- c. Purchases directly from New York State or other current government contract (e.g. New York City Department of Citywide Administrative Services, Department of Education, certain schedules of General Services Administration) that require no additional documentation or solicitation efforts with a value of \$500,000 (does not include piggybacking purchases).
- d. Purchases from New York State-certified minority-owned or women-owned or small businesses (MWBE) of (1) commodities, (2) services up to \$100,000, and (3) for amounts up to \$200,000 in certain categories where following an informal purchasing process is permitted (the Purchasing Department staff can advise you as to when this exemption from following a solicitation is permitted).
- e. Single source or sole source purchases for goods up to \$100,000, provided that an order is not being deliberately and artificially split in an attempt to stay below this dollar threshold.
- f. Purchases for goods valued at in excess of \$50,000 but not more than \$100,000.

*NOTA BENE:* Concocting smaller purchases (by splitting purchases or breaking up a larger purchase, by not disclosing anticipated needs, etc.) to meet lower threshold requirements is strictly prohibited. Knowingly requesting purchases of similar commodities/services as separate orders is a violation of University policy.

- 3. Purchases of services valued at \$100,000 or more from an MWBE require State pre- approval and generally take 2-3 months to process.
- 4. Purchases in the following categories generally take 6-8 months to process:
  - a. Purchases of services valued at \$100,000 or more other than from an MWBE.
  - b. Purchases in excess of \$200,000 from an MWBE.
  - c. Purchases in excess of \$100,000 that cannot be purchased from a Preferred Source, CUNY-wide contract, New York State or other current government contract. The time frame for completing a procurement process in this category can be extensive. The length of time elapsing between the initial request and delivery of goods or services varies based on the complexity of the purchase. The steps to be undertaken may take several weeks, so early planning with your Purchasing Department is key to successful procurement in the shortest time frame possible.
    - i. Bidding opportunities entailing an expenditure in excess of \$50,000 must be advertised, or the Purchasing Department must request and receive an exemption from advertising from the Office of the State Comptroller and then publish a notice of the advertising exemption.
    - ii. Purchases for which the planned expenditure exceeds \$100,000 will generally involve the issuance of a formal

- solicitation, and the selection of a vendor pursuant to an evaluation of bid submissions or proposals.
- iii. Draft solicitation documents, including the specifications, must be submitted to and approved by the CUNY Office of General Counsel before they are issued.
- iv. Planned procurements in excess of \$500,000 require the submission of a Board Resolution submitted to the CUNY Board of Trustees for approval, unless an omnibus Resolution covering the commodity or service has already been approved by the Board.
- v. Contracts also must be registered by the NYS Comptroller or the NYC Comptroller in order to be valid contracts.
- vi. In some cases, most often in the case of RFPs, some contract terms and conditions will need to be negotiated with the selected vendor.

Each of these steps can take several weeks and early planning is key to performing the procurement in the shortest time frame possible.

- 5. Involve Purchasing as soon as you are considering a purchase; Purchasing can help you frame the procurement so that the purchase can be made as expediently as possible.

### **36) What can I do to get stuff faster?**

Here are some guidelines that will help expedite your ordering of much-needed goods and services:

- A. Speak to your Purchasing Department early in the academic year and discuss your needs with Purchasing Department staff who will help you map out the quickest way to make your purchases
- B. Consult with Purchasing Department staff as the first step in the procurement process.
- C. When you submit a requisition, make sure that it, including the specifications for the commodities/services, is accurate, complete<sup>6</sup>, and authorized by the proper department so Purchasing has the information and authority it needs to act.
- D. Be flexible in determining requirements of the commodities/services. If you are specifying a particular brand name product not available on any State pre-approved contract, consider reviewing the specifications of alternate brand products that are immediately available for purchase on existing contracts.
- E. After a commodity or service has been selected, request that the College's Purchasing Department staff research all possible sources that may preclude a public solicitation (sometimes referred to as "bidding"); for example, Preferred

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<sup>6</sup> Detailed specifications are an essential part of a complete and accurate purchase requisition. Ask your Purchasing Department for a specifications outline or specifications questionnaire to help you prepare your specifications.

Sources, an MWBE or small business sources, current University-wide contracts, State of New York, City of New York, (NYC) Department of Education, or other government contracts. Purchases from these sources can be made fairly quickly because the vendors have been evaluated and vetted by the New York State Office of General Services, by CUNY, or by the City of New York.

1. familiarize yourself and your staff with State-designated Preferred Source options. Find out what commodities are available through vendors qualified by the State of New York as Preferred Sources, from which purchases can be made without competitive bidding.
2. purchases for \$200,000 or less may be made from State-certified MWBE and small businesses following an informal purchasing process (without a formal (“bid”) solicitation); of course, as is always the case, the Purchasing department is required to determine that the price being paid is reasonable. Your Purchasing Department staff is trained to assist and they are qualified to advise you of procedures to follow when using these sources.
3. conduct an online search of commodities available from contractors listed by the State of New York’s Office of General Services ([www.ogs.ny.gov](http://www.ogs.ny.gov)). Generally, items listed may be ordered through your Purchasing Department without issuing a solicitation for bids. Consult with Purchasing Department staff for guidance.

*NOTA BENE:* The OGS web site is very useful in determining if an item is available under State Contract. Contracts are now available for services as well as commodities including temporary service personnel and computer consultants, to name a few. In order to ensure that you review the latest amendments to each contract, you should search first by description to find the commodity group number and then go back to the search engine and then repeat the search using the commodity group number in the box provided. The OGS contracts may be searched through the following link: <http://ogs.ny.gov/purchase/SearchBrowse.asp>.

- F. Valuable time is wasted when departments try to circumvent purchasing guidelines by taking improper shortcuts (e.g. the end user negotiating directly with a vender prior to involving Purchasing; identifying a “single source” without proper justification; obtaining services or submitting an invoice prior to a requisition). Such improper “shortcuts” often result in making the process more complicated due to the necessity of subsequent corrective actions. Follow the proper steps from the start.
- G. While a sole source or single source designation may be used to expedite ordering and may preclude a time-consuming solicitation process, the appropriate criteria must be met. The Purchasing Department is responsible for making the determination of whether or not a sole source procurement or a single source procurement is appropriate. The Purchasing Department is required to obtain from the end-user a Non-competitive Justification Memo setting forth the reasons the end-user believes the sole source or single source procurement is justifiable and appropriate, and to create and maintain a file including the Non-competitive

Justification Memo and a written record of the determination made by the Purchasing Department after reviewing the memo.

*NOTA BENE:* A written self-declaration of sole source or single source status by the vendor is of little value and (by itself) not sufficient justification for circumventing the solicitation process.

Additional research and inquiry will be required in all cases, and your Purchasing Department staff is trained to provide guidance and seek advice from OGC when necessary. An explanation as to why only one source is available or the best option and reasonableness of price (both the total price and the rates and estimated quantities) is required in all cases, and advertisement requirements for purchases in excess of \$50,000 still apply. Please note that proposed purchases via the single source procurement method are subject to greater scrutiny since this is a procurement method that could be used to circumvent other procurement methods that can appear to be more open, fair, and transparent.

- H. Even if one cannot legitimately avoid the need to issue a solicitation, there is no need to assume that it will take an inordinate length of time to acquire needed goods and services. A key factor is planning major procurements (anything \$100,000 or more) far enough in advance to allow Purchasing to adequately assess the marketplace, advertise opportunities to prospective vendors, and prepare required solicitation documents. It is imperative that Purchasing Department staff be involved in the acquisition process from the very inception of any project involving a major procurement. Solicitation documents (sometimes referred to as “bid” documents) and the process of advertising, submitting a draft Board Resolution for review, and other preliminary steps may begin during the process of project planning. \*Do not allow the Purchasing Department staff to be the proverbial “last to know” of procurement plans under consideration.\*
- I. Concocting an “emergency” is NOT an acceptable method of speeding up the procurement process. Declarations of emergencies (events that immediately endanger the lives, health or safety of individuals in the classroom or workplace) are, by definition, rare occurrences, and require special procedures involving senior management working in concert with CUNY’s Office of General Counsel. A true emergency (such as a fire, flood, or explosion) must be reported immediately to appropriate Public Safety personnel following College guidelines.
- J. If there's an emergency - a real, immediate one, such as a fire, flood, or explosion - then regular procurement procedures will be waived. However,
  - 1. lack of planning does not constitute an emergency.
  - 2. New York State law defines an emergency situation as an unforeseen occurrence or condition or situation where a threat to health, safety, life or limb exists, or where a necessary service is threatened with material damage or suspension, or where College buildings or property are threatened.
  - 3. purchases made on an emergency basis require a declaration of emergency initiated by the Vice President for Finance and Administration and a memorandum regarding such declaration from the Vice President for

Finance and Administration to the Vice Chancellor for Budget and Finance and to the General Counsel and Senior Vice Chancellor for Legal Affairs. State laws and University policy recognize states of emergency in only the rarest of circumstances, and declarations of emergency require the Vice President's consultation with the OGC.

- K. See FAQ #35 - "How long is it going to take (for me to get my stuff)?" regarding estimated timeframes for purchases.

## **WHERE CAN I GET STUFF?**

### **37) Where should I go first?**

You must first go to your Purchasing Department, who will help you research potential sources for the purchase. Law and University policy requires that we must first consider Preferred Sources, MWBE, University-wide contracts, state contracts, other government contracts (New York City DCAS, Department of Education).

### **38) Where can I get more information?**

- A. Contact your Purchasing Department
- B. CUNYbiz.com
- C. NYS-"Selling Products and Services to the State of New York-A Guide for Small Businesses". See <http://www.ogs.state.ny.us/purchase/spg/pdfdocs/NySbGuide.pdf>.
- D. New York State Department of Economic Development - [www.empire.state.ny.us](http://www.empire.state.ny.us)
- E. New York State Office of General Services <http://www.ogs.ny.gov>
- F. New York State Contract Reporter online subscriptions [www.nyscr.org](http://www.nyscr.org)
- G. The City Record Online (CROL) <http://a856-internet.nyc.gov/nycvendoronline/home.asp>

## **WHY CAN'T I JUST HAVE MY STUFF?**

### **39) Why can't I just buy what I need when I need it?**

- A. Actually, for some items, you can! Policies vary from College to College, but certain (limited) purchases can be made directly, by:
  - 1. using blanket purchase orders. Your Purchasing Department has issued purchase orders to vendors who supply services/commodities on an as-needed basis not to exceed a specific dollar amount for the fiscal year;
  - 2. for example, a College may issue a \$1,500 order to an art supply store for the Design Department. As items are needed, the art supply store delivers against the order throughout the year. If this type of order would be appropriate for your department, contact your Purchasing Department for assistance in setting one up;
  - 3. ordering office supplies from the University-wide office supply vendor; and



4. using a procurement card (a credit card, often referred to as a “P-card”) for small purchases of non-IT goods only (not for services, software or IT hardware) in accordance with the P-card limitations and procedures, if your College has provided one to you (your department).
- B. You can't just buy what you need when you need it because compliance with State laws and regulations and University rules requires the actions of designated Purchasing Department staff. Purchasing Department staff has specific knowledge and is trained to ensure cost controls in obtaining reasonable prices and compliance with State laws and regulations and University rules and internal control procedures, consistent with the University’s commitment to public trust and transparency. The Colleges are all constituent parts of the City University of New York, which is a State political subdivision predominantly funded by public monies, and subject to State laws and University guidelines.
- C. Your College's Purchasing Department has expertise in making sure that the College makes its purchases at the lowest available price, consistent with quality requirements, from vendors who have proved themselves to be reliable and who meet established standards/requirements. The Purchasing Department is responsible for:
1. clearly representing the requester’s requirements to vendors in order to ensure the procurement of the proper goods or services within a particular timeframe;
  2. meeting the needs of the University while providing the best value (getting the best “bang for the buck”);
  3. protecting the interests of the tax payers of New York State and New York City;
  4. ensuring transparency - fair and open competition for vendors; and
  5. guarding against favoritism, improvidence, extravagance, fraud, and corruption.

<p><i>NOTA BENE:</i> CUNY employees who direct a vendor to start providing commodities or services without an approved contract in place may be personally liable for the amount owed to the contractor.</p>
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- D. All purchase commitments by the University, of which each of the Colleges is a part, must be made only by authorized individuals acting within the scope of their authority and in full compliance with the laws governing New York State purchasing practices. It is against NYS finance laws to procure a service or commodity without acquiring necessary approvals and documents in advance. Authority for purchases is vested in the Director of Purchasing and Purchasing Department staff. Purchases consummated by other means are unauthorized (if you have not been specifically granted authority to commit the College or the University, then you are not authorized to make commitments on behalf of the College/University) and are subject to non-payment by the University and subject to payment to the vendor by the unauthorized individual purporting to make the commitment on behalf of the University.

**40) Why can't I just buy the stuff I want and ask Purchasing to do the "paperwork" afterwards?**

- A. Because it's not just "paperwork", and it is against NYS finance laws to procure a service or commodity without following required procedures and acquiring necessary approvals and documents in advance.
- B. If you do, the invoice will not be paid by Accounts Payable, and you will have to find an alternative source of funds. CUNY employees who direct a vendor to provide commodities or services without an approved contract in place may be held personally liable for the amount owed to the vendor.
- C. There's no guarantee that purchases made in violation of proper procedures will be honored by the College since the required procedures may not result in a purchase that is the same as the one you made. That is, the required procedures may point to a different vendor, product, and/or **price than the one(s) you chose**. If so, then you may be personally liable for the purchase you made.

**41) Why aren't there consistent regulations governing ALL purchases?**

- A. Actually, there are. There is understandable confusion arising from the fact that not all acquisitions of goods and services require identical procedural steps. CUNY follows State-mandated rules that are based on numerous factors, such as: (1) the nature or commodity classification of the products or services specified; (2) availability of suppliers on existing government or University contracts; (3) quantitative value of the procurement; and (4) scope and complexity of the acquisition. Your College's designated Purchasing Department staff is trained to identify the appropriate classification of all procurements, and is required to follow the mandated procedure in each case, as explained below.

*NOTA BENE:* Under no circumstances is "split ordering" permitted as a means of altering the nature or dollar value of a planned acquisition or to circumvent procurement procedures.

- B. Here's a general description of how it works:
  - 1. Once you have submitted a (complete and accurate<sup>7</sup>) approved requisition for a commodity or service and funding was made available, Purchasing Department staff will determine whether or not the purchase can be made (a) from a NYS Preferred Source (as defined under State law), or (b) through an existing CUNY-wide, or New York State (OGS) contract, New York City (DCAS), or NYC Department of Education contract; (c) from a State-certified MWBEs or small business, if the purchase is for less than \$200,000. If the purchase can be made through one of these three sources (limited to \$200,000 for purchases from MWBEs and small businesses), then a purchase order will be issued without a formal ("bid") competitive solicitation process and, in most cases, without advertising the

<sup>7</sup> Detailed specifications are an essential part of a complete and accurate purchase requisition. Ask your Purchasing Department for a specifications outline or specifications questionnaire to help you prepare your specifications.

procurement, since alternative procurement procedures will have already been followed.

2. Once the value of the purchase reaches \$50,000, then advertising for fifteen business days is required for all purchases except those from NYS Preferred Source, an existing CUNY-wide, New York State (OGS), New York City (DCAS), or NYC Department of Education contract.
3. A “NYS Preferred Source” is a supplier that has met certain State-established criteria, usually related to employment of economically disadvantaged or physically challenged individuals. See FAQ # 13 above.
4. **IMPORTANT TO KNOW:** The approved requisition gives Purchasing the authority to begin working on your purchase. Purchasing is not permitted to begin making a purchase without an approved (complete and accurate) requisition, and with CUNYfirst, will not receive your requisition until it has been approved and cleared budget.
5. If the purchase cannot be made from or through a NYS Preferred Source, CUNY-wide contract, other government contract, or an MWBE, then the University is obligated to adhere to the following:
  - a. **FOR PURCHASES LESS THAN \$50,000**, the Purchasing Department may follow informal purchasing procedures; it is required to maintain a procurement record reflecting a rational basis for every purchase and to include in such record reasonableness of price. Competition is usually the best technique, but fairness and reasonableness of price may be done in a variety of ways, including (1) the solicitation of three or more quotations using the University RFQ form, (2) identifying published list pricing and determining a reasonable percentage off, (3) comparison of pricing offered to others, particularly to government entities, or (4) if the purchase is less than \$20,000, oral quotes provided to and recorded by the Purchasing Department using the Telephone Quotes form from three or more vendors. **WHILE IT IS ACCEPTABLE FOR DEANS, DIRECTORS, FACULTY, AND STAFF OF THE COLLEGE TO REQUEST GENERAL INFORMATION SUCH AS INFORMAL, PRELIMINARY PROPOSALS, AND/OR PUBLISHED LIST PRICES, THE PROVISION OF SUCH GENERAL INFORMATION BY VENDORS IS NOT RECOGNIZED AS OFFICIAL OFFERINGS TO THE COLLEGE.** All requests for prices must be issued by the Purchasing Department, and all procurements require the issuance of an official purchase order, which must be generated by designated Purchasing Department staff. Purchases are subject to post-audit by the Office of the State Comptroller.

<p><i>NOTA BENE:</i> Concocting smaller purchases (by breaking up a larger purchase, by not disclosing anticipated needs, etc.) to meet lower threshold requirements is strictly prohibited.</p>
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- b. FOR PURCHASES OF GOODS \$50,000 - \$100,000, the Purchasing Department may follow informal purchasing procedures; it is required to advertise purchases for fifteen business days in the Contract Reporter and the City Record, and to maintain a procurement record reflecting a rational basis for every purchase and to include in such record reasonableness of price.
- c. PURCHASES OF \$100,000 OR MORE, in the absence of a pre-approved contracted supplier, require more complicated procedures and lengthier time frames for processing. Advertisement of (bidding) solicitation opportunities, mandated by law, requires the scheduling of bid submission deadlines that are reasonable and that will promote competition among qualified vendors. Most procurements at this dollar threshold require solicitations of bids or proposals, using documents appropriate to the scope and nature of the services or goods to be provided (Invitations for Bids or Requests for Proposals). Purchasing Department staff will consult with OGC for the purpose of obtaining advice and counsel in the preparation of solicitation documents and formal contract documents, when appropriate. Procurements for \$500,000 or more require the approval of a board resolution by the CUNY Board of Trustees. Purchasing Department staff is trained to determine the necessity of submitting such a document, consistent with established policies, and will facilitate the submissions to the CUNY Board of Trustees.
- d. SOLE SOURCE or SINGLE SOURCE determination may be facilitated by contacting your Purchasing Department staff who is trained to assist you in establishing sole **source or single source status**. While these designations may preclude following some of the procedures outlined above, valid proof that competitive products or services are unavailable for a given procurement are required *regardless of cost of the procurement*, and Purchasing Department staff bring a broad range of experience to handling this issue. A vendor's self-declaration of such status is of little value and not sufficient justification for circumventing the solicitation process. Additional research and inquiry will be required in all cases, and your Purchasing Department staff is trained to provide guidance and seek advice from OGC when necessary.

Note: All purchases are subject to post-audit by the Office of the State Comptroller/the Comptroller of the City of New York.

**42) Why are communications with vendors restricted -- during the procurement process or at any other time? Does the Procurement Lobbying Act apply to me? What's the Record of Contact form? What is Project Sunlight, and what are its reporting requirements? What rules and guidelines are in place regarding conflicts of interest?**

- A. Communicating with the vendors is restricted during the procurement process to ensure a level playing field for vendors and to avoid attempts to influence a procurement. And, yes, the Procurement Lobbying Act applies to you, whether you are an employee of the University, one of the Colleges, or you are a member of the business community interested in or doing business with the University. See Procurement Lobbying Act - Advisory Memo from Senior Vice Chancellor and General Counsel Frederick P. Schaffer and Controller Barry Kaufman to the Presidents, Provosts, and Vice Presidents of Finance and Administration dated January 23, 2007 with respect to this topic (attached as Exhibit C). See also <http://ogs.ny.gov/acpl/>.
- B. The Record of Contact form is a form that each CUNY employee must complete, sign, and immediately submit to the Purchasing Department if s/he receives a Contact (i.e. oral, written or electronic communications that a reasonable person would infer are attempts to influence a procurement at the College/University) from a vendor during a Restricted Period, even if the employee is the Designated Contact. See Record of Contact form attached as Exhibit A.
- C. Definitions in the Procurement Lobbying Act
1. "Contact" is defined by statute and refers to those communications (written or oral) that a reasonable person would infer are attempts to influence a procurement at the College/University.
  2. "Designated Contact" is a University employee who is responsible for receiving vendor communications permissible under the Procurement Lobbying Act. The name and contact information of the Designated Contact is stated in the solicitation document.
  3. "Restricted Period" is the period during which communication between vendors (and their representatives) and University employees (including consultants and representatives) are prohibited. It begins with the earliest written notice, advertisement, or method of soliciting a response from vendors for a contract through contract registration (or the equivalent) at the City or the State and ends when the subject contract has been signed by the vendor and the University and registered by the City or the State. For CUNY procurements, the Restricted Period will begin when the Purchasing Department has been requested to initiate a solicitation. If the basis of the procurement is a single source contract or a sole source contract, then the Restricted Period will begin with the earliest method used by the University to solicit a response from vendors intending to result in a procurement contract. All communication regarding the intended purchase between University employees (except for the Designated Contact) and any potential vendors must cease as soon as the end users have requested that Purchasing initiate a purchase effort.

4. “Record of Contact” is the form that must be completed by the University employee for each “Contact” (person or organization) that takes place during a “Restricted Period”. The Purchasing Department must include all “Records of Contact” in its purchasing record for each contract.
- D. Requirements of the Procurement Lobbying Law (“PLL”) (also referred to as the Procurement Lobbying Act):
1. the PLL requires CUNY to direct all communications concerning a potential procurement to a designated contact person (“Designated Contact”) during certain periods in the procurement process;
  2. the PLL prohibits vendors from contacting anyone other than a designated contact person during these periods (e.g. during an Invitation for Bids solicitation process);
  3. the PLL requires CUNY and all of its campuses to record and maintain documentation regarding certain communications made by vendors and their representatives during these periods;
  4. the PLL requires CUNY to include such documentation in the related procurement record and be ready to submit same to the State; and
  5. the PLL requires CUNY to include certain provisions of the PLL in its procurement and contract documents.
- E. What are the consequences/penalties for violating the Procurement Lobbying Law?
1. If a vendor knowingly and willfully violates the law, then the vendor and its subsidiaries, related entities, and successor entities will be found “non-responsible” (defined in the law) and may not be awarded the contract. Two such findings within four years will result in debarment, that is, the vendor will be ineligible to respond to any solicitation or be awarded any (New York State) procurement contract for four years from date of second finding of non-responsibility.
  2. It is not yet clear what the consequences might be if the University is found to violate the Act, but it is likely that the subject contract would not be registered (and would therefore be invalid and would not be paid).
- F. What is Project Sunlight? Does it affect communications during a procurement?
1. Project Sunlight, an important component of the Public Integrity Reform Act of 2011, is an online database that provides the public with an opportunity to see the individuals and entities that are interacting with government decision-makers. Unlike the Procurement Lobbying Act, which applies during the procurement process, the reporting rules of Project Sunlight apply only when no procurement process with respect to a good or service has been initiated. The University must report, within five business days where feasible, any “appearance” between covered

individuals that concerns a potential procurement, regardless of any actual procurement is anticipated at the time.. Any individual at the University who has the power to exercise discretion in a procurement is a covered individual.

2. For purposes of the Act an “appearance” if it is a substantive interaction that is meant to affect the decision-making process of the University. Only in-person meetings and video conferences may be considered appearances. Phone calls, emails, letters, and faxes are not considered appearances and are not reported into the Project Sunlight database.
3. Appearances during the Restricted Period under the Procurement Lobbying Act do not need to be reported. If you are not sure if a meeting is a reportable appearance for the purposes of Project Sunlight requirements, please consult with the Purchasing Department and/or OGC.

G. What rules and guidelines are in place regarding conflicts of interest?

1. A CUNY employee may not engage in activities that would create or *appear to create* a conflict with their positions or raise suspicion among the public that they are likely to be engaged in acts that are in violation of their public trust.

There are several areas where the potential for a real or apparent conflict of interest could exist, including:

- personal outside employment or investments;
  - nepotism and improper political considerations in hiring and contracting;
  - release of confidential information; and
  - gifts.
2. CUNY employees are prohibited from:
    - engaging in transactions with any business entity where the employee has a financial interest that can conflict with their duties;
    - making investments that may be directly related to the employee’s decisions or which otherwise create a substantial conflict with their duties;
    - using their position to secure unwarranted privileges for one’s self or others;
    - giving reasonable basis for the appearance that they are affected by kinship, rank, position or influence of any party or person; and
    - giving the impression that any person can improperly influence or unduly enjoy favor in the performance of their official duties.
  3. No employee of CUNY may take part in any hiring or contracting decision relating to a family member. If any hiring or contracting matter arises relating to a family member, then the employee must advise his or her supervisor of the relationship.

4. CUNY employees may hold outside employment; however, the CUNY employee is required to advise his or her supervisor and the Office of Human Resources of such outside employment to verify there is no conflict of interest with the provision of the employee's CUNY job responsibilities.
5. If a CUNY employee is also engaged in providing goods and services as a vendor, the employee's firm cannot do business worth \$25 or more with any state/city agency including CUNY unless there is public notice and competitive bidding.
6. If a CUNY employee owns or controls 10% or more of the stock in a corporation, that employee may not be involved in the award of any transaction to such corporation.
7. No former employee of the University (Senior/Community Colleges, Central Office), the State University of New York (SUNY) or any New York State agency or authority (any entity whose funds are derived from New York State) may provide services to CUNY for a period of two years from the date of the individual's separation from service with CUNY. In addition, there is a lifetime prohibition on former employees returning to work on projects, initiatives, etc., that they were directly involved in while employed at CUNY.

**43) Do we have to go through a public procurement/bid solicitation process? There's only one vendor who can provide me with the goods and services I need. Why can't I just buy the item that I need?**

- A. If you believe that only one vendor can provide you with the goods and/or services you need, let the Purchasing Department know. Only the Purchasing Department can make the determination of whether a single source/sole source procurement method is appropriate, and it is Purchasing Department's responsibility to review and approve all sole source and single source purchases and to ensure that the procurement record includes "material and substantial reasons" for the single source or sole source purchase.
- B. What is a single source procurement? What is a sole source procurement? Are they different?  
The State defines and distinguishes between a single source procurement and a sole source procurement.
  1. A sole source procurement is used when only one vendor is capable of supplying the required commodities or services.
  2. A single source procurement is used when the desired commodities or services can be supplied by several vendors, but there are material and substantial reasons to prefer one vendor over the others, such as the need to upgrade current equipment with parts or to obtain software from the original manufacturer or to select a consultant for a particular expertise.
- C. End users must provide a memo to the Purchasing Department that includes:
  1. a description of the commodity and/or service being sought;



2. a statement that explains the specific elements that differentiate the selected vendor/product that the College requires from all other vendors/products available (why this one vendor/product represents the best possible source/product when considering characteristics, technical capabilities, availability of resources, facilities, expertise);
3. identification of the other vendors/products considered and, if single source procurement, a description of how the vendor was selected from the pool of potential vendors who also provide the product/service;
4. the specific reasons for selecting this vendor instead of the others describe how the product/service uniquely meets the College's needs and how selecting this vendor is in the best interests of the College and why competitive solicitation is not warranted;
5. if applicable, a description of the previous similar purchases, future requirements, and long-range objectives, including what efforts are being made to ensure future competition;
6. the overall (long-term) estimated costs of the product/service;
7. consequences if this vendor/product were not selected (as a single/sole source);
8. the basis upon which the College determined that the vendor's price is fair and reasonable (as required for all purchases).

*NOTA BENE:* A letter from the vendor declaring that it is the sole source for a product is not sufficient justification for a purchase to be made on a single source or sole source basis; the Purchasing Department must conduct its own due diligence to determine whether that vendor is the exclusive source for the required goods and/or services.

- D. It is the Purchasing Department's responsibility to review and approve all sole source and single source purchases and to ensure that the procurement record includes "material and substantial reasons" for all purchases made using sole source and single source as the procurement method. For both sole source procurements and single source procurements, Purchasing is required to include in the procurement record information regarding the circumstances leading to Purchasing's selection of the vendor, including the alternatives considered and why the alternatives would not suffice, the rationale for selecting the specific vendor, and the basis upon which a determination was made that the price was fair and reasonable.
- E. Purchases made by sole source or single source procurement methods for an amount of \$50,000 or more are subject to advertising requirements. The Purchasing Department must publish a "blind" advertisement (i.e. one that does not specifically name the proposed single/sole source vendor) in the New York State Contract Reporter and the City Record for fifteen business days. If The Purchasing Department decides to request an exemption from advertising from the State, the College must wait for the exemption before proceeding and a notice of the exemption must then be published.

- F. Please note that purchases made through a single source or sole source procurement method are subject to greater scrutiny since these methods could be used to circumvent other procurement methods that can appear to be more open, fair, and transparent. While a sole source or single source procurement method may be used to expedite ordering and may preclude a time-consuming (bid) solicitation process, the appropriate criteria must be met, and the Purchasing Department will help you determine whether it is appropriate.
- G. Steps involved in a sole source or single source procurement:
1. identify vendor providing needed commodities/services;
  2. end user submits justification memo to Purchasing, identifying why the identified vendor is uniquely qualified to provide the commodities/services, identifying the other vendors considered and why each one is not suitable for College's needs, and explaining how reasonableness of price was determined;
  3. Purchasing must review responsibility of vendor - check VENDEX, references, financials;
  4. Purchasing prepares procurement file that includes end user-provided information that justifies the decision to make the purchase on a single source/sole source basis, including why competitive solicitation is not warranted, how it was determined that the vendor's price is reasonable and fair, and what would happen if College doesn't make the purchase (as a single/sole source);
  5. request and secure exemption from advertising from OSC and publish notice;
  6. advertise in NYS Contract Reporter and City Record if (total) expenditure is \$50,000 or more;
  7. after the required advertisement has run for fifteen days, prepare contract based on University form contract;
  8. submit draft contract to OGC for review and approval as to form;
  9. submit board resolution and obtain board approval if (total) expenditure is \$500,000 or more;
  10. obtain vendor's signature;
  11. obtain University signature;
  12. secure approval from OSC/OCC (Office of State Comptroller/Office of City Comptroller), as appropriate; and
  13. notify vendor to start work.

**44) The vendor and CUNY have signed the contract. Why can't I get my stuff now?**

- A. No document for a purchase made with New York State funds is a contract until it is registered by the New York State Comptroller. (State Finance Law Section 112)
- B. No document for a purchase made with New York City funds is a contract until it is registered by the New York City Comptroller.

- C. If a College administrator or staff member directs a vendor to begin work before a contract is registered, and subsequently the Comptroller does not register the contract, then the administrator or staff member who directed the vendor to begin work may be personally liable for an indebtedness that is ultimately held to be owed to the vendor. It is against NYS finance laws to procure a service or commodity without following required procedures and acquiring necessary approvals and documents in advance. One of these essential, mandated procedures is the registration of the contract by the New York State Comptroller or the New York City Comptroller (depending on the source of funding)

**45) What's our policy with respect to Minority-Owned Business Enterprises and Women-Owned Business Enterprises (M/WBEs)? What's our policy with respect to Service Disabled Veteran-Owned Businesses (SDVOBs)? What's our Supplier Diversity Program?**

- A. It is the University's policy and commitment to make good faith efforts to ensure that New York State-certified minority and women-owned business enterprises ("MWBEs") and New York State-certified service-disabled veteran owned businesses ("SDVOBs") are given the opportunity to provide the University with commodities and services at competitive prices. The University recognizes the potential economic and social benefits of working with MWBEs and SDVOBs. Our MWBE and SDVOB programs are collectively called CUNY's Supplier Diversity program.
- B. In furtherance of this commitment, the University has established a University-wide Supplier Diversity Goal for MWBE and SDVOB participation, to be calculated on an annual, fiscal year basis. End-users should check with their Purchasing Directors for the current MWBE and SDVOB participation goals.
- C. Article 15-A of the NYS Executive Law requires CUNY's senior colleges, honors and professional schools, and the vendors and contractors with whom they do business to make good faith efforts to procure materials, supplies, equipment, and services from NYS-certified MWBEs. Article 17-B of the NYS Executive Law requires CUNY's senior colleges, honors and professional schools, and the vendors and contractors with whom they do business to make good faith efforts to procure materials, supplies, equipment, and services from NYS-certified SDVOBs. It is the University's policy to extend the spirit of these Executive Laws to all CUNY procurements, including those procurements by our community colleges.
- D. The purpose of these policies is to give those targeted businesses an opportunity to benefit from CUNY's purchasing activity, on the assumption that those targeted businesses historically have been excluded from participation and have not had an equal chance to compete. The University and the colleges are given MWBE and SDVOB participation goals, expressed as percentages of total available purchasing volume, and are instructed to implement and facilitate special outreach initiatives geared toward MWBE and SDVOBs.

- E. Empire State Development Corporation (ESD) has a searchable database that is useful in locating certified MWBEs ([www.ny.newyorkcontracts.com](http://www.ny.newyorkcontracts.com)). The NYS Office of General Services (OGS) has a spreadsheet that is useful in locating SDVOBs ([www.veterans.ny.gov/business](http://www.veterans.ny.gov/business)).
- F. The University reports senior college MWBE utilization to ESD which is responsible for monitoring senior colleges' MWBE utilization and measuring it against the University's Supplier Diversity Goal. The University reports senior college SDVOB utilization to OGS which is responsible for monitoring senior colleges' SDVOB utilization and measuring it against the University's Supplier Diversity goal. This information is also made public by the State.
- G. When engaging MWBE and SDVOB vendors, **all existing procurement rules apply**. The University reminds purchasing staff that there is an increase to the informal purchasing (discretionary procurement) threshold – up to \$200k – when targeting MWBEs, among other targeted industries. Additionally, CUNY encourages purchasing agents to actively engage MWBE and SDVOBs whenever possible.
- H. Purchasing staff are strongly encouraged to purchase directly from NYS-certified MWBEs through available governmental contracts and the University's discretionary purchasing authority to meet the dual goals of procurement efficiency and MWBE/SDVOB participation.
- I. MWBE/SDVOB Subcontracting Goals – MWBEs and SDVOBs also may serve as subcontractors or suppliers on University contracts. All contracts exceeding \$25,000 for labor, services, (including financial, printing, and other professional services), travel, supplies, equipment, materials or combination of the items listed, and contracts exceeding \$100,000 for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements must be assessed for practicable, feasible, and appropriate MWBE and/or SDVOB subcontracting goals. Please refer to CUNY – MWBE Subcontracting Goal Setting Procedures for additional information.
  - i. Goals – Purchasing staff must set MWBE and/or SDVOB subcontracting goals, tailored to each solicitation, expressed as a percentage of project value payable to MWBEs and SDVOBs as subcontractors or suppliers (MWBE/SDVOB Subcontracting Goal). Any subcontracting goal that is less than the University's current goal must be reviewed by the Office of the University Controller.
  - ii. Utilization Plans – If a University contract has an established MWBE and/or SDVOB Subcontracting Goal, then the Contractor is required to submit a Utilization Plan setting forth the Contractor's efforts to meet CUNY's Supplier Diversity Goal. The University requires all Proposals submitted in response to RFPs to include a Utilization Plan. When evaluating Bids submitted in response to IFBs, the University requires the responsible Bidder offering the lowest Bid Price (the apparent awardee) to

submit a Utilization Plan. All Utilization Plans must be reviewed by the Office of the University Controller.

- iii. Waivers – If the prime contractor cannot meet the established MWBE and/or SDVOB Subcontracting Goal, that vendor may apply for a waiver (or partial waiver) of goals from the University. Waivers must be reviewed by the Office of the University Controller.
- iv. Quarterly Contractor Compliance Report – Each quarter, prime contractors with MWBE and/or SDVOB subcontracting goals must submit a Quarterly Contractor Compliance Report to notify the University of all payments made to MWBE/SDVOBs in accordance with their respective agreements. The colleges submit these reports to the Office of the University Controller.

- J. NYS, and therefore CUNY, only recognizes a vendor as an MWBE or SDVOB vendor if it has been certified as such by NYS. We do not accept the City of New York’s MWBE certification or the federal SDVOSB certifications.
- K. Additional information regarding CUNY’s Supplier Diversity program is available on [www.cuny.edu/selltocuny](http://www.cuny.edu/selltocuny).

**46) Why do vendors wait so long before they get paid? What can I do to help?**

- A. There are a number of reasons that contribute to delays in getting vendors paid:
  - 1. often because proper procurement processes were not followed.
  - 2. often because the vendor does not send its invoices to Accounts Payable (and instead sends their invoices to the requester).
  - 3. often because requester does not sign the “receiving” paperwork promptly after receipt of the goods/services and does not create a receipt in CUNYfirst after receipt of the goods/services.
  - 4. often because requesters make purchases without going through Purchasing and necessary processes and paperwork are lacking or improperly completed.
- B. In order to process a vendor payment, a requisition, a Purchase Order, a valid invoice submitted to Accounts Payable, and a department-certified receipt with supporting documents in CUNYfirst are all required. Upon receipt of all required documents, Accounts Payable generates a voucher which goes to the City or the State, and then the City or the State wires funds to the vendor.
- C. The University avoids making late payments because:
  - 1. it's bad practice (we want our vendors to be paid on time and fairly for goods and services rendered);
  - 2. (future) pricing offered by vendors will reflect long waits for payment; and
  - 3. if more than thirty (30) days elapse from satisfactory receipt of goods to vendor payment, the University must pay penalty interest that is automatically imposed in accordance with New York State Prompt Payment Legislation; and
- D. Vendors should not suffer because the requester has not completed the necessary paperwork.

**47) What's our responsibility to the business community?**

- A. We are responsible for conducting all of our business transactions with high standards--adhering to the highest standards of business ethics.
- B. We are responsible for conducting all of our business transactions with fairness and transparency to garner public trust.
- C. We are responsible for welcoming participation in the procurement process by all qualified and competent business entities offering goods and services congruent with our goals and mission as a world-class University.
- D. As holders of public trust, we are responsible to uphold our fiduciary responsibility towards all of our funding sources for prudent stewardship of those resources. It is important to bear in mind that vendors calling on us are businesses who contribute to the public treasury.
- E. We are responsible to make sure that doing business with CUNY is mutually beneficial - CUNY is entitled to optimal quality of service, timely delivery and available in the marketplace (not always just the lowest price) and vendors are entitled to a fair profit.

**EPILOGUE**

**48) What's the bottom line?**

Your College's Purchasing Department and the University's Central Purchasing Office will make every effort to assure timely deliveries of purchases. Some pointers to keep in mind which will help us to process your requisitions on a more timely basis are:

- A. Don't let the Purchasing Department be the proverbial "last to know." BEGIN the process by involving the Purchasing Department. Inform vendors and staff that all orders placed by the administration of the College or the University must be placed through the issuance of a valid purchase order generated by the Purchasing Department.
- B. Make sure that all purchase requisitions include appropriate, active budget codes with sufficient funding to cover the purchase. If a budget transfer is necessary, the transfer must be requested and completed BEFORE the purchase requisition can be submitted to Purchasing.
- C. Submit a requisition to the Purchasing Department with complete and accurate specifications that have been written and vetted by qualified staff.
- D. Obtain all required authorization(s) prior to submission of a requisition to the Purchasing Department.
- E. Consult the calendar and vendor lead time parameters to determine realistic time frames for deliveries and services required. Submit requisitions in a timely manner,

so that timely delivery is feasible. Avoid terms like “RUSH” and “ASAP” which, through overuse, have become meaningless clichés. A realistic expectation courteously articulated will elicit a more favorable response from both potential vendors and administrative staff.

Exhibit A  
Contract Signing Authority Memo dated January 31, 2011






General Counsel & Senior Vice Chancellor for Legal Affairs

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January 31, 2011

## MEMORANDUM

To: Chancellor  
Council of Presidents  
Cabinet  
Administrative Council  
University Controller  
Legal Affairs Designees  
Purchasing Directors

From: Frederick P. Schaffer   
General Counsel & Senior Vice Chancellor for Legal Affairs

Re: Contract Signing Authority

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### Introduction

There appears to be some uncertainty within the University as to which individuals have the authority to sign contracts and which contracts require approval by the Office of the General Counsel ("OGC"). This memorandum is intended to clarify the rules pertaining to these issues and where appropriate to change them so as to achieve consistency and eliminate unnecessary delays while ensuring proper oversight.

### General Rules

CUNY, including each of its constituent colleges and professional schools, is subject to the public procurement requirements of New York State law. CUNY policy requires that OGC approve all commitments made in CUNY's name. Pursuant to Board policy, contracts for the purchase of goods and services valued at \$500,000, except contracts covered by the Board's annual omnibus resolution relating to technology contracts, must be approved by the Board of Trustees and signed by the General Counsel. For contracts valued at less than \$500,000 but \$20,000 or more, the Board has authorized the Chancellor or his designee to approve and the General Counsel to execute all such contracts.

Current practice for the Purchasing Department at each college and the Office of the Controller for the Central Office includes making purchases and commitments without review by OGC and without signature by the General Counsel where they use current OGC-issued documents, such



as purchase orders, independent contractor agreements and space rental agreements. In addition, Purchasing Departments also issue and sign purchase orders, using an OGC-issued form, to procure goods and services covered by existing contracts (that have already satisfied public procurement requirements) of the City and its agencies (including the Department of Education), the State and its agencies, and certain permitted agencies of the United States government.

This memorandum clarifies these general rules and practices and settles questions as to who precisely has authority to execute agreements for CUNY, in what amounts and under what circumstances. The remainder of the memorandum establishes such specific delegations of authority.

### **Scope of Application and Definitions**

This memorandum covers all agreements, including contracts, purchase orders and independent contractor agreements, that create obligations or liabilities on behalf of the University, any constituent unit of the University or its constituent units (but not college associations, auxiliary enterprise corporations, college foundations or the City University Construction Fund), regardless of the source of funds (*i.e.*, tax levy accounts, IFR accounts, non-tax levy accounts, accounts at the Research Foundation, etc.).<sup>1</sup> It also covers all agreements whether the University or other entity is paying for goods and services from a third party or receiving payment for providing goods and services to a third party.

The value of an agreement shall be determined by the total amount of the agreement. For example, if a service contract is for \$50,000 per year for a total of five years, its value is \$250,000. This remains true even if the University has the right to terminate the contract, whether on an annual basis or with appropriate notice. Similarly, if the University has the right to extend an annual service contract in the amount of \$50,000 for an additional four years, its value is \$250,000. Contracts may not be artificially broken up to avoid limitations. For example, if the University contracts to buy five copiers for \$10,000 apiece, the value of the contract is \$50,000 even if the purchase is divided up into five contracts. Some contracts have an uncertain or indeterminate value. In such cases, or whenever there is any uncertainty about the value of a contract, the contracting person should consult with OGC.

Notwithstanding the delegation of signing authority, all agreements must comply with laws and University policy regarding procurement. In addition, no agreement shall be signed unless the document is on a form that has been issued or approved by OGC.

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<sup>1</sup> The source of funds remains relevant as to whether it is necessary to comply with State procurement law and obtain approval of a contract by the Office of the State Comptroller.

## Delegations of Authority

### Contracts

1. Contracts in the Amount of \$100,000 or More. All such contracts must be signed by the General Counsel, except that annual renewals of technology contracts covered by the Board's omnibus resolution may be signed by the Associate Vice Chancellor and University Chief Information Officer where the terms of the contract have not been changed (other than dates and price increases set forth in the original contract) and the renewal contract does not extend beyond the term of the original contract.
2. Contracts in an Amount Less Than \$100,000. Contracts that have been approved as to form in writing by the Office of the General Counsel may be signed by the following persons:
  - a. Central Office –
    - the Controller and the Associate Controller for Procurement (with respect to contracts for goods and services other than construction and construction related services, leases and computers and software);
    - the Vice Chancellor for Facilities Planning, Construction and Management and the Executive Director of Fiscal Management in the Department of Facilities Planning, Construction and Management (with respect to contracts for goods and services relating to construction and leases); and
    - the Associate Vice Chancellor and University Chief Information Officer (with respect to contracts for goods and services relating to data and voice technology, including computers, software and telephones ).
  - b. Campuses – the President or Vice President for Finance and Administration.
3. Contracts in an Amount Less Than \$20,000. Where contracts are on OGC-issued forms or have been approved as to form in writing by OGC, the following additional persons may sign such contracts:
  - a. Central Office –
    - the Associate Controller for Procurement in the Office of the Controller (with respect to contracts for goods and services other than construction and construction related services, leases and computers and software).

- b. Campuses – the Purchasing Director and his/her designee(s). Such designee(s) must be approved annually by the Vice President for Finance and Administration on each campus and a list of such approved designee(s) must be sent to the Office of the General Counsel.

### Purchase Orders

Only purchase orders on forms issued by OGC where the underlying contract has been approved as to form in writing by OGC may be used. In cases where a purchase order is to be issued off of existing contracts of the City and its agencies (including the Department of Education), the State and its agencies, and certain permitted agencies of the United States government, so long as the terms of the purchase order are the same as or more favorable to the University than the existing government contract, then such existing contracts may be deemed to have been approved by OGC.

Where these conditions have been met, the following persons may sign the purchase order:

- a. Central Office –

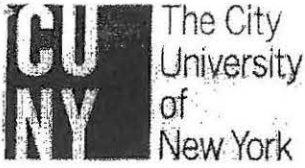
- the Associate Controller for Procurement (with respect to contracts for goods and services other than construction and construction related services and leases) and his/her designee(s). Such designee(s), and the dollar amount of their authority to sign purchase orders, must be approved annually by the University Controller, and a list of such approved designee(s) and the limits of their authority must be sent to the Office of the General Counsel; and
- the Executive Director of Fiscal Management in the Department of Facilities Planning, Construction and Management (with respect to contracts for goods and services relating to construction and leases), and his/her designee(s). Such designee(s), and the dollar amount of their authority to sign purchase orders, must be approved annually by the Vice Chancellor for Facilities Planning, Construction and Management, and a list of such approved designee(s) and the limits of their authority must be sent to the Office of the General Counsel.

- b. Campuses – the Purchasing Director and his/her designee(s). Such designee(s), and the dollar amount of their authority to sign purchase orders, must be approved annually by the Vice President for Finance and Administration, and a list of such approved designee(s) and the limits of their authority must be sent to the Office of the General Counsel.

### **Annual Filing of Forms or Signature Cards with the Office of the State Comptroller**

All forms or signature cards filed with the Office of the State Comptroller indicating the persons on each campus who have authority to sign contracts and purchase orders shall comply with the terms of this memorandum. A draft of the completed forms must be sent to the Office of the General Counsel for approval before they are sent to the Office of the State Comptroller, and a copy of the final form sent to the Comptroller must be sent to the Office of the General Counsel.

Exhibit B  
Procurement Lobbying Law Memo and Record of Contact  
under State Finance Law §139-k(4)



General Counsel & Sr. Vice Chancellor for Legal Affairs

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January 23, 2007

To: Presidents  
Provosts  
Vice Presidents of Finance and Administration

From: Frederick P. Schaffer  
Barry Kaufman

Subject: Procurement Lobbying Act - Advisory Memo

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In response to concerns about outside influence on the public procurement process and in awarding state contracts, including real estate and construction contracts, New York State enacted the Procurement Lobbying Act (State Finance Law §§ 139-j and 139-k), effective January 1, 2006. Executive Order 127, which also addressed this issue, has been withdrawn. This memo sets forth the obligations of the University, including all colleges, employees, agents, and consultants, in complying with this law

#### **Summary of the Law**

##### **The Procurement Lobbying Act (PLA):**

- requires CUNY to direct all communications concerning a potential procurement to a designated contact person during certain periods in the procurement process;
- prohibits vendors from contacting anyone other than a designated contact person during these periods (e.g. during an Invitation for Bids solicitation process);
- requires CUNY and all of its campuses to record and maintain documentation regarding certain communications made by vendors and their representatives during these periods;
- requires CUNY to include such documentation in the related procurement record and be ready to submit same to the State; and
- requires CUNY to include certain provisions of the PLA in its procurement and contract documents.



## Key Terms

“Contact” is defined by statute and refers to those communications (written or oral) that a reasonable person would infer are attempts to influence a procurement at the College/University.

“Designated Contact” is a University employee who is responsible for receiving vendor communications permissible under the Procurement Lobbying Act. The name and contact information of the Designated Contact is stated in the solicitation document.

“Restricted Period” is the period during which communication between vendors (and their representatives) and University employees (including consultants and representatives) is prohibited. It begins with the earliest written notice, advertisement, or method of soliciting a response from vendors for a contract through contract registration (or the equivalent) at the City or the State and ends when the subject contract has been signed by the vendor and the University and registered by the City or the State. For CUNY procurements, the Restricted Period will begin when the Purchasing Department has been requested to initiate a solicitation. If the basis of the procurement is a single source contract or a sole source contract, then the Restricted Period will begin with the earliest method used by the University to solicit a response from vendors intending to result in a procurement contract. All communication regarding the intended purchase between University employees (except for the Designated Contact) and any potential vendors should cease as soon as the end users have requested that Purchasing initiate a purchase effort.

“Record of Contact” is the form that must be completed by the University employee for each “Contact” (person or organization) that takes place during a “Restricted Period”. The Purchasing Department must include all “Records of Contact” in its purchasing record for each contract.

### What does the law require of the business community?

The Procurement Lobbying Act obligates the business community to make only permissible Contacts during the Restricted Period. The business community generally is prohibited from contacting anyone other than the designated contact person during the Restricted Period. Vendors who are seeking an opportunity to sell to the University must disclose whether there has been a finding of non-responsibility (as defined by law) with regard to compliance for the past four years. Vendors will be required to affirm their understanding of and agreement to comply with the University policy, guidelines, and procedures and certify that all information provided to the University regarding Contacts is complete, true, and accurate.

### What does the law require of the College/University?

- Any person at the College/University who receives a Contact from a vendor during a Restricted Period must make a written record of such contact and must inquire and record whether the person or organization that made the Contact was a vendor involved in the procurement or was retained, employed, or designated on behalf of a



vendor to appear before or contact the College/University. A copy of a "Record of Contact" form is attached to this memorandum. Should a Contact occur during the Restricted Period, complete the form and send it to your college's Purchasing Director immediately after the Contact occurs.

- The Purchasing Department must include all of the completed "Records of Contact" in its procurement record for each contract.
- The Purchasing Department must designate one individual as the "Designated Contact" for each procurement effort, and all inquiries from the business community to the University must be directed to the Designated Contact.
- The University is obligated to notify the State Comptroller of all determinations of non-responsibility and debarment. The University Controller's office will make such notifications.

**What triggers the requirements of the Procurement Lobbying Act for the University?**

- a solicitation for proposals or bids from the business community
- mini-bids (in connection with a State contract)
- granting of a concession or franchise where the recipient is required to pay a fee

**The Procurement Lobbying Act generally does not apply to the following situations:**

- inter-governmental agreements ("MOUs")
- solicitations and purchases made with non tax-levy monies
- serial purchases (even exceeding \$20,000 within a one-year period) from a state centralized contract that does not require a solicitation resulting in a procurement contract

**Is every communication between a University employee and the business community a "Contact"?**

No, the communication must take place during the Restricted Period and be a communication that a reasonable person would infer are attempts to influence a procurement at the College/University. Communications may be in person, by telephone, by mail, or by electronic mail and may occur in a business or social setting. It is a good idea to assume that all communications that are not ministerial in nature are attempts to influence.

Communications that a reasonable person would infer are not intended to influence a procurement do not have to be recorded. Each situation will depend on its facts, but unsolicited advertisements, emails, or phone calls would not likely be deemed a "Contact".

State Finance Law §§ 139-j and 139-k do not apply to communications between one governmental entity and another regarding requests for information about a potential vendor's performance.

**Are intra-CUNY communications covered by the Procurement Lobbying Law?**

University employees and University consultants may continue business communications previously allowed under existing law. State Finance Law §§ 139-j and 139-k do not apply to communications between University employees regarding information about a potential vendor's performance.

**Does the Procurement Lobbying Act apply to non-tax-levy money purchases?**

No, the Procurement Lobbying Act does not apply to non-tax-levy money purchases; however, the University must still follow sound purchasing practices, and the University has a duty to ensure that all purchases are made with good business judgment and fiscal responsibility. Good business practice requires that all communication with the business community during the solicitation and procurement process must be directed to one designated person, and the designated person should be notified if any other communications with the business community took place during the solicitation and procurement process. Bear in mind that non-tax-levy money purchases may be subject to heightened scrutiny.

**What communications are *not* affected by the Procurement Lobbying Law?**

Other than communications regarding covered procurements during a Restricted Period, University employees and University consultants may continue business communications previously allowed under existing law. The following communications are allowed at any time and are not subject to the Procurement Lobbying Act:

- communications among University employees and University consultants, or between University employees/University consultants and other state agencies' employees during the normal conduct of their duties, even if the communication pertains to a covered procurement during a Restricted Period;
- communications between vendors and University employees/University consultants concerning ongoing contract administration of an existing contract, such as for billing inquiries or performance issues;
- communications between University employees/University consultants and the commercial marketplace in the course of doing preliminary research, such as for product demonstrations, prior to the public advertisement or solicitation of a response from one or more vendors; and
- communications between vendors and University employees/University consultants in the course of general marketing outreach, such as when a vendor sends

unsolicited advertising materials to University or a vendor conducts a demonstration of a new product where the vendor describes the product and advocates its use (not related to a specific procurement).

**Can the Designated Person (for a particular procurement) receive a "Contact"?**

Yes, if a vendor contacts the Designated Contact, and the contact is one that a reasonable person would infer is intended to influence a procurement during the Restricted Period, then it is also considered a "Contact" and the Designated Contact must complete a Record of Contact and include it the procurement file.

**What are permissible Contacts during the Restricted Period?**

The following Contacts during the Restricted Period are permissible and there is no need to create a Record of Contact if directed to the Designated Contact:

- submission of a bid, proposal, or response to a solicitation;
- submission of written questions (as part of solicitation process);
- ministerial communications concerning due dates or contact information
- participation in a pre-bid conference or site visit;
- complaints by a vendor to the Office of General Counsel where the Designated Contact fails to respond in a timely matter;
- negotiations with the University after notice of a tentative contract award;
- debriefings about a procurement contract award; and
- filing of written disputes in administrative hearings, judicial proceedings and to the attorney general, inspector general, district attorney or state comptroller.

**What are the consequences/penalties for violating the Procurement Lobbying Act?**

If a vendor knowingly and willfully violates the law, then the vendor and its subsidiaries, related entities, and successor entities will be found "non-responsible" (defined in the law) and may not be awarded the contract. Two such findings within four years will result in debarment, that is, the vendor will be ineligible to respond to any solicitation or be awarded any (New York State) procurement contract for four years from date of second finding of non-responsibility.

It is not yet clear what the consequences might be if the University is found to violate the Act, but it is likely that the subject contract would not be registered (and would therefore be invalid and would not be paid).

If you require additional guidance or if you have any questions, please call Howard Altschuler (212-397-5655) at the Office of the University Controller or Marina Ho (212-794-5382) or Jane Sovern (212-794-5382) at the Office of General Counsel.

Please distribute this Advisory Memorandum as widely as possible on your campus.

Attachment: Record of Contact Form

- c: Board of Trustees
- Chancellor Matthew Goldstein
- Cabinet
- Administrative Council
- Internal Audit
- Business Managers
- Purchasing Directors
- Financial Aid Directors
- Campus Facilities Officers
- Environmental Health & Safety Officers
- Labor Designees
- Legal Designees
- Ethics Officers
- Human Resources Directors
- Registrars
- Chief Student Affairs Officers
- Information Technology Directors
- Public Safety Directors

Record of Contact under State Finance Law §139-k(4)

To: Procurement Record for \_\_\_\_\_  
Procurement Contract Number \_\_\_\_\_

From: \_\_\_\_\_  
(name and title of person completing this form)  
\_\_\_\_\_ College, City University of New York

Subject: Record of Contact under State Finance Law §139-k(4)

Date: \_\_\_\_\_

I had Contact with the below-named individual regarding the above identified procurement. The term "Contact" is defined in State Finance Law §139-k(1)(c). In accordance with State Finance Law §139-k(4), the following information was obtained:

Name: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Telephone Number: \_\_\_\_\_

Place of Principal Employment: \_\_\_\_\_

Occupation: \_\_\_\_\_

1. Was the person making the contact informed that the contact would be documented?  
(check one)       Yes                       No
2. Is the above-named person or organization the bidder or proposer ("Offerer") in this procurement?  
(check one)       Yes                       No
3. If the above-named person or organization is not the Offerer, then was the above-named person or organization retained, employed, or designated by the "Offerer" to:
  - a. appear before the College/University about the procurement?  
(check one)       Yes                       No
  - b. contact the College/University about the procurement?  
(check one)       Yes                       No

List date(s) of Contact: \_\_\_\_\_  
(add additional pages as necessary)

Summarize the form (e.g., email, letter, conversation) and topic of the communication on each date of Contact:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
(add additional pages or copies of written communications as necessary)

Instructions for Completing Record of Contact  
under State Finance Law §139-k(4)

The Procurement Lobbying Act prohibits vendors from contacting anyone other than the designated contact person(s) during the Restricted Period and obligates the College/University to make a written record of any Contacts that are made during the Restricted Period. The law also obligates the University to inquire and record whether the person or organization that made the Contact was the Offerer or was retained, employed or designated on behalf of the Offerer to appear before or Contact the College/University.

- ☞ “Contact” is defined by statute and refers to those oral, written or electronic communications that a reasonable person would infer are attempts to influence a procurement at the College/University.
- ☞ “Restricted Period” means the earliest written notice, advertisement, or method of soliciting a response from vendors for a contract through contract registration (or equivalent) at the City or the State. For practical reasons, as soon as your end users are talking to Purchasing about making a purchase, any communication between the end users and the vendors must cease.

Any person at the University who receives a Contact during a Restricted Period must complete a separate form

[http://www.ag.ny.gov/sites/default/files/pdfs/bureaus/budget\\_fiscal/PROCUREMENT-LOBBYING-FORM.pdf](http://www.ag.ny.gov/sites/default/files/pdfs/bureaus/budget_fiscal/PROCUREMENT-LOBBYING-FORM.pdf)

for each “Contact” (person or organization) that takes place during the restricted period of a procurement pursuant to New York State Finance Law §139-k(4). Purchasing must include all of the completed “Records of Contact” in its procurement record for each contract.

Information and guidance on the “restricted period” and permissible Contacts can be found in the guidelines issued by the Advisory Council on Procurement Lobbying, which can be found on the OGS website at

[http://www.tax.ny.gov/about/procure/procurement\\_lobbying\\_act.htm](http://www.tax.ny.gov/about/procure/procurement_lobbying_act.htm)

Exhibit C  
June 4, 2004 Construction Projects Memo – Chancellor Goldstein



# The City University of New York

*The Chancellor*

June 4, 2004

To: College Presidents

From: Matthew Goldstein *MG*

Re: **College-Managed Construction Activity**

As I have mentioned before, I want to reiterate that there are certain requirements and procedures to be followed in the procurement and implementation of facility improvements managed by the individual Colleges. Although these requirements have existed for many years, as I previously advised you in my memorandum dated April 10, 2003, a number of the Colleges have failed to comply with these procedures.

In simplest terms, any proposed facility-related improvement or modification, regardless of the funding source, must be reviewed and approved by the Office of Facilities Planning, Construction and Management. This review shall include seeking approval by the Board of Trustees where appropriate.

Specifically, any projected work related to physical plant alterations, whether funded from capital or operating budgets, grants or gifts, and whether performed by contractors or in-house staff, must be reviewed by the Office of Facilities Planning, Construction and Management prior to its initiation. This consultation should be done prior to submitting grant proposals or retaining outside consultants or using your professional staff to prepare plans, as well as after specifications are completed and prior to contracting the actual work.

An essential purpose of this review is to assure that building modifications are in conformity with applicable building code requirements. The Department of Design, Construction & Management has the appropriate technical staff to review proposed structural, plumbing, mechanical and electrical work to ensure that it is code-compliant and compatible with existing infrastructure. In addition, the University's underlying financing agreements with the Dormitory Authority require a "review of plans for proposed alterations in any Dormitory Authority-owned facility." Aside from the safety concerns, any room changes should be consistent with campus master plans and CUNY space standards. Any proposed space modifications should be assessed by the Department of Space Planning & Capital Budgeting to ensure compliance, and to ascertain that all building modifications are incorporated into its computerized space database.



On occasion, the Office of Facilities Planning, Construction and Management has found that certain College-initiated changes have violated code requirements, or overloaded system capacities and created hazardous conditions. Similarly, equipment acquired through successful grant proposals has necessitated expensive (and unfunded) installation costs that were only thought of after the equipment was received. I must advise you that we no longer have access to the resources of DASNY's Building & Equipment Reserve Fund, which in the past was used to correct inappropriate or unanticipated work. In the future, the only funding source for any such work will be the Colleges' own operating budgets. It is obviously best to avoid such situations in the first place.

Once again, I ask that you direct your staff to advise the Office of Facilities Planning, Construction and Management of any relevant grant proposals or proposed building alterations, whether done by contractors or by on-campus staff. Your staff will receive a response within one week of their written submission.

If you need any clarification of the foregoing, please call Vice Chancellor Emma Macari.

cc: Senior Vice Chancellor Allan Dobrin  
Vice Chancellor Emma Macari  
Vice Presidents/Deans for Finance/Administration  
Campus Facilities Officers  
Joanna Pestka, DDCM Director  
Meghan Moore-Wilk, SPCB Director

Exhibit D

**CUNY PURCHASING HIERARCHY**

<p><b>1. Preferred Source</b></p>	<p>Additional information on available products and services can be found at:  <a href="http://www.ogs.state.ny.us/procurecounc/pdfdoc/pslist.pdf">http://www.ogs.state.ny.us/procurecounc/pdfdoc/pslist.pdf</a></p>	<p><b>NYSID</b> (NYS Industries for the Disabled)  <b>NYSPSP</b> (NYS Preferred Source Program for People who are Blind)  <b>Corcraft</b> (Dept. of Corrections/Furniture)</p>
<p><b>2. University-Wide Contracts and other Centralized Contracts</b></p>	<p>Where feasible, the Office of the University Controller – Purchasing, leverages CUNY’s buying power to procure goods and services on favorable terms by entering into a University-wide contract with a vendor.           If there is no University-wide contract, products and services centrally procured by these City and State departments must then be considered, if available.</p>	<p><b>CUNY</b>  <b>OGS</b> (NYS Office of General Services)  <b>DCAS</b> (NYC Department of Citywide Administrative Services)  <b>DOE</b> (NYC Department of Education)  <b>DOITT</b> (NYC Dept. of Information Technology &amp; Telecommunications)  <b>GSA</b> (General Services Administration)</p>
<p><b>4. Requests for Quotations          Telephone Quotations          Requests for Proposals          Invitation for Bids          Piggybacking          Consortia Contracts</b></p>	<p>The method used will depend on the type of goods and/or services being acquired, the total value, and other circumstances.</p>	<p><b>RFQ</b> (Informal Competitive)  <b>TQ</b> (Informal Competitive)  <b>RFP</b> (Formal Competitive)  <b>IFB</b> (Formal Competitive)</p>
<p><b>5. Single or Sole Source</b></p>	<p>Whenever possible, a competitive process is used to select the most suitable vendor. However, in some cases single / sole source procurement will be appropriate. For guidance, see the Purchasing FAQs or discuss with the Purchasing Department</p>	<p><b>Non-Competitive</b></p>

Exhibit E  
Informal Purchasing Memorandum

November 6, 2015

**MEMORANDUM**

To: Cabinet  
College Presidents  
Vice Presidents of Finance and Administration  
Business Managers  
Purchasing Directors and Accounts Payable Directors  
Legal Affairs Designees

From: Frederick P. Schaffer, General Counsel & Senior Vice Chancellor for Legal Affairs  
Leonard Zinnanti, University Executive Controller

Re: Informal Purchasing (Discretionary Purchasing Authority)

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**I. Introduction**

Certain purchases made by The City University of New York and its colleges are not subject to the formal competitive solicitation processes that are otherwise required by applicable law and policy, such as the receipt of sealed bids and proposals (“Formal Purchasing”), but instead may be procured using informal purchasing methods under the University’s discretionary purchasing authority pursuant to the State Finance Law and Education Law (“Informal Purchasing”). Colleges, acting through their Purchasing Departments, may use Informal Purchasing when obtaining commodities or services under certain dollar thresholds, and after meeting other University and New York State requirements. Where permitted, Informal Purchasing is intended to allow colleges to use streamlined processes to obtain needed goods and services at competitive prices. This memorandum sets forth specific procedures for the use of Informal Purchasing by colleges.

Colleges must follow these procedures when utilizing Informal Purchasing. Any deviations from these procedures must be approved in advance in writing by the Office of University Controller and the Office of General Counsel.

These procedures do not apply to procurements by The City University Construction Fund, college associations, auxiliary enterprise corporations, or college foundations.

## II. Overview of Informal Purchasing

The University may use Informal Purchasing to procure commodities and/or services with a value of less than \$100,000 that are not available through preferred sources or centralized contracts, including CUNY-wide contracts. Informal Purchasing may not be used to procure commodities and/or services valued at \$100,000 or more except as noted in Section VI (Exceptions to Informal Purchasing Threshold), below.

Informal Purchasing is distinct from Formal Purchasing in the type of solicitations used as well as the statutory requirements and rules that govern the related procurements. Informal Purchasing is used for lower dollar value, less complex, often one-time, purchases that do not exceed \$100,000.<sup>1</sup> Informal Purchasing methods include the use of Telephone Quotes or written Requests for Quotes (“RFQ”). Advertising may be required when using Informal Purchasing based on the value of the purchase. As further described in these procedures, there are both competitive and non-competitive Informal Purchasing methods.

Formal Purchasing is typically used for higher dollar and/or more complex purchases, typically in excess of \$100,000. Formal Purchasing typically results in the provision of commodities and/or services generally over a period of time (e.g., year or multi-year terms). Formal Purchasing methods are often dictated by specific statutory requirements that direct the solicitation, selection, and award processes such as the use of Requests for Proposals (“RFP”) and Invitations for Bid (“IFB”) and the receipt of sealed proposals and bids. Contract awards under Formal Purchasing may require additional CUNY, City and State approvals.

## III. Informal Purchasing Requirements and Restrictions

### A. Informal Purchasing Requirements

When considering the use of Informal Purchasing, colleges must adhere to all applicable purchasing requirements, including the following:

1. Coordinating all purchases through their Purchasing Departments. All Informal Purchasing methods, including Requests for Quotes and Telephone Quotes, only may be used by college Purchasing Departments. Other college staff may use the written Requests for Quotes document for purposes of obtaining price estimates for budgeting purposes only. Purchasing Directors may use the results of such price estimates as the basis of a purchase if they determine that the methodology followed was consistent with the requirements of these procedures.
2. Researching whether potential purchases in the aggregate (see footnote 1) by the college of the same commodity or service will exceed \$100,000, or, in the case of purchases described in Section VI below, \$200,000 (the “Informal Purchasing

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<sup>1</sup> In determining whether a particular solicitation meets one of the Informal Purchasing dollar thresholds described in this policy, colleges shall consider the reasonably expected aggregate amount of all purchases of the same commodities or services to be made within the twelve-month period commencing on the date of purchase. When a college can reasonably anticipate that repeat or multi-year purchases of the same commodities or services are necessary, the college shall aggregate the expected repeat or multi-year purchases when determining whether the purchases meet one of the applicable Informal Purchasing dollar thresholds. Colleges may not enter into amendments or renewals to purchases made using Informal Purchasing that would cause the aggregate purchase to exceed the applicable Informal Purchasing dollar threshold. Purchases of services or commodities shall not be artificially divided for the purpose of satisfying the applicable thresholds.

Threshold”), and monitoring actual purchases made of the same commodity or service using Informal Purchasing methods to ensure that such purchases will not exceed the applicable Informal Purchasing Threshold.

3. Ensuring that the commodity or service sought satisfies the college’s required form, function, and utility, and determining whether a preferred source or a centralized contract offers commodities or services that can satisfy these requirements.
4. Only if the requirement cannot be met through a preferred source or centralized contract, using competition to the maximum extent practicable through a Telephone Quote or the written Request for Quotes, using forms issued by the University’s Office of General Counsel (“OGC”).
5. As applicable, setting MWBE goals on purchases in excess of \$25,000 as required by law and the University’s Policy on Purchasing from Minority-Owned and Women-Owned Businesses.
6. In addition, when conducting procurements for commodities and/or services valued at \$20,000 or more but less than \$100,000, colleges must use an RFQ, IFB, or RFP.
7. Obtaining all necessary internal and external approvals.
8. Advertising in the NYS Contract Reporter and The City Record when the value of the purchase is \$50,000 or more. (Senior Colleges may forego advertising if they obtain an exemption from the NYS Comptroller and publish notice of the exemption in the NYS Contract Reporter.)
9. Obtaining and maintaining all required forms, certificates, and information from the prospective vendor.
10. Maintaining a record of the procurement that demonstrates that the requirements have been met and includes documentation of fairness and reasonableness of price.<sup>2</sup>
11. Complying with the University’s Contract Signing Authority policy.
12. Obtaining Office of General Counsel approval as to form for any solicitations for services in excess of \$50,000 and for commodities in excess of \$100,000.

#### B. Informal Purchasing Restrictions

Informal Purchasing procedures also are subject to the following restrictions:

1. Colleges may not use Informal Purchasing methods for procurements of construction, architecture, engineering and/or surveying services.
2. Colleges may not artificially divide purchases in order to use Informal Purchasing. Splitting purchases is prohibited. Amendments to or renewals of contracts or purchase orders issued using Informal Purchasing shall not cause the total value of the associated purchase to exceed the original Informal Purchasing Threshold for the procurement.
3. Telephone Quotations are for use of college Purchasing Department staff only.
4. Telephone Quotations are **not** allowed for the purchase of commodities and/or services with a value of \$20,000 or more.

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<sup>2</sup> See Section VII (Award under Informal Purchasing) for a discussion of how to establish fairness and reasonableness of price.

#### **IV. Competitive Informal Purchasing Methods**

##### **A. Telephone Quote**

A Telephone Quote is an Informal Purchasing method that may be used only by college Purchasing Department staff to obtain verbal quotes for commodities and/or services with a value that is less than \$20,000. When using a Telephone Quote the college Purchasing Department staff must obtain a minimum of three (3) quotes. Colleges must use the form documents issued by OGC for Telephone Quotes and maintain the completed forms as part of the procurement record.

The use of Telephone Quotes is **not** allowed for the purchase of commodities or services with a value of \$20,000 or more.

##### **B. Request for Quotes**

A Request for Quotes is an Informal Purchasing method that can be used for purchases by the college Purchasing Department of either commodities and/or services with a value of less than \$100,000, except as permitted under Section VI (Exceptions to Informal Purchasing Threshold) below. Colleges must use the RFQ form issued by OGC and maintain the completed RFQ and all vendor responses as part of the procurement record. When using an RFQ with a value that is less than \$50,000 the college Purchasing Department staff must obtain a minimum of three (3) quotes. When using an RFQ with a value that is \$50,000 or more but less than \$100,000 the college Purchasing Department staff must obtain a minimum of five (5) quotes. Colleges must use the form documents issued by OGC for Telephone Quotes and maintain the completed forms as part of the procurement record.

#### **V. Non-Competitive Informal Purchasing Methods**

In certain limited instances purchases may be made without using competitive methods under the Informal Purchasing dollar threshold.

##### **A. Single Source**

The single source procurement method may be used when there is more than one vendor capable of providing the needed commodity or service and one vendor clearly represents the best possible source due to several factors, including price, technical requirements, capabilities, expertise, resources, facilities, and schedule.

Prior to proceeding with a single source purchase, the college end-user must prepare a non-competitive single source justification memorandum for review by the college Purchasing Director. The college end-user must include the following information in the memorandum:

- description of the commodity or service sought;
- explanation of why one vendor represents the best possible source considering price, technical capabilities or characteristics, availability of special expertise, resources, facilities, and schedule;
- explanation of alternatives considered and why such alternatives were deemed not acceptable;
- description of the procurement history, future requirement and long-range objectives, including what efforts have been made to ensure future competition can occur;

- estimated costs, including documentation of fairness and reasonableness of price; and
- schedule considerations.

The college Purchasing Director will review the justification memorandum and make a determination as to whether the information presented is sufficient to select the single source purchase as the most appropriate procurement method. The Purchasing Department may proceed with the purchase on a single source basis only if the Purchasing Director has determined that a single source justification exists. If the college proceeds with the purchase on a single source basis, then the college Purchasing Department must maintain as part of the procurement record the single source justification memorandum and a record of the Purchasing Director's determination relating to the justification memorandum. The Purchasing Department must justify and document as part of the procurement record the fairness and reasonableness of the prices to be paid for the commodities and/or services purchased.

If the Purchasing Director determines that a single source procurement is not justified for a particular purchase, then the college must use another procurement method, following the purchasing hierarchy as described in this policy.

#### B. Sole Source

The sole source procurement method may be used when there is only one entity capable of providing the needed commodity and/or service, typically by virtue of exclusive technical capability (e.g., existence of patents, trade secrets, copyrights, technical and/or other proprietary data and rights); exclusive performance capability (e.g., the entity is unquestionably the predominant expert and is the only one with the highly specialized experience considered vital to the commodities and/or services needed); resource capability (e.g., the entity has exclusive facilities and/or test equipment that are complex or specialized and vital to the effort); schedule capability (e.g., the entity is the only one who can do the job within the required schedule constraints, typically of an urgent or emergency nature). Schedule constraints or a vendor's performance capability, however, are not sufficient by themselves to support a sole source purchase.

A purchase using the sole source procurement method must be supported with demonstrated, verifiable evidence. Purchasing Directors and end-users must set forth the evidence in a non-competitive procurement justification memorandum that must include the following information:

- description of commodity/service sought;
- explanation of vendor's exclusive capability;<sup>3</sup>
- discussion of the procurement history, future requirement and long range objectives;
- discussion of the efforts made to ensure that future competition can occur;
- estimated costs including the fairness and reasonableness of the price;<sup>4</sup> and
- schedule.

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<sup>3</sup> Relying only upon on a vendor's assertion of exclusive capability is not sufficient evidence to use the sole source procurement method.

<sup>4</sup> Using a sole source procurement method does not relieve the Purchasing Department of ensuring a fair and reasonable price.



## **VI. Exceptions to Informal Purchasing Threshold**

### **A. Exception**

Informal Purchasing may be used for purchases with a value of up to \$200,000 when award is made to or for one or more of the following:

- New York State Small Businesses;
- New York State certified Minority- and/or Women-Owned Business Enterprises;
- recycled or remanufactured commodities or technology; or
- commodities that are food including milk and milk products that are grown, produced or harvested in New York State.

### **B. Definitions**

The following definitions and requirements apply to this Section VI.

1. New York State Small Business: A business that is resident in New York State (“NYS”), independently owned and operated, not dominant in its field and employs 100 or fewer persons; colleges must obtain a certification from the vendor that the vendor meets this criteria.
2. New York State certified Minority and/or Women Owned Enterprises: A business that is certified by the NYS Department of Economic Development as a minority- or women-owned enterprise (“MWBE”).
3. Recycled or Remanufactured commodities or technology: A recycled commodity is a product manufactured from secondary materials as defined in NYS Economic Development Law §261 (1) and State Finance Law §165(3)(a). A remanufactured commodity is a commodity that has been restored to its original performance standards and functions 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. Colleges must obtain a certification from the vendor that the commodity or technology is recycled or remanufactured.
4. New York State Food Commodities: Food, including milk and milk products that are grown, produced or harvested in NYS (“NYS Food Products”). In addition to the advertising requirements described in Section VII (Advertising) below, if the purchase of NYS Food Products exceeds \$50,000 in value, the college must advertise the purchase on the college website for a reasonable period of time and must make the purchase based on lowest price.

## **VII. Advertising**

### **A. Requirement for Advertising**

The purchase of commodities and/or services valued at \$50,000 or more must be advertised in the New York State Contract Reporter as required by the Article 4-C of the Economic Development Law. In addition, CUNY also requires advertisement of such purchases in The City Record.

Colleges must advertise in the NYS Contract Reporter and The City Record at least fifteen (15) business days prior to conducting a solicitation event including: holding pre-bid/pre-proposal conferences; receiving quotes, bids or proposals; making awards; or entering into contracts or issuing purchase orders.

#### B. Exceptions to Advertising

Several types of purchases, identified below, are *exempt* from the advertising requirement:

- Preferred Sources (e.g., NYS Industries for the Blind, NYS Industries for the Disabled);
- centralized New York City, NYS or federal contracts or a NYS pre-approved piggyback contract; and
- single source procurements and sole source procurements for Senior Colleges, but only if the College first obtains an exemption from advertising from the NYS Comptroller and places a notice in the NYS Contract Reporter, as soon as practicable, indicating that an exemption has been received, identifying the reasons for the exemption, the vendor, providing a description of the commodities or services, and the value of the purchase.

#### C. Advertising a Single or Sole Source Purchase

When considering a single or sole purchase in excess of \$50,000, Purchasing Departments must use a “blind” advertisement to assist the college establish the justification for the single or sole source purchase. A blind advertisement must indicate that the college intends to purchase the commodities and/or services, but must not specifically name the proposed single source or sole source vendor. In addition, the advertisement must identify the unique qualifications and salient characteristics of the commodity and/or service being purchased and any related University requirements and permit interested vendors to respond to the college. Requirements that artificially preclude competition or are biased to a particular vendor are prohibited.

If there is only one response to the advertisement, then the college will have satisfied the requirement for competition and may proceed with the single or sole source purchase with the responding vendor. However, if more than one response is received to the advertisement, a competitive process may be required. Any questions should be directed to the Office of the University Controller and the Office of General Counsel.

Exception for Senior Colleges: In lieu of advertising a single source or sole source procurement with a value of \$50,000 or more, Senior Colleges may request an exemption from advertising from the NYS Comptroller. An exemption request should contain a complete description of the procurement and address all the aspects of the procurement identified under Section V(A) above including fairness and reasonableness of price. If the NYS Comptroller grants the exemption, the Senior College must publish notice of the exemption in the NYS Contract Reporter. The notice must state the reason for the exemption and be placed as soon as practicable. The Senior College must maintain the published notice as part of the procurement record. If the procurement is subject to NYS Comptroller pre-audit, then the Senior College must also submit a copy of the exemption approval and the publication notice to the NYS Comptroller. (Note that this exemption is not available to Community Colleges, which must advertise all individual procurements in excess of \$50,000.)

#### D. Advertising an Informal Purchase

The following advertising templates are to be used when advertising and using Informal Purchasing:

##### 1. Alternative #1

[College] intends to purchase [project description, e.g., 1,000 widgets] pursuant to its discretionary authority under the New York State Education Law and State Finance Law, which authorize purchases without a formal competitive process in certain circumstances, including purchases from New York State small businesses, from businesses certified pursuant to Article 15-A of the New York State Executive Law and, if applicable, from businesses selling commodities or technology that are recycled or remanufactured or commodities that are food, including milk and milk products, grown, produced or harvested in New York State. Interested parties should contact [College contact] to discuss this opportunity.

##### 2. Alternative #2

[College] intends to purchase [project description, e.g., 1,000 widgets] pursuant to its discretionary authority under the New York State Education Law and State Finance Law. Interested parties should contact [College contact] to discuss this opportunity.

##### 3. Alternative #3

[College] intends to purchase [insert project description, e.g., 1,000 widgets] pursuant to its discretionary purchasing authority under the New York State Education Law and State Finance Law. This procurement opportunity is limited to New York State small businesses, businesses certified pursuant to Article 15-A of the New York State Executive Law, and, if applicable, businesses selling commodities or technology that are recycled or remanufactured or commodities that are food, including milk and milk products, grown, produced or harvested in New York State.

If a college desires to use a different advertisement from the above templates, the college must contact OGC for additional options.

### **VIII. Award under Informal Purchasing**

#### A. Purchasing Hierarchy

When conducting procurements within the Informal Purchasing dollar threshold, college Purchasing Departments must follow the purchasing hierarchy described below and depicted in Section X (Procurement Thresholds). The purchasing hierarchy indicates the order of precedence that Purchasing Departments must follow when considering which purchasing method to use for an individual procurement.

Before using Informal Purchasing, Purchasing Departments must first determine whether a preferred source or centralized contract can meet their needs (i.e., the form, function and utility) or

whether a University-wide contract exists for the needed commodities or services.<sup>5</sup> To apply the form, function and utility standard, the college must establish the minimum essential requirements that will satisfy the college's needs. Requirements must not be inflated or overstated.

Preferred sources include the NYS Industries for the Disabled ("NYSID"), NYS Industries for the Blind ("NYSIB"), and the NYS Department of Corrections ("Corcraft"). Centralized contracts include University-wide contracts available through the Office of University Controller and contracts available through the NYS Office of General Services ("OGS"), NYC Department of Citywide Administrative Services ("DCAS"), NYC Department of Education ("DOE"), NYC Department of Information Technology & Telecommunications ("DOITT"), and the U.S. General Services Administration ("GSA").

If the college's requirements cannot be met by a preferred source or centralized contract, and a University-wide contract does not exist, then a Telephone Quote or Request for Quotes may be used. The dollar thresholds and requirements for using a Telephone Quote or Request for Quotes are set forth in Section IV (Competitive Informal Purchasing Methods). Single and Sole Source procurements are to be used only when there is a compelling, substantiated rationale and justification for a non-competitive procurement. The requirements for Single and Sole Source procurements are contained in Section V (Non-Competitive Informal Purchasing Methods).

#### B. Determination and Documentation Reasonableness of Price

Purchasing Departments are responsible for ensuring and documenting that the price of commodities or services purchased is fair and reasonable. This is a requirement regardless of the value of the purchase or the source of funds (i.e., tax levy or non-tax levy). There are several methods for determining the fairness and reasonableness of price including the following:

- competition (quotes, oral or written);
- Note: If fewer than three (3) quotes are obtained, then the Procurement Record must contain the analysis used to determine that the price is fair and reasonable;
- comparison with published catalogs, price lists, market prices of commodities, indexes, etc.;
- comparison of historical prices paid by CUNY and/or other governmental entities with current proposed prices for same or similar items;
- comparison to GSA, "OGS or Less" – if applicable, for same or similar items;
- comparison of proposed prices with independent, internal cost estimates; or
- other cost or price analytical tools (audit, etc.).

One or more of the methods identified above must be used when determining and documenting the fairness and reasonableness of price. Use of more than one method may be appropriate and necessary when justifying higher dollar procurements within the Informal Purchasing thresholds or single or sole source procurements.

**The University has determined a price to be fair and reasonable if it is within 15 percent of the lowest current price offered from other responsive and responsible vendors or within 15 percent of the other current pricing indicator used by the college.** In the event an award is

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<sup>5</sup> Please note that CUNY has entered into a number of University-wide contracts on an exclusive basis with vendors for certain commodities or services, and in these instances colleges are prohibited from purchasing such commodities or services from other sources. Colleges must direct any questions to the Office of University Controller.

made to a responsive and responsible vendor whose price is greater than (but within 15% of) the lowest current offered price or other current pricing indicator available, the Purchasing Department must maintain documentation in the procurement record of the rationale for the selection of the vendor.

For more information on Procurement Record requirements, refer to Section IX (Procurement Record) below.

## **IX. Procurement Record**

College Purchasing Departments must maintain a record of each procurement.

Key elements of the procurement record include:

1. an explanation of the procurement method and vendor selection process;
2. justification as to the fairness and reasonableness of the price (see Section VIII(B) above);
3. copies of the solicitation documents and any bid or quote tabulation sheet or proposal scoring sheets;
4. copies of the bids, proposals, or quotes received;
5. copies of any related, relevant correspondence;
6. copies of advertisements and notices;
7. copies of all required forms;
8. record of any responsibility determination made; and
9. a copy of a purchase order and/or contract.

## **X. Procurement Thresholds**

The available procurement methods and corresponding requirements change depending on the value of the commodity and/or service being purchased. The current thresholds, which are defined by the value of the purchase, are identified below.

The tables on the following pages summarize the procurement methods, requirements, and forms for each threshold. Many of the available methods, requirements, and forms are consistent across the thresholds. Additional requirements that become applicable to each incremental threshold are set forth in *bold and italicized type* within each table.

**THRESHOLD 1: PURCHASES VALUED AT LESS THAN \$20,000**

Purchasing Methods	Purchasing Method Notes	Special Requirements & Forms
1. Preferred Source	NYSID, NYSIB, Corcraft	In addition to the minimum requirements in Section IX (Procurement Record), the following forms are required:  <b>Workers Compensation &amp; Disability Benefit Insurance</b>
2a. University-Wide Contracts	Refer to current year University-wide contract list.	
2b. Centralized Contract	OGS, DCAS, DOE, DOITT, GSA	
3a. Informal Purchasing	Telephone Quote (only by Purchasing Dept.) or RFQ	
3b. Single or sole source (if necessary)	Documentation of justification and reasonableness of price required	

**THRESHOLD 2: PURCHASES VALUED AT \$20,000 BUT LESS THAN \$100,000<sup>1</sup>**

Purchasing Methods	Purchasing Method Notes	Special Requirements & Forms
1. Preferred Source	NYSID, NYSIB, Corcraft	In addition to the minimum requirements in Section IX (Procurement Record), the following forms are required for Purchasing Methods 2a, 3a, 3b, 3c: <sup>2</sup> <ul style="list-style-type: none"> <li>Workers Compensation &amp; Disability Benefit Insurance</li> <li><b>Procurement Lobbying Law</b></li> <li><b>Consultant Disclosure</b></li> <li><b>Legislation (applicable to contracts for consulting services)<sup>3</sup></b></li> </ul> <b>At \$25,000: MWBE goals must be considered when procurement involves labor, services, supplies, equipment, or materials</b>  <b>At \$50,000: (i) advertising required in NYS Contract Reporter and The City Record (unless the NYS Comptroller has granted to a Senior College an exemption from advertising) and (ii) OGC approval as to form required for services over \$50,000 and commodities over \$100,000</b>
2a. University-wide contracts	Refer to current year CUNY-wide contract listing	
2b. Centralized Contract	NYS OGS, DCAS, DOE, DOITT, GSA	
3a. Informal Purchasing	Must use RFQ. Telephone quotes prohibited.	
3b. Formal Purchasing (if appropriate)	Use Request for Proposals (RFP) or Invitation for Bid (IFB)	
3c. Single or sole source (if necessary)	Justification required.  At \$50,000 advertising required <sup>4</sup>	

<sup>1</sup> The maximum threshold for Informal Purchasing increases to \$200,000 for purchases from qualified NYS small businesses and NYS certified MWBEs, and for purchases of recycled or remanufactured commodities or technology, or of commodities that are food, including milk and milk products that are grown, produced or harvested in New York State (additional restrictions apply to food purchases). Refer to Section VI (Exceptions to Informal Purchasing Threshold).

<sup>2</sup> For University-wide contracts, the Central Office collects these forms.

<sup>3</sup> A “contract for consulting services” is any contract for analysis, evaluation, research, training, data processing, computer programming, engineering, environmental health and mental health services, accounting, auditing, paralegal, legal, or similar services.

<sup>4</sup> Senior Colleges: Refer to Section VII (Advertising), Paragraph C (Advertising a Single or Sole Source Purchase). Pre-audit approval is required from the Office of the New York State Comptroller for service-related purchases of \$100,000 or more.

**THRESHOLD 3: PURCHASES VALUED AT \$100,000 OR MORE<sup>1</sup>**

Purchasing Methods	Purchasing Method Notes	Special Requirements & Forms
1. Preferred Source	NYSID, NYSIB, Corcraft	In addition to the minimum requirements in Section IX (Procurement Record), the following forms are required for Purchasing Methods 2a, 3a, 3b, 3c: <sup>2</sup> <ul style="list-style-type: none"> <li>• Procurement Lobbying Law</li> <li>• Workers Compensation &amp; Disability Benefit Insurance</li> <li>• Consultant Disclosure Legislation (applicable to contracts for consulting services)<sup>3</sup></li> <li>• <b>Vendor Responsibility Questionnaire</b></li> <li>• <b>NYS Tax Law ST-220-CA and ST-220-TD</b></li> </ul> Advertising, OGC approval as to form, and MWBE goal requirements apply (See Threshold 2)
2a. University-wide contract	Refer to current CUNY-wide contract listing	
2b. Centralized Contract	NYS OGS, DCAS, DOE, DOITT, GSA	
3a. Formal Purchase	Request for Proposals (RFP), Invitation for Bid (IFB)	
3b. Piggybacking	Refer to OGS Purchasing Memorandum on piggyback process	
3c. Single or sole source (if necessary)	Justification and advertising required <sup>4</sup>	

<sup>1</sup> The maximum threshold for Informal Purchasing increases to \$200,000 for purchases from qualified NYS small businesses and NYS certified MWBEs, and for purchases of recycled or remanufactured commodities or technology, or of commodities that are food, including milk and milk products that are grown, produced or harvested in New York State (additional restrictions apply to food purchases). Refer to Section VI- (Exceptions to Informal Purchasing Threshold).

<sup>2</sup> For University-wide contracts, the Central Office collects these forms.

<sup>3</sup> A “contract for consulting services” is any contract for analysis, evaluation, research, training, data processing, computer programming, engineering, environmental health and mental health services, accounting, auditing, paralegal, legal, or similar services.

<sup>4</sup> Senior Colleges: Refer to Section VII (Advertising), Paragraph C (Advertising a Single or Sole Source Purchase). Pre-audit approval is required from the Office of the New York State Comptroller for service-related purchases of \$100,000 or more