



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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Members of the Purchasing Handbook Committee

Jeff Connors, Queensborough Community College
Mike Feeney, Graduate Center
David Garlock, Baruch College
Lynn Hung-Taylor, Central Office
Diane Oquendo, Brooklyn College
Ron Paynter, LaGuardia Community College
Lorraine Prasad, Queens College

Special thanks to Wayne Robinson of New York City College of Technology, Joanne Sagherian of Kingsborough Community College, and Cheoliver Sprosta of The Office of the General Counsel at Central Office.

Frequently Asked Questions (FAQs) About Procurement at CUNY

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The committee has used its best efforts to create a tool to respond to questions frequently raised by the community; please note that Colleges may have slightly different practices with respect to particular issues. This is a work-in-progress, and we welcome your input and will incorporate corrections and updates in future versions.

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INTRODUCTION

The Purchasing 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) **Who and what is Purchasing? What is Purchasing's purpose? Why does the process at the University seem so cumbersome?**
 - A. We are here to facilitate and execute the buying function. The Purchasing Department staff are 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.
 - B. 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 and fairness to vendors, which mandates transparency of processes unique to a publicly-funded institution.
 - C. 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 ensure transparency of operations and to deter favoritism and malfeasance. It is important also to remember that your College’s Purchasing Department staff are available to assist you in navigating the process.
 - D. 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.
 - E. 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 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 for the Colleges at 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.

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. The Director of the Purchasing Department at your College (and some members of the College's Purchasing Department staff) has authority to make purchases on your behalf.
2. The University has centralized all purchasing functions in the Purchasing Departments to ensure compliance with State laws and regulations governing purchasing, to ensure cost containment through obtaining reasonable prices, and to maintain internal control procedures relevant to the issuance, approval, and administration of purchase orders and contracts.

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 except in the limited circumstances set forth below through blanket purchase orders, purchases from Staples, purchases using the P-card, and petty cash purchases.
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 an authorized member of the Purchasing Department 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 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.

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?

- A. No. You are not authorized to sign any purchasing-related documents on behalf of the College or the University unless you have been specifically granted such authority.
- B. No one (except authorized Purchasing Department staff after receiving approval from CUNY's Central Office of General Counsel should 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.

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 are authorized to sign purchase requisitions and receiving reports only.*

4) Who does the buying for me?

The Purchasing Department functions as the buyer for you. Some Purchasing Departments assign the buying function to particular staff members with skills and experience that are commodity-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 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 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 New York State Public Officers Law. A copy of the State Ethics Law and Regulations are available upon request from the college's ethics officer (labor designee) or the State Ethics Commission (1-800-87 ETHICS) - ask for a copy of the blue ethics booklet. Or order it online by email at www.dos.state.ny.us/ethc/ethics.html (click “Publications” in the left-hand column; then “Public Officers Law Booklet”).
- 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 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. This prohibition shall apply notwithstanding Public Officers Law Section 73(5), which provides that gifts up to \$75 may be allowed in certain circumstances.
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 draft solicitation documents (IFB/RFP) and contracts to ensure that all required components are included and that prescribed forms are adhered to;
 2. interprets and assists the University in complying with rules, laws, and regulations to protect the State, City, and the University;
 3. protects the University against potential litigation;
 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 option; and
 7. through its paralegal staff: reviews vendor-signed contracts - verifies proper execution by vendor; checks for OGC review of solicitation and contract; conducts VENDEX checks of vendors; and verifies approved board resolution before signature by General Counsel; obtains GC signature for contracts.
- B. What is the role of the OFFICE OF THE UNIVERSITY CONTROLLER ("OUC")? The OUC:
 1. conducts procurements for the University as a whole;
 2. acts as the hub for University-wide (collaborative) purchasing;
 3. promulgates procurement policies to improve delivery of goods and services to the University;
 4. acts as the liaison between CUNY and the New York City Comptroller's Office and New York State Comptroller's Office;
 5. acts as the liaison between Colleges and City and State (Comptroller's Offices, Office of General Services, Corporation Counsel) and intercedes on Colleges' behalf;
 6. negotiates with State Comptroller regarding the flexibility ceiling permitted at the individual college level;

7. provides guidance to encourage uniformity in how Colleges respond to/comply with new laws and rules;
8. conducts training for College's Purchasing personnel;
9. provides guidance regarding procedure: e.g. this FAQ document, Purchasing Handbook, Vendors' Guide to Doing Business with CUNY, overseeing the listserv;
10. evaluates College contracts for worth and wisdom;
11. interprets, with Office of General Counsel, New York State laws and New York State and New York City procedures and practices;
12. maintains systems for accounting, internal audit;
13. handles encumbrances; and
14. promotes M/WBE efforts.

C. What is the role of the University's Board of Trustees ("BOT")?

1. Under Education Law Section 6206(6), the University Board of Trustees ("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 University Board of Trustees authorizes purchases that involve expenditures of \$20,000 or more.
 - a. The Board of Trustees has authorized¹ 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 Board of Trustees 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 University Board of Trustees 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 Board of Trustees and are awarded in accordance with law and University regulations after approval as to form by the University Office of the General Counsel.

D. What is the role of the Attorney General's Office?

1. protects interests of the state of NY and its subsidiaries, including CUNY; and
2. represents CUNY when there are claims or disputes (*i.e.* if a lawsuit is filed)

¹ 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.

- E. What is the role of the New York State Office of General Services ("NYS OGS" or "OGS")?
1. OGS comprises the state's equivalent of New York City's Department of Citywide Administrative Services; and
 2. OGS has two major roles:
 - a. it is the purchasing arm for State of New York (the University may make purchases based upon OGS contracts); and
 - b. it is the reviewer of piggybacking documents - must have OGS approval as first step to using another government entity's contract.
- F. What is the role of the New York State Office of the State Comptroller? - conducts a "worth and wisdom" evaluation
1. review documents to ensure state laws are adhered to;
 2. review documents to ensure level playing field;
 3. review documents to ensure that selection of vendor was appropriate;
 4. check that references to State contracts are correct;
 5. review piggyback contracts for appropriateness; and
 6. verifies validity of sole/single source designation.
- G. 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; and
 2. the City Comptroller does not have authority to determine the "worth and wisdom" of a contract award made by the University.
- H. What is the role of the New York City Corporation Counsel ("Corp Counsel")?
1. reviews draft solicitation documents (for City-funded projects) before the College may advertise and issues the solicitation; and
 2. protects the interests of the City of New York
- I. What is the role of the Department of Citywide Administrative Services ("DCAS" (often referred to as "DEE kass"))?
1. the city's equivalent of New York State's Office of General Services (OGS); and
 2. purchasing arm for New York City (the University may make purchases from DCAS's contracts).
- J. What is the role of the Financial Information Services Agency (FISA)?
1. It is the owner of New York City's accounting system
- K. 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 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, and you have received your 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, indicate that on the purchase requisition, and it will be stated on the purchase order. The designation "ASAP" 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 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 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 Q&A #23 - "It's an emergency!" What should I do?", below.
- 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 may be somewhat informal for simple (commodity) purchases, but 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. Best value does not necessarily mean only lowest price, and thorough comparative product analysis against established specifications ensures the correct purchasing decision. If a College would like to have the option of not selecting the vendor (who is responsive and responsible and) who offers the lowest price, then the ("bid")

solicitation document must state and justify the basis of selection clearly prior to the issuance of the solicitation document.

- C. 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.
- D. Purchasing Department staff, having the responsibility for coordinating 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.

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. Purchasing is here to both help you and to serve you. Although we exist in a bureaucratic environment with many rules and regulations (many of which 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:

- A. Plan ahead. Make your 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 should be submitted to Purchasing no later than April 1 (practices at your campus may vary). Please note that purchases that require public solicitation 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 the last Monday of the following months: September, November, January, February, April, June.

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|---|
| <ul style="list-style-type: none">a. To find the Board of Trustees meeting schedule, go to:b. www.cuny.educ. then click “Trustees” in left-hand columnd. and then click “Board of Trustees Schedule” |
|---|

- 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 performance rather than brand.
 - 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. Work with(in) the system. The job can get done when we work together.
- D. 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.
- E. 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.
- F. If you have any questions or concerns, contact us. We are here to help you obtain the goods and services that you need and expect.
- G. You are responsible for prudently requesting the supplies, services, or equipment needed for the effective operation of the College and the university.
- H. 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. Vendors should be given written notice of the College's dissatisfaction and provided an opportunity to address the issues raised or fix the problem(s). Take detailed notes regarding the conversations you have with a vendor who have 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.

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 (note that the University is not merely looking for the lowest price without regard to 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 solicitations, evaluate 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; and
 13. avoid complaints by vendors; avoid challenges to purchases.
- 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. CUNY is a political subdivision; it is not a State agency, although it may be treated like a State agency under many circumstances.
 2. CUNY is not bound by NYC PPB rules.
 3. CUNY follows University regulations.
- B. Are senior Colleges and community Colleges subject to different laws?
1. No.
 2. 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.

3. The community Colleges also 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.
- B. *The University is required to purchase from preferred sources whenever possible regardless of price or other considerations;* 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 College must compile defensible documents and evidence justifying why the Preferred Source or CUNY Contract, or State Contract was not selected.
- C. Examples of preferred sources include Department of Correctional Services (Corcraft), Industries for the Blind and Industries for the Handicapped. There is no requirement to seek competitive pricing when using these vendors. Office of State Funded Purchasing & Contract staff should be contacted in the early stages of any planned purchases (such as office furnishings) that may be affected by these regulations.
- D. There are four entities identified in the statute:
 1. CORCRAFT, New York State Department Of Correctional Services
 2. Industries for the Blind of New York State, Inc.
 3. New York State Industries for the Disabled, Inc.
 4. New York State Office of Mental Health, Buy OMH
- E. Guidelines governing use of these sources are available at the following website link <http://www.ogs.state.ny.us/procurecounc/pdfdoc/psguide.pdf>
- F. A list of Preferred Source Offerings can be found at the following link <http://www.ogs.state.ny.us/procurecounc/pdfdoc/pslist.pdf>
- G. 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.
- H. Contact Information:

CORCRAFT

New York State Department of Correctional Services
Division of Industries
550 Broadway, Menands, NY 12204
Phone (518) 436-6321 1 (800) 436-6321
FAX (518) 472-1614 1 (800) 898-5895
Web Address: <http://www.corcraft.org>

Department of Correctional Services (Corcraft) provides furniture, including landscape modular systems, desks chairs, and file cabinets. Its web address is: <http://www.corcraft.org>

INDUSTRIES FOR THE BLIND OF NEW YORK STATE, INC.

296 Washington Avenue Extension
Albany, NY 12203-5346
Phone (518) 456-8671
FAX (518) 456-3587
Web Address: <http://www.ibnys.org>

Industries for the Blind provides many products, such as file folders, post it notes, transparencies, examination gloves and CD-R products.

NEW YORK STATE INDUSTRIES FOR THE DISABLED, INC.

155 Washington Avenue, Suite 400
Albany, NY 12210
Phone (518) 463-9706
FAX (518) 463-9708
Email: 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.

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 that is then registered as a contract with the State of New York. Colleges are required to use University-wide contracts. 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: computer hardware, computer software licenses, copiers, office supplies, printing class schedules, building automation systems, HVAC maintenance, book binding, hazardous waste removal, and armored car 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" or "OGS Contract". A State Contract can be either:
1. a contract that was solicited by the University ("University-wide contract") and then registered with the Office of the State Comptroller; or
 2. a contract solicited and negotiated by New York State Office of General Services Contract, also referred to as an "OGS Contract" (which provides discounted pricing to all State agencies)

CUNY is required to purchase from these State Contracts (except that preferred sources take precedence). The University (including all the Colleges) is required to use these State Contracts whenever available, but call Purchasing if you are interested in purchasing equivalent commodities/services from the open market if circumstances warrant.

- B. The Office of General Services is the central purchasing agency for New York State. OGS also negotiates regional and state-wide term commodity contracts with vendors through a formal competitive process for a variety of consumable supplies and equipment ("State Contracts"). Besides the usual price advantage gained through the power of volume purchasing and formal competition that State 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 State Contract. Contracts are now available for services as well as commodities including temp service personnel and computer consultants to name a few. In order to ensure that you review the latest amendments to each contract it is suggested that you 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://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 (formerly known as Board of Education) contracts, and, in certain limited circumstances, General Services Administration (GSA) contracts.

16) What's “piggybacking”? Is it available for my purchase? What steps are involved?

- A. Piggybacking is making a purchase based on an existing, current contract that another government entity within the United States has entered into after a competitive solicitation process. The commodities/services being purchased must match the contract you are trying to "piggyback." The Purchasing Department must seek written approval from New York State OGS before making such a purchase.
- B. To explore the possibility of piggybacking, consult with Purchasing. Please note that piggyback purchases may take up to 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. Determine that there is an existing contract issued by a government entity to a vendor offering the commodities/services that the College wishes to buy and that the contract was a result of a public procurement process.
 - 2. Obtain a copy of the original contract from the issuing entity; verify that it is a currently valid contract.
 - 3. Verify that the vendor meets State requirements for "responsibility"; check VENDEX; obtain and verify references and financials.
 - 4. 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 contract.
 - 5. Request and obtain a letter of consent from the originating entity to piggyback.
 - 6. Request and obtain a letter of consent from the vendor to piggyback.
 - 7. (The vendor's consent to the piggyback request must be in written legal form separate from a purchase order, which sets forth the agreed-upon terms of the piggyback.)
 - 8. Prepare a written justification explaining the requirement for the commodities/services and the rationale for piggybacking. This justification should be addressed to the New York State Office of General Services
 - 9. Include in the justification evidence that the pricing offered is reasonable.
 - 10. The piggyback “Contract Use Request Form” must be completed. This document can be accessed on the OGS link:
 - 11. <http://www.ogs.state.ny.us/procurecounc/pdfdoc/PGBReqForm.pdf>
 - 12. Upon completion, submit the Contract Use Request Form to the New York State Office of General Services for review and approval.
 - 13. Prepare a purchase order or contract document, including specifications regarding the commodities/services to be purchased and prices; include standard CUNY terms and conditions.
 - 14. Obtain signature by the vendor and the University.
 - 15. After approval is received from NYS OGS, then the University's contract can be submitted for registration by the City Comptroller or the State Comptroller.
 - 16. After registration, a purchase order may be issued.

17) What's an "approved equal"?

When making a purchase, we are permitted to name a particular brand, model number, manufacturer, or standard, but vendors must be permitted to offer as part of its bid or proposal an alternative product as a proposed substitute. Vendors must provide supporting evidence that the proposed substitute performs at least as well as the item specified by the College. The Purchasing Department staff will work with the end user to evaluate the proposed substitute product and determine whether it can be deemed an "approved equal". Please remember that "approved equal" is a legal standard, and Purchasing must consult OGC if a proposed substitute is offered.

18) What's an IFB (Invitation for Bids)? What's an RFP (Request for Proposals)?

- A. An IFB is a public solicitation tool that allows the University to select a vendor with price as the only criterion (vendors also must be "responsive and responsible" - both terms are defined under New York State law). Vendors are invited to respond to the University-issued IFB with a bid submission that includes a Bid Price, and, assuming that the vendor that offers the lowest Bid Price is responsive and responsible, the University awards the contract to that vendor.

- B. An RFP is a public solicitation tool that allows the University to choose a vendor based on several criteria (not just price) - such as quality, experience, design, availability, and timeliness. An RFP is often the better solicitation tool when you know what you want to end up with but do not know how to design it and want input from vendors. Note: No public proposal opening or reading of prices is scheduled as part of the RFP process since price is not the only criterion. A committee is generally convened to evaluate the proposals. After review of the options offered, the committee will determine the best proposal and vendor for the project.

19) What's a site visit/pre-bid conference?

- A. A "site visit" 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.

- B. A "mandatory pre-bid conference" is an obligation requiring a prospective vendor to attend a conference where details of a project or work to be done can be amplified and explained for the purpose of facilitating the solicitation process. The prospective vendor must attend the entire conference. A reasonable grace period may be permitted for late arrivals, but once the meeting is officially begun, latecomers must be refused entry. Bid submissions from vendors who fail to attend the entire mandatory site visit/pre-bid conference must be rejected.

- C. Frequently a site visit is combined with a pre-bid conference, and often the two events occur at one scheduled time. In all cases, attendance by vendors planning to offer a bid submission is mandatory. The time and location of a site visit and/or pre-bid conference is always specified in the IFB or RFP solicitation documents issued by the

College's Purchasing Department or in addenda that may be issued subsequent to the issuance of bid documents.

- D. Purchasing must take attendance (using a sign in sheet that stays in the control of Purchasing Department staff member at all times) at each site visit/pre-bid conference. A Purchasing Department staff member (either the Designated Contact of the solicitation or his/her designee) must be present at the entire site visit/pre-bid conference to ensure that all the potential vendors are provided with the same information.
- E. Questions that arise during the course of the site visit/pre-bid conference are recorded by Purchasing Department staff, and the questions and answers to ministerial questions are mailed to all participating prospective vendors immediately following the event. At the discretion of the Purchasing Department staff responsible for organizing and officiating at these events, the deadline for bid submissions from vendors may be deferred, pending alterations in specifications or other similar considerations, should the site visit/pre-bid conference warrant such modifications. Subsequent to the site visit/pre-bid conference, all attendees will be notified in writing of any modifications in specifications, submission deadlines, and/or any revisions in the scope or essence of the procurement or project under consideration.
- F. The site visit/pre-bid conference is intended to accomplish the following:
 - 1. Facilitate the bidding 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. Help College administrators evaluate options relevant to the required goods, services and equipment being procured;
 - 4. Provide advance notice to 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 will have had the opportunity to review and critique the written documents issued by the College's Purchasing Department staff; and
 - 6. Send a clear message to all prospective vendors that the procurement process at the College is an open and transparent process, allowing all who show interest to investigate fully the bidding opportunity under consideration.

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

- A. A "Bid Opening" is simply a public opening of bid submissions and a reading out of the name of each vendor and each vendor's Bid Price. No other information is announced or shared with the vendors or the public until after Purchasing has reviewed and evaluated the bid submissions (in private).

- B. The vendors or the public may assume that the vendor offering the lowest price will receive the contract award, but Purchasing 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 must meet and respond to the minimum bidder requirements (this determines whether the bidder is "responsive") and also must be found "responsible", meaning 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 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 agencies, 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 Records Access Officer of your college.
- B. Purchasing Offices must direct all FOIL (Freedom of Information Law) 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 (212-794-5382).
- 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. Make sure there are adequate funds before submitting your request. Determine the exact source of funds prior to initiating any purchase requisition for a specific account number or similar concrete data (college procedures vary, but most colleges require you to consult with your College's Budget Office or your departmental budget). A signed requisition with designated funding source is the only way to start the procurement process (verbal discussions do not constitute a commitment). Get hard information from your Budget Office before proceeding with a requisition to ensure expeditious action from Purchasing. Specific College procedures vary, but the underlying principle remains the same!

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.

- B. Complete the College's official purchase requisition. Each purchase requisition is to be limited to those commodities that are similar in nature, and that are (presumably) available from one vendor.
- C. "Do it Yourself" Purchases. 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. e.g. 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.
 3. ordering office supplies from the University-wide contract with Staples (most expendable supplies are available through the College's StaplesLink online ordering system). Designated users on campus can access this automated catalogue and order form at this Staples web address: <http://www.StaplesLink.com>. Contact your Purchasing Department, who can set up an on-line account.
 4. using a procurement card ("P-card") in accordance with the stated limitations, if your College has provided one to you (your department), which will:
 - a. speed up the purchasing process;
 - b. eliminate need for a paper purchase order;
 - c. allow phone orders for minor procurements where the issuance of a purchase order seems unwarranted; and
 - d. using petty cash (for limited amounts) with the approval of your department supervisor, if your College permits.

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 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 a real, 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)
 4. act prudently! ask yourself, what if I (personally) had to pay for it? you’ll need to assist in writing an emergency justification 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
 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
- B. If it's not a fire or flood, Purchasing may, in appropriate circumstances, treat the purchase on an emergency basis – the Purchasing Department refers to this type of situation as a "Less Immediate Emergency".
1. call your Purchasing Department who will call CUNY Legal 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. Purchasing will need your help in preparing a memo for your College Vice President to send to Vice Chancellor of Budget and Finance and Senior Vice Chancellor for Legal Affairs and General Counsel to advise them of intended emergency purchase. The 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.
 4. Purchasing will conduct a solicitation following “emergency” procedures

5. Purchasing will conduct an (abbreviated) review of the vendor's credentials and references
6. Purchasing will submit the proposed contract to (depending on funding source) NYS Comptroller or NYC Comptroller for registration.

NOTA BENE: State laws and University-wide policy recognizes states of emergency in only the rarest of circumstances, and declarations of emergency require the Vice President's consultation with the University's Office of General Counsel.

- C. An "emergency" is defined as an instance 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. The memo should 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 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 could have been foreseen).

24) How does the College engage consultants?

Engaging a consultant is handled just like other purchase of services. If any consultant's services are needed for an amount exceeding \$20,000 in a fiscal year, then Purchasing is required to follow all procurement procedures for same. See Q&A #22 - "How Do I Get Stuff" and Q&A #40 - "Why aren't there consistent regulations governing ALL purchases?"

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.

- A. The first step is to provide to Purchasing a (complete and accurate*) purchase requisition stating the detailed scope of work and specific qualifications required of the consultant needed.
- B. Purchasing will assist you in the required determination of whether a current employee (who is able and qualified) can fulfill the requirements as part of his/her duties and whether hiring a consultant is less expensive and more economically advantageous than hiring a new or additional employee.

* 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.

- C. If no current employee can fulfill the requirements as part of his/her duties, then Purchasing then will assist you in identifying potential consultants who meet your requirements and recommend appropriate procurement procedure.
1. To engage a consultant for an amount up to \$5,000 (for the fiscal year), considerable latitude is permitted in consultant selection. However, the Purchasing Department staff is required to 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.
 2. To engage a consultant for an amount between \$5,000 - \$20,000 (for the fiscal year), where no pre-approved contracted consultant is available, the Purchasing Department staff will prepare an Invitation to Bid document, which they will distribute to at least five qualified consultants. See Q&A #40 - "Why aren't there consistent regulations governing ALL purchases?" for more details.
 3. To engage a consultant for an amount exceeding \$20,000 (for the fiscal year), in the absence of a pre-approved contracted consultant requires advertisement and a public solicitation. Purchasing Department staff will consult with CUNY's Office of General Counsel for the purpose of obtaining advice and counsel in the preparation of solicitation documents and formal contract documents, when appropriate. Procurements in excess of \$500,000 require the approval of a board resolution by the CUNY Board of Trustees.
- D. Consultants must sign a University-standard agreement (Independent Contractor Agreement) and complete 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, and a Claim for Payment form in order to be paid).
- E. Consultant agreements that involve expending an amount exceeding \$20,000 in a fiscal year must be reviewed and approved by the Office of General Counsel and signed by the General Counsel.
- F. Consultants cannot be an employee at the University or an employee of any of the Colleges at the University or an employee of SUNY or any other New York State agency or have been on New York State or New York City payroll during the previous two years.
- G. Consultants engaged by the University or the Colleges must be qualified to work for CUNY, including having appropriate immigration status and tax status.
- H. **IMPORTANT TO KNOW:** CUNY employees may not take part in any contracting decision relating to a family member. See Executive Order No. 1: Establishment of Ethical Conduct Guidelines.

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 Department 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 DDMC regardless of funding source. Therefore, call Campus Facilities/Planning first. See Chancellor Goldstein's memorandum dated June 4, 2004 with respect to this topic.
- B. Solicitation ("bidding") efforts and contracts with architectural consulting services and engineer consulting services, regardless of source of funding, are conducted by DDCM, which will develop a solicitation document that includes contract terms and, as applicable, DDCM-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.

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. Purchasing is prohibited from executing requisitions for computer-related goods until approved by the University CIO.

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 should be consulted before requisitions for furniture are prepared.

*Don't forget about lead time for furniture purchases – typically 8 weeks.

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

Yes, the New York State Printing Law applies, which means that there are lower thresholds. An ITB is required for all purchases in excess of \$5,000. 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.

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?

<i>NOTA BENE:</i> Communication with vendors is restricted during the procurement process.
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- 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 the Procurement Lobbying Act and its requirements; it applies to you and to the vendors. Violation of the Procurement Lobbying Act will likely result in inability to purchase a product that you want/need. See Q&A #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 Q&A #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.
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 ("soft money") are not governed by State procurement laws and are not covered by these guidelines; however, sound purchasing procedures must still be followed. 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 still look like a University procurement.

B. Contracts funded 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 soft 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. 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 ("R.F."), a legally separate New York State corporate entity established to administer externally funded grants. The CUNY Research Foundation's policies and procedures do reflect sponsor mandates (federal agencies, etc.) and parallel CUNY to the extent feasible. Purchases against R.F. grants are processed independently from State Purchasing, following R.F. procedures and using R.F. forms. While not subject to State laws re procurement, procurements conducted by the R.F. still requires 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 R.F. 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 DDCM 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. Purchasing will need to conduct a formal Invitation for Bids (IFB) or Request for Proposals (RFP) process for purchases >\$20k. These steps are required:
 - 1. prepare IFB/RFP document, including detailed specifications
 - 2. submit draft IFB/RFP to OGC for review
 - 3. obtain OGC approval as to form for IFB/RFP
 - a. Community Colleges and City funds - submit IFB to Corporate Counsel for review; obtain pre-approval (Corporation Counsel is not reviewing the intended purchase for its worth and wisdom; it is reviewing the draft IFB for its legal terms). Corporation Counsel normally takes 30-60 days to review the draft IFB.
 - b. Senior Colleges and State funds - no pre approval required
 - 4. advertise in City Record and NYS Contract Reporter
 - 5. prepare board resolution for OGC review; submit board resolution for next Board of Trustees meeting
 - 6. conduct pre-bid (pre-proposal) meeting and site visit
 - 7. receive written questions from vendors

8. prepare responses to written questions (Addenda); seek assistance from OGC; distribute Addenda to vendors
 9. receive bid packages from vendors
 10. conduct bid opening and public reading of Bid Prices (no public proposal opening)
 11. conduct review and analysis of bid (proposal) submissions (seek OGC help as needed) – complete bid submission/proposal analysis form
 12. select lowest responsive and responsible bidder
 13. check vendor responsibility - review NYS responsibility questionnaire, check VENDEX, references, financials
 14. prepare contract
 15. send award letter to vendor; have vendor sign (several copies of) contract
 16. send contract to OGC for signature by General Counsel on behalf of the University after confirming that the Board of Trustees passed the board resolution
 17. the following steps diverge, depending on source of funding:
 - a. Senior Colleges and State funds:
 - i. Submit contract to Attorney General for review and approval (AG reviews contract to ensure that CUNY and NYS are protected, not whether it's a wise purchase).
 - ii. If AG approves, it will forward contract package to Office of State Comptroller which will evaluate the contract and the solicitation documents in relation to the following criteria: wisdom of purchase (consistent with CUNY mission), availability of funding, acceptability of terms (e.g. a contract locking prices for 30 years likely won't pass muster), legality and propriety of the solicitation process followed (no collusion, maximum competition, proper advertising; completion of appropriate forms). OSC will then approve and then register the contract. Only upon registration is the contract valid.
 - b. Community Colleges and City funds
 - i. Submit contract to City's Imaging Office who will index and scan the document and send it electronically to the City auditor, who is the primary examiner for CUNY, who reviews the contract for signature by Comptroller's office. Only after the Comptroller has (electronically) signed is the contract a contract.
- 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 College must compile defensible documents and evidence justifying why the Preferred Source Contract, the CUNY Contract, and/or State Contract was not selected.

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 your (complete and accurate*) purchase requisitions into purchase orders or contracts:
1. Purchases in the following categories generally take 1-2 weeks for Purchasing to process:
 - a. Purchases from Preferred Sources for any amount.
 - b. Purchases from New York State-certified minority-owned /women-owned/small businesses (M/WBE) for amounts up to \$50,000 in certain categories where bid solicitation is not required for M/WBEs, the Purchasing Department staff can advise you as to when this exemption from bid solicitation is permitted.
 - c. Purchases from CUNY-wide contracts for any amount.
 - d. Purchases from New York State or other current government contract (e.g. New York City, Department of Education) that require no additional documentation or solicitation efforts.
 - e. Single source or sole source purchases expending less than \$20,000 for the fiscal year, provided that an order is not being deliberately split in an attempt to stay below this dollar threshold.
 - f. Purchases for less than \$5,000, which do not require the distribution of Invitation to Bid forms to multiple vendors, but which do require evidence that the reasonableness of pricing has been determined through (1) a quotation indicating discount off list price, (2) faxed quotations from two or more vendors, (3) oral quotations from two vendors solicited by telephone and recorded by Purchasing Department staff, or (4) a vendor's commitment to a written quotation.
 2. Purchases in the following categories generally take 3-4 weeks to process:
 - a. Purchases between \$5,000 and \$20,000 that cannot be purchased from a Preferred Source, a WMBE vendor, a CUNY-wide contract, a NYS or other current government contract, or a single source or sole source.
 - b. Purchases up to \$100,000 from New York State Contracts that require additional solicitation steps (e.g., conducting a mini-bid) or documentation.

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 policy.

* 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.

3. Purchases in the following categories generally take 3-6 months to process:
 - a. Purchases in excess of \$20,000 from single source vendors or sole source vendors.
 - b. Purchases in excess of \$50,000 from New York State certified minority-owned/women-owned/small business (W/MBE).
 - c. Purchases in excess of \$20,000 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 in tandem with your Purchasing Department is key to successful procurement in the shortest time frame possible.
 - i. Bidding opportunities entailing an expenditure in excess of \$20,000 must be advertised, unless exemption from advertising has been obtained from the Office of the State Comptroller in writing.
 - ii. Purchases requiring bid solicitation in which the planned expenditure exceeds \$20,000 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. 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.
 - iv. Contracts also must be registered by the NYS Comptroller or the NYC Comptroller in order to be valid contracts.
 - v. Draft solicitation documents, including the specifications, must be prepared and approved by the CUNY Office of General Counsel before they are issued.
 - vi. If City funds are being expended, draft solicitation documents must be approved by the City's Corporation Counsel before they are issued.

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

4. 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 unsnarl the procedural labyrinth and 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*, 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 sources, an M/WBE or small business sources, current University-wide contracts, State of New York, City of New York, (NYC) Department of Education, or other government contracts, single-source/sole-source. 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.
 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 less than \$50k may be made from State-certified minority-owned, women-owned, and small businesses without a ("bid") solicitation (of course, as is always the case, the price must be reasonable). Your Purchasing Department staff are 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.state.ny.us). Generally, items listed may be ordered through your Purchasing Department without issuing a solicitation for bids. Consult with Purchasing Department staff for guidance.

* 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.

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 it is suggested that you 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://www.ogs.state.ny.us/Purchase/Search/default.asp>

- F. Valuable time is wasted when departments try to circumvent purchasing guidelines by taking improper shortcuts. 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 (bid) 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 create and maintain a file indicating that such a purchase is justifiable and appropriate.

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 (bid) solicitation process.

Additional research and inquiry will be required in all cases, and your Purchasing Department staff is trained to provide guidance and seek legal counsel 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 \$20,000 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 (bid) 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 exceeding \$20,000) 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) should be reported immediately to appropriate Public Safety personnel following College guidelines.
- J. If there's an emergency - a real one, such as a fire or a flood--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 Facilities and a memorandum regarding such declaration from the Vice President for Finance and Facilities 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 University’s Office of General Counsel.
- K. See Q&A #35 - “How long is it going to take (for me to get my stuff)?” re estimated timeframes for purchases.

WHERE CAN I GET STUFF?

37) Where should I go first?

Your Purchasing Department, who will help you research potential sources for the purchase. By law, we must first consider preferred sources, M/WBE, university-wide contracts, state contracts, other government contracts (DCAS, Dept of Education).

38) Where can I get more information?

- A. Contact your Purchasing Department
- B. NYS - "Selling Products and Services to the State of New York - A Guide for Small Businesses". See www.state.ogs.state.ny.us/purchase/spg/pdfdocs/NySbGuide.pdf
- C. New York State Department of Economic Development - www.empire.state.ny.us (212) 803-2200
- D. New York State Office of General Services www.ogs.state.ny.us
- E. New York State Contract Reporter online subscriptions www.nyscr.org
- F. City Record online subscriptions www.gov/nyc.vendoronline/home/html

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. *e.g.* 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 Staples (most expendable supplies are available through the College's StaplesLink online ordering system). Designated users on campus can access this automated catalogue and order form at this Staples web address: <http://www.StaplesLink.com>. Contact your Purchasing Department, who can to set up an on-line account.
 4. using a procurement card ("P-card") in accordance with the stated limitations, if your College has provided one to you (your department), which will
 - a. speed up the purchasing process
 - b. eliminate the need for a paper purchase order
 - c. allow phone orders for minor procurements where the issuance of a purchase order seems unwarranted.
 5. using petty cash (in limited amounts) with the approval of your department supervisor, if your College permits.
- B. You can't just buy what you need when you need it because compliance with State laws and regulations requires the knowledge and experience of designated Purchasing Department staff. Purchasing Department staff are trained to ensure cost controls in obtaining reasonable prices and compliance with 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/group 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 performers 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.

NOTA BENE: 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 (see New York State Procurement and Disbursement Guidelines-Bulletin No. G-195).

- 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 personally liable.
- 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'll be personally liable for the purchase you made.

NOTA BENE: Advertised sales/discounts and list pricing available from vendors may not meet the quality standards and price comparison requirements mandated by the State/City.

- D. Purchases of commodities or services of low cost and of meager value (most Colleges have a \$250 limit) that have proper authorization may be reimbursed to you from petty

cash. But remember - the University cannot reimburse you for any taxes you pay if you purchase something and seek reimbursement.

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 are trained to identify the appropriate classification of all procurements, and are 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^{*}) approved requisition for a commodity or service, 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 or other government contract, or (c) from a State-certified women-owned, minority-owned, or small business, if the purchase is for less than \$50,000. If the purchase can be made through one of these three sources, then a purchase order will be issued without a ("bid") solicitation and, in most cases, without advertising the procurement, since alternative procurement procedures will have already been followed.
 2. 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.
 3. **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.
 4. If the purchase cannot be made from or through a NYS Preferred Source, CUNY-wide contract, other government contract, or an M/WBE, then the University is obligated to adhere to the following:
 - a. **FOR PURCHASES UNDER \$5,000 (for the fiscal year), considerable latitude is permitted in vendor selection. However, the Purchasing**

^{*} 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.

Department staff is required to 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. Normally, competition is the best technique, but this may be done in a variety of ways, including (1) the solicitation of two or more faxed quotations, (2) a written proposal offering a percentage off published list pricing, or (3) oral quotes from two 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 solicitations 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.

NOTA BENE: Concocting smaller purchases (by breaking up a larger purchase, by not disclosing anticipated needs, etc.) to meet lower threshold requirements is strictly prohibited.

- b. PURCHASES FROM \$5,000 - \$20,000 (for the fiscal year), where no pre-approved contracted supplier is available, the Purchasing Department staff will prepare an Invitation to Bid document, which they will distribute to at least five qualified suppliers. This process can be completed in a relatively short time, often within a three-four week period, when the requisition and specifications you have provided are complete, up-to-date, and approved by your department/supervisor.
- c. PURCHASES IN EXCESS OF \$20,000 (for the fiscal year), in the absence of a pre-approved contracted supplier, require more complicated procedures and lengthier time frames for processing. Advertisement of bidding 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 CUNY's Office of General Counsel for the purpose of obtaining advice and counsel in the preparation of solicitation documents and formal contract documents, when appropriate. Procurements in excess of \$500,000 require the approval of a board resolution by the CUNY Board of Trustees. Purchasing Department staff are 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 are 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 may be 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 bid solicitation process. Additional research and inquiry will be required in all cases, and your Purchasing Department staff is trained to provide guidance and seek legal counsel 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? Does the Procurement Lobbying Act apply to me? What's the Record of Contact form?

- 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. See <http://www.ogs.state.ny.us/aboutogs/regulations/advisoryCouncil/2006PLRules4.11.pps>
- 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 from a vendor during a Restricted Period, even if the employee is the Designated Contact.
- 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) 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.
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 Act ("PLA"):

1. the PLA 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 PLA 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 PLA 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 PLA requires CUNY to include such documentation in the related procurement record and be ready to submit same to the State; and
5. the PLA requires CUNY to include certain provisions of the PLA in its procurement and contract documents.

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

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).

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. Because only the Purchasing Department can make the determination of whether or not a sole source procurement or a single source procurement is appropriate. The Purchasing Department is required to create and maintain a file that such a purchase is justifiable and appropriate before issuing a purchase order.
- B. A declaration of sole (only) source status by the vendor is not sufficient justification for either designation.
- C. Please note that purchases made through a single source/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. 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.
- D. What's the difference 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.
- E. 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, the rationale for selecting the specific vendor, and the basis upon which a determination was made that the price was reasonable.

- F. Additional research and inquiry will be required in all cases, and your Purchasing Department staff is trained to provide guidance and seek legal counsel when necessary. Reasonableness of price determination is required in all cases, and advertisement requirements for purchases in excess of \$20,000 still apply.
- G. Steps involved in a sole source or single source procurement:
 1. identify vendor providing needed commodities/services
 2. review responsibility of vendor - check VENDEX, references, financials
 3. help Purchasing obtain the following information so that a justification memo can be included in Purchasing's files:
 - a. provide background information
 - b. identify need for purchase
 - c. demonstrate why competitive solicitation is not warranted
 - d. show how did you have determined that a single/sole source was the best procurement method
 - e. clarify how reasonable price and terms were determined
 - f. justify - why this vendor?
 - g. explain - alternative: what happens if College doesn't make the purchase (as a single/sole source)
 4. request and secure exemption from advertising from OSC
 5. advertise in NYS Contract Reporter (College may be permitted to advertise as an announcement after entering into the contract instead of as an opportunity for vendors to respond to a solicitation)
 6. prepare contract based on model
 7. submit draft contract to OGC for review and approval as to form
 8. submit board resolution and obtain board approval
 9. obtain vendor's signature
 10. obtain University signature
 11. secure approval from OSC/OCC (Office of State Comptroller/Office of City Comptroller), as appropriate

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. (New York City Charter, Chapter 13, Section 328).
- 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/WBE)? What's our policy with respect to Affirmative Action?

- A. It is the University's policy to take affirmative action to ensure that New York State certified minority-owned and women-owned business enterprises ("M/WBEs") are given the opportunity to demonstrate their ability to provide the University with commodities and services at competitive prices.
- B. Article 15-A of the NYS Executive Law encourages all State agencies to maximize business opportunities for M/WBEs by making every effort to place orders with such firms.
- C. The University therefore places high priority on doing business with these firms. Empire State Development has a searchable database that is useful in locating certified businesses and can be found at the following link:

<http://205.232.252.35/>

- D. By Executive Order, all New York State Agencies are required to take affirmative steps to award purchases to minority-owned and women-owned businesses. The intent is to give those targeted businesses an opportunity to benefit from the massive purchasing activity of the State, on the assumptions that those targeted businesses have been historically excluded from participation and that developing small businesses have not had an equal chance to compete. The University and the Colleges are given M/WBE goals expressed as percentages of total purchasing volume and are instructed to implement and facilitate special outreach initiatives geared toward M/WBEs. While attainment of goals is expected by the University, the University continues its program on a voluntary basis, recommending awarding contracts to M/WBEs where feasible and in the best interests of the University, attempting to strike a balance between the principle of best value and our shared commitment to inclusion and equality of opportunity for all members of our vital business community.

46) Why do vendors wait so long before they get paid?

- A. Usually because proper procurement processes were not followed.
- B. Often because requester did not sign the "receiving" paperwork promptly after receipt of the goods/services.
- C. Often because requesters make purchases without going through Purchasing and necessary paperwork is lacking, or improperly completed.
- D. In order to process a vendor payment, both a valid invoice and a departmentally certified receiving copy are required. Vendor invoices, packing slips, etc. should

accompany the receiving copy forwarded to Accounts Payable to thoroughly document the transaction.

- E. 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;
 - 3. if more than thirty (30) days elapse from satisfactory receipt of goods to vendor payment, the University must pay penalty interest that's automatically imposed in accordance with N.Y.S. Prompt Payment Legislation; and
 - 4. the vendor 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 “best value” available in the marketplace (not 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 us 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. NO EXCEPTIONS.
- 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 should be requested and completed BEFORE the purchase requisition is 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.

[intentionally left blank]

APPENDIX A – RECORD OF CONTACT

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) <input type="checkbox"/> Yes <input type="checkbox"/> No
2.	Is the above-named person or organization the bidder or proposer (“Offerer”) in this procurement? (check one) <input type="checkbox"/> Yes <input type="checkbox"/> 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) <input type="checkbox"/> Yes <input type="checkbox"/> No b. contact the College/University about the procurement? (check one) <input type="checkbox"/> Yes <input type="checkbox"/> 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 should cease.

Any person at the University who receives a Contact during a Restricted Period must complete a separate form 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 New York Temporary Commission on Lobbying which can be found at

http://www.nylobby.state.ny.us/law_guide.html

and the guidelines from the Advisory Council on Procurement Lobbying, which can be found on the OGS website at

<http://www.ogs.state.ny.us/aboutOgs/regulations/defaultAdvisoryCouncil.html>

Call the University's Associate Controller for Procurement or the Office of General Counsel for additional guidance or if you have any questions.



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

