

Frequently Asked Questions (FAQs) About Procurement at CUNY

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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 at providing 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, towards acquiring the tools to provide excellence in education to students.

Questions Addressed

1. **Who and what is Purchasing? What is Purchasing's purpose?**
 - A. We are here to serve our constituents with quality service, timely delivery, and “best value” available in the marketplace while providing an environment of good sound business controls to protect the assets of the University.
 - B. We are here to facilitate and execute the buying function. The primary function of the Purchasing Departments at the colleges is to secure the commodities and services needed while complying with 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 to fulfill its mission in education and research with a commitment to academic excellence and the provision of equal access and opportunity to students, faculty, and staff from all ethnic and racial groups and from both sexes
 - C. We are here to help save you money (so that you can spend it on other things your department needs). The practice of competitive solicitation ensures participation of the largest group of vendors and guards against favoritism, improvidence, and fraud, which, in turn, tends to drive prices downward,. We are a public university, and we are firmly committed to prudent and effective stewardship of resources.
 - D. We are here to help you avoid incurring personal liability 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 person(s) designated to do the buying for the colleges at the University is its purchasing department personnel. The Purchasing Departments 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. **What do I need to know about the purchasing process?**
 - A. 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).

- B. All purchases made using taxpayer dollars (State and City funds) are subject to Finance and Education Law of the State of New York, 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. The offices of the State and City comptroller perform audits on various transactions processed by the Purchasing and have the authority to approve or deny payments and/or contracts.
- C. 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 the lack of it), there is no substitute for thorough planning and Purchasing is committed to this principle and to full assistance in every way. If the unanticipated does occur, call your Purchasing Department so that it can help clarify the proper action and provide you with guidance and assistance. If there's a real emergency, see Question #24, below.
- D. 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.

3. **Who may makes purchases? Who may not make purchases?**

A. Who may make purchases?

- 1) The Purchasing Director of the Purchasing Department at your college (and some members of the college's Purchasing Department staff) have authority to make purchases on your behalf. The University has centralized all purchasing functions in the purchasing departments to ensure compliance with State laws and regulations governing purchasing, to ensure cost controls in obtaining reasonable prices, and to maintain internal control procedures with respect to the issuance, approval, and **maintenance 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.
- 2) While it is often appropriate and necessary for faculty, staff, and administrators to provide information to the Purchasing Department for purchases, only an authorized member of the Purchasing Department may sign a purchase order or a contract. The signature by an authorized person certifies that applicable policies have been followed.
- 3) Unauthorized commitments are subject to non-payment and/or personal payment by the unauthorized individual.

<p>Note: It is a violation of New York State Finance laws to procure a service or commodity without acquiring necessary approvals and documents in advance.</p>

4. **May I sign vendor agreements? May I sign credit agreements? May I sign any agreements on behalf of the College?**

No one (except authorized Purchasing staff) should sign vendor agreements under any circumstance. It is rare that the University signs a vendor's form of agreement; Purchasing Departments are obliged to seek OGC review, negotiation (if necessary), and approval as to form for all vendor agreements before signing any vendor agreement.

5. **Who does the buying for me?**

The Purchasing Department functions as the buyer for you. Although no officer is assigned to a specific commodity or service, each does have specific skills and experience. Please contact your Purchasing Department to find out who the name of the staff member of the Purchasing Department staff who will be your key contact in helping you meet your needs (not all colleges designate specific individuals for particular areas).

6. **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 have 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.
 - 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 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
 - i. speed up the purchasing process
 - ii. eliminate the need for paper purchase order
 - iii. allows phone orders with vendors who may not accept a purchase order number(?)
 - 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 it would be impossible to ensure compliance with State laws and regulations, ensure cost controls in obtaining reasonable prices, and ensure internal control procedures, but, in part, it's a matter of

public trust and transparency. The colleges are all constituent parts of the City University of New York, which is a state political subdivision that is predominantly funded by public monies, so the University must follow state laws and university guidelines and has charged Purchasing Departments with the responsibility of securing commodities and services while complying with the laws and regulations.

- 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 meet certain requirements. The purchasing department is responsible for:
- ⇒ meeting the needs of the University while providing the best value ("get the best bang for buck");
 - ⇒ protecting interests of New York State, New York City and taxpayers;
 - ⇒ ensuring transparency - fair and open competition for vendors; and
 - ⇒ guarding against favoritism, improvidence, extravagance, fraud, and corruption.

NOTE: A CUNY employee who directs a vendor to start providing commodities or services without an approved contract may be personally liable for an indebtedness that is ultimately held to be owed to the contractor. 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 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 is vested in the Director of Procurement Services and purchasing staff. Purchases consummated by other means are unauthorized and are subject to non-payment, payment by the unauthorized individual, or a monetary penalty assigned to a relative account.

7. What does Purchasing do for me? What services are provided by the Purchasing Department?

- A. Purchasing can, with information and assistance from the requestor:
- 1) direct requesters to information about products, suppliers, market prices, and product availability, and possible other resources
 - 2) determine best procurement method
 - 3) ensure best value for College and University
 - 4) save you (your department, your college) money
 - 5) purchase goods and services on behalf of the end users
 - 6) ensure compliance with applicable state laws and regulations and 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 purchase order discrepancies
 - 10) maintain relationships with vendors

- 11) help you avoid pitfalls with vendors
- 12) protect college from legal actions
- 13) avoid complaints by vendors; avoid challenges to purchases

8. **What role do I play in the purchasing process?**

A. You are very important 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 purpose), here's how we can work together to meet your needs:

B. 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're 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 May 1. Please note that purchases that require public solicitation may not be completed by fiscal year end.
- 3) Please note that New York State law requires an approved CUNY Board Resolution for each and every purchase that exceeds \$20,000. 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.

- a. To find the Board of Trustees meeting schedule, go to:
- b. ■ www.cuny.edu
- c. ■ then click "trustees" in left-hand column
- d. ■ and then click "Board of Trustees Schedule"

C. Share your expertise; it is needed to make purchases.

- 1) Educate us! Share your product/vendor research.
- 2) Base your request and specification on performance rather than brand.
- 3) In order to purchase the correct merchandise and services that meet your quality requirements, you need to provide Purchasing with detailed information regarding the requested purchase. 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 to 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.

D. Work with(in) the system. The job can be done when we work together.

- E. 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.
- F. 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.
- G. 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.
- H. You are responsible for prudently requesting the supplies, services, or equipment needed for the effective operation of the college and the university.
- I. Tell us right away (and take notes!) if you're unhappy with the goods / services or the vendor in any way.

9. **How do I get stuff?**

- A. Make sure there are adequate funds before submitting your request. Determine whether funds are available prior to initiating any purchase requisition. College procedures vary.
- 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. Note: 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.
- D. "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 have 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.
 - 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 to set up an on-line account.
 - 4) using a procurement card ("P-card") in accordance with the restrictions, if your college has provided one to you (your department)

- a) speed up process
- b) eliminate need for paper purchase order
- c) allows phone orders with vendors who may not accept a purchase order number
- d) using petty cash (for limited amounts) with the approval of your department supervisor if your college permits.

10. **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 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.

11. **How do I get furniture?**

- A. 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.
- B. Don't forget about lead time for furniture purchases – typically 8 weeks.

12. **What about building renovations or repairs? What about hiring architects and engineer consultants with private money?**

- A. No one at the Colleges is authorized to enter into any agreement that is construction-related unless first approved by Central's 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 any acquisitions involving renovation, repairs, or improvements to facilities, whether interior or exterior; and the hiring of architect and engineer consulting services without prior approval as to form by the Department of Design and Construction Management 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. All solicitation ("bidding") efforts and contracts with architect consulting services and engineer consulting services, regardless of source of funding, must be 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 also that (design) consultants may not respond to solicitations on (or be awarded contracts for) construction projects that they designed.

13. 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 for amounts up to \$50,000.
 - 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 that are for less than \$20,000 (annualized).
 - f) Purchases of less than \$5,000 (annualized) with prices that can be readily justified with quotes or discounts.
- 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 W/MBE 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.

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

- 3) Purchases under 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). 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 timing to do these purchases varies based on the complexity of the purchase, and each of these steps can take several weeks, so early planning with your Purchasing Department

* detailed specifications are an essential part of a complete and accurate purchase requisition

is key to performing the procurement is the shortest time frame possible.

- (1) Purchases in excess of \$20,000 must be advertised
- (2) Purchases in excess of \$20,000 must be submitted to the CUNY Board of Trustees for approval.
- (3) Purchases in excess of \$20,000 involve the issuance of a formal solicitation, and the selection of a vendor pursuant to an evaluation of bid submissions or proposals.
- (4) Contracts also must be registered by the NYS Comptroller or the NYC Comptroller in order to be valid contracts.
- (5) Draft solicitation documents, including the specifications, must be prepared and approved by the CUNY Office of General Counsel before they are issued.
- (6) If City funds are being expended, draft solicitation documents must be approved by the City's Corporation Counsel before they are issued.

- 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.

14. **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 to discuss your needs with purchasing staff who will help you map out the quickest way to make your purchases
- B. Consult with Purchasing 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 complete and authorized 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 the College's Purchasing 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 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 staff for guidance.

NOTA BENE: The OGS web site is very useful in determining if an item is available under State Contract. Contracts are now available for services as well as commodities including temporary service personnel and computer consultants to name a few. In order to ensure that you review the latest amendments to each contract 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 and circumvent purchasing guidelines by taking improper shortcuts. Such improper "shortcuts" often result in making the process more complicated due to necessary 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 that such a purchase is justifiable and appropriate. A written self-declaration of such status by the vendor 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 staff is trained to provide guidance and seek legal counsel when necessary. Reasonableness of price is required in all cases, and advertisement requirements for purchases in excess of \$20,000 still apply. Please note that proposed purchases via single source procurement 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 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 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 is 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 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.
- K. See Q&A #13 re estimated timeframes for purchases.

15. **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 alternative source of funds. CUNY employees who direct a vendor to provide commodities or services without an approved contract 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, meaning that you will have to pay for two thousand pounds of frog food with no chance of reimbursement from the University.

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 (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.

16. Does the Procurement Lobbying Act apply to me? What's the Record of Contact form?

- A. 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.
- 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).

17. **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 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.

- B. Here's a general description of how it works:

- 1) Once you have submitted a requisition for a commodity or service, Purchasing staff will determine whether or not the purchase can be made (i) from a NYS Preferred Source (as defined under State law), or (ii) through an existing CUNY-wide or New York State (OGS) contract or other government contract, or (iii) from a State-certified women-owned, minority-owned, or small business, if the purchase is for less than \$50,000. A purchase order will be issued without a ("bid") solicitation and, in most cases, without advertising the procurement or receipt of a resolution approved by the Board of Trustees, since applicable procedures will have already been followed prior to this specific procurement.

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.

- 2) **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 and completed requisition.
- 3) 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 (annualized)**, considerable latitude is permitted in vendor selection. However, the Purchasing staff is

required to determine reasonableness of price and representing best value and to maintain a procurement record reflecting a rational basis for the purchase. 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, THESE ARE 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 staff. The purchase is subject to post-audit by the Office of the State Comptroller.

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 (annualized), where no pre-approved contracted supplier is available, the purchasing staff will prepare an Invitation to Bid document, which they will submit 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 (annualized), 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. Procurements in excess of \$20,000 require the approval of a board resolution by the CUNY Board of Trustees. Purchasing 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. Most procurements at this dollar threshold require solicitations of bids, using documents appropriate to the scope and nature of the services or goods to be provided. Purchasing staff have access to 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.

- d) SOLE SOURCE or SINGLE SOURCE determination may be facilitated by contacting your purchasing 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 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 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.

18. What's a State Contract? OGS Contract? Office of General Services Contract?

- 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)
- 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.
- C. CUNY is required to purchase from these State Contracts (except that preferred sources take precedence). CUNY is required to use these State Contracts but call Purchasing if you are interested in purchasing equivalent commodities/services from the open market if circumstances warrant.

Note: 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>

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

A University wide contract is an agreement that originates as the result of a solicitation conducted by 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 deviate substantially from a College's requirements should an alternative procurement method be considered.

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.

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

A. To advance special 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 over all other sources of supply and competitive procurement methods.

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, and 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.

NEW YORK STATE OFFICE OF MENTAL HEALTH
BUY OMH
44 Holland Avenue
Albany, NY 12229
Phone (518) 473-8561
FAX (518) 473-0066

21. **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.
- 1) 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.
 - 2) 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/>
- B. By Executive Order, all New York State Agencies are required to take affirmative steps to award purchases to minority and women 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 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 take special outreach measures to 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 affirmative opportunity.
22. **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". We 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:
 - 1) Determine that there is an existing contract issued by a government entity after a competitive solicitation process with the vendor in question for the commodities/services that the College wishes to buy.
 - 2) Obtain a copy of the original contract from the issuing entity; verify that it is a current valid and current contract.
 - 3) Verify that vendor meets State requirements for "responsibility"; check VENDEX; obtain and verify references and financials.
 - 4) Verify that there's equivalency (quantity, size, and scope) between the University's proposed commodities/services 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. (The vendor's consent to the piggyback request must be in written legal form separate from a purchase order, which sets forth the agreed terms of the piggyback.)
 - 7) Requestor must assist Purchasing in preparing the explanation to the State regarding why piggybacking is the appropriate purchasing method.
 - 8) Prepare justification for pricing for the acquisition.
 - 9) The piggyback "Contract Use Request Form" must be completed and can be accessed on the OGS link:
<http://www.ogs.state.ny/procurement/pdfdoc/PGBReqForm.pdf>
 - 10) Once the Contract Use Request Form is completed, Purchasing submits it to the appropriate New York State Contract department for review and approval.
 - 11) Prepare a purchase order or contract document, including specifications regarding the commodities/services to be purchased; include standard CUNY terms and conditions.
 - 12) Obtain signature by vendor and the University.
 - 13) After approval is received, then the University's contract can be submitted for registration by the City Comptroller or the State Comptroller; then a purchase order may be issued.

23. **There's only one vendor who can provide me with the goods and services I need. Do we have to go through a public procurement/bid solicitation process? 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.
- In both cases, 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 it determined the price was reasonable.
- E. Additional research and inquiry will be required in all cases, and your Purchasing staff is trained to provide guidance and seek legal counsel when necessary. Reasonableness of price is required in all cases, and advertisement requirements for purchases in excess of \$20,000 still apply.
- F. 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) You will need to help Purchasing obtain the following information so that a justification memo can be included in Purchasing's files:
 - a) provide background info
 - b) identify need for purchase
 - c) why is competitive solicitation not warranted?
 - d) how did you determine that a single/sole source was the best procurement method?
 - e) reasonable price and terms - how determined?
 - f) why this vendor?
 - g) 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 OSC/OCC approval

24. **Who's going to help me resolve problems with deliveries?**

- A. If you are unable to resolve a delivery problem after pursuing regular College's procedures for tracking deliveries, call 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.

25. **"It's an emergency!" What should I do?**

First, ask yourself -- is it really an emergency? Is it 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 handle the purchase on an emergency basis. Lack of planning does not constitute an emergency.

- A. If it is an Immediate Emergency event – such as a fire, an explosion, a flood, then:
 - 1) call 911
 - 2) call Security, Facilities, Purchasing, VP for Finance who will make whatever purchases are necessary
 - 3) fix what needs to be fixed - not an excuse to install new decorative landscaping
 - 4) act prudently! what if you (personally) had to pay for it? you'll need to write an emergency justification memo for your college VP who will need to send it under his/her signature to Vice Chancellor Malave and Senior Vice Chancellor Schaffer to advise them of emergency purchase(s) made
 - 5) work with Purchasing to produce specifications and 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, then "Less Immediate Emergency"
 - 1) call your Purchasing Department who will call CUNY Legal for guidance
 - 2) Purchasing will need to make a plan for determining how College will solicit goods and services

- 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 Malave and Senior Vice Chancellor Schaffer to advise them of intended emergency purchase. The memo must:
- a) explain the situation – why emergency procurement is necessary;
 - b) what college plans to do and why plan is reasonable;
 - c) provide assurance that it is a one-time occurrence; and
 - d) provide assurance that the emergency procurement 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.

Note: 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).

26. 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
- 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 (Corp Counsel is not

- reviewing the intended purchase for its worth and wisdom; it is reviewing the draft IFB for its legal terms
- 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:
 - (1) 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).
 - (2) If AG approves, it will forward contract package to Office of State Comptroller which will evaluate the contract and the solicitation documents: wisdom of purchase (consistent with CUNY mission), money is available, acceptable terms (e.g. a contract locking prices for 30 years likely won't pass muster), proper solicitation process was followed (no collusion, maximum competition, proper advertising; completion of appropriate forms. OSC (Dan Ryan, Jim Hettie) will then approve and then register the contract. Only upon registration is the contract a contract.
 - b) Community colleges and City funds
 - (1) submit contract to City's Imaging Office who will index and scan the document and send it electronically to the City auditor - John Goddard who is the primary examiner for CUNY. Mr. Goddard reviews the contract and then approves it as to form for signature by Comptroller's office (John Graham). Only after the Comptroller has 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 State Contract were not selected.

27. **How does the purchasing process work?**

- A. What laws/rules/regulations do CUNY follow?
 - 1) CUNY follows State laws
 - 2) CUNY is not bound by NYC PPB rules

- 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 lead colleges to be subject to a different review process and contract registration process by the State or the City.
 - 3) The community colleges also are mandated to follow certain City procedures

28. **Who else is involved in purchasing? What are their roles?**

- A. Office of the General Counsel
 - 1) reviews draft solicitation documents (IFB/RFP) and contracts to ensure that all required components are included and follow prescribed form
 - 2) interprets and assists 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
 - 7) OGC paralegal: reviews vendor-signed contract; verifies proper execution by vendor; checks for OGC review of solicitation and contract; conducts VENDEX check of vendor; and verifies approved board resolution before signature by General Counsel; obtains GC signature for contract

- B. Office of the University Controller
 - 1) procurement for the University
 - 2) hub for University-wide (collaborative) purchasing
 - 3) promulgate procurement policies to improve delivery of goods and services to University
 - 4) act as liaison between CUNY and City Comptroller's Office and CUNY and State Comptroller's Office
 - 5) liaison between colleges and City and State; intercede on colleges' behalf

- 6) negotiate with State Controller re flexibility ceiling
 - 7) uniformity in how colleges respond to/comply with new laws and rules
 - 8) conducts purchasing training for College's Purchasing personnel
 - 9) provides guidance regarding procedure: this FAQ site; Purchasing Manual, Vendors' Guide to Doing Business with CUNY, listserv
 - 10) evaluate college contracts for worth and wisdom
 - 11) with Office of General Counsel, interprets state and city rules and policies
 - 12) systems: accounting, internal audit
 - 13) encumbrances
 - 14) promote M/WBE efforts
- C. 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 Campuses.
 - 2) all purchases that are at least \$20,000 need a board resolution to authorize the purchase.
 - 3) The University Board of Trustees Bylaws authorizes the General Counsel to sign all contracts on behalf of the BOT for the University.
- D. Attorney General's Office:
- 1) protects interests of the state of NY and its subsidiaries, including CUNY
 - 2) represents CUNY when there are claims or disputes (i.e. if a lawsuit is filed)
- E. New York State Office of General Services ("NYS OGS" or "OGS")
- 1) the state's equivalent of New York City's Department of Citywide Administrative Services)
 - 2) OGS has two major roles:
 - a) it is the purchasing arm for State of New York (the University may make purchases from OGS contracts)
 - b) it is the reviewer of piggybacking documents - must have OGS approval as first step to using another government entity's contract
- F. 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
 - 6) validity of sole/single source
- G. Office of (New York) City Comptroller

- 1) the City Comptroller has thirty days for 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.
 - 2) the City Comptroller does not have authority to determine the "worth and wisdom" of a contract award made by the University.
- H. New York City Corporation Counsel ("Corp Counsel")
- 1) protects the interests of the state of NYC and its subsidiaries
- I. Department of Citywide Administrative Services ("DCAS" (DEE kass))
- 1) the city's equivalent of New York State's Office of General Services (OGS)
 - 2) purchasing arm for New York City (the University may make purchases from DCAS's contracts)
- J. Financial Information Services Agency (FISA)
- 1) owner of city's accounting system
- K. State Contract Reporter / City Record
- 1) State law requires the University and its colleges to advertise public solicitations in State Contract Reporter
 - 2) University policy requires that we also advertise solicitations in the City Record (and it simply makes sense for us to do so since we're in NYC)

29. **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 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 vendor of the problem(s) and, if appropriate, in its efforts to give the vendor an opportunity to fix the problem.
- 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 problems), 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.

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

- A. Since they are a valuable source of information, you are encouraged to seek information from them 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 better 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 the 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 #16 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 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 #16 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.

- 1) If a vendor contacts you while a procurement 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.

- 3) If you receive any materials from a vendor while a procurement is underway, immediately forward them (unopened, if possible) to Purchasing.

31. Why do vendors wait so long before they get paid?

- A. Usually because proper procurement process was not followed.
- B. Often because requester does not sign the "receiving" paperwork promptly after receipt of the goods.
- C. Often because requesters make purchases without going through Purchasing and necessary paperwork is out of whack.
- 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 necessary paperwork.

32. 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 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 are entitled to optimal quality of service, timely delivery and “best value” available in the marketplace and vendors are entitled to a fair profit.

33. Who me? I'm expected to follow Public Officers' Law?

- A. CUNY is covered by the provisions of the New York State Public Officers Law. The vendor (or contractor or supplier or consultant) also shall abide by these provisions throughout the duration of the Contract.

- B. Public Officers Law Section 73 (5) specifically prohibits CUNY employees from soliciting or accepting any gift, no matter what the value, from a disqualified source - defined as “a person or entity that is regulated by, does business with, appears before or negotiates with CUNY; lobbies or has litigation adverse to CUNY; applies for or receives funds from CUNY; or contracts with CUNY or another agency where CUNY receives the benefit of the contract.”
- C. For the purposes of this Contract, a Conflict of Interest may be deemed to exist where CUNY, in its sole judgment, determines that (i) a vendor, or any of its affiliates, subsidiaries or its parent (or any officers, directors, principals or key employees thereof), or (ii) any other entity, by whom the vendor is employed, under contract with or otherwise provides services to, has a personal, business or financial interest which is adverse to or otherwise in conflict with any interest of CUNY, any of its senior or community colleges, and/or CUNY auxiliary or related entities affiliates and the State of New York. Circumstances where a Conflict of Interest may be deemed to exist include, but are not limited to, involvement in legal or administrative proceedings in which CUNY or an affiliated entity is a party.
- D. All vendors must disclose in writing to CUNY, together with its bid submission or proposal, any Conflicts of Interest or potential Conflicts of Interest, which might arise if the vendor were awarded a particular contract. Upon such notification, CUNY may make such further inquiries into the circumstances as are reasonable, and the vendor must cooperate with such inquiries.
- E. Where CUNY, in its sole judgment, deems that a Conflict of Interest will arise if the Contract is awarded to the vendor, or that there is a reasonable possibility that a Conflict of Interest may arise at some point after award, CUNY may reject such bid submission or proposal or require the vendor, as a condition of award of the Contract, to take such measures as CUNY may reasonably determine to avoid or limit the effect of such Conflict of Interest.
- F. If the vendor is awarded the Contract, then the vendor's duty to disclose Conflicts of Interest and potential Conflicts of Interest shall continue throughout the course of the Contract, until final payment is rendered. Where a Conflict of Interest arises during the course of performance of the Contract, CUNY may terminate the Contract under the Article entitled "Termination", or require the vendor to take such measures as CUNY may reasonably determine to avoid or limit the effect of such Conflict of Interest.
- G. Failure of a vendor to disclose a Conflict of Interest or potential Conflict of Interest of which, in CUNY’s sole discretion, the vendor was aware or reasonably should have been aware, will be grounds for termination of this Contract for default. In addition, any such failure to disclose may be considered in future responsibility determinations rendered by CUNY.

34. **Where can I get more information?**

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

35. **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 an alternative product as a proposed equivalent. The vendors must provide supporting evidence that the proposed equivalent performs at least as well as the item specified by the College. The Purchasing staff will work with the end user to evaluate the proposed equivalent product and determine whether it should be deemed an "approved equal". Please remember that "approved equal" is a legal standard, and Purchasing must consult OGC if an otherwise qualified vendor offers a proposed equivalent.

36. **What's an IFB (Invitation for Bids)? What's an RFP (Request for Proposals)?**

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.

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 don't 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.

37. **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 its 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 subject to review and evaluation before contract award.
- C. In all cases, the selected vendor must meet and respond to the minimum bidder requirements ("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.

Note: a vendor that offers the lowest price but is not selected has the right to sue the University, potentially holding up any related contract award for many months.

38. How is a bidder disqualified?

- A. "Not responsive" (as defined under New York State law) to specifications - bidder/proposer's bid submission/proposal does not "respond" to the (IFB/RFP) solicitation's requirements, i.e. does not meet threshold requirements.
- B. "Not responsible" (as defined by New York State law) - bidder/proposer does not meet the three criteria of demonstrated ability to perform, fiscal integrity, and moral integrity, including (recorded) poor past performance - where 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.

39. 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 submit 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 staff member at all times) at each site visit/pre-bid conference. A Purchasing 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 staff, and answers to ministerial questions are mailed to all participating prospective vendors immediately following the event. At the discretion of the Purchasing 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. In all cases, Purchasing will notify in writing about any modifications made in deadlines or in specification documents every vendor attending the conference.
- 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 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 staff
 - 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.

40. **The vendor and CUNY have signed the contract. Why can't I get the commodities/ services 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 Campus directs a vendor to begin work before the contract is registered, and then the Comptroller does not register the contract, then you 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 which is the registration of the contract by the New York State Comptroller or the New York City Comptroller (depending on the source of funding)

41. **What are FOIL Requests?**

- A. During a solicitation, the University may deny release of certain documents on the basis that such release may "impair present or imminent contract awards."
- B. Purchasing Offices must direct all FOIL requests for information (such as for former contracts and bid prices for previously issued solicitations (Invitations for Bids and Requests for Proposals) to the its Campus Records Access Officer. Campus Records Access Officers may request assistance on questions relating to FOIL requests from OGC (212-794-5382).

42. **What is the role of the requestor with respect to preparation of specifications?**

- A. Every instance of smart buying involves clear, detailed specifications. 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. Best value does not necessarily mean only lowest price, and thorough comparative product analysis against established specifications ensures the correct purchasing decision. A selection not carrying the lowest price must be fully justified by reference to its specifications.
- B. Solicitation of competitive quotes or bids from vendors is possible only by supplying clear specifications which are sufficiently generic to avoid exclusionary consequences, whether inadvertent or deliberate.
- C. Purchasing 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. Especially in the procurement of highly technical or complex materials, equipment, or services, the responsibility for specification development must fall to the initiating department with Purchasing maintaining its role of coordination and oversight to ensure sufficient detail and avoidance of exclusionary language. 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.

43. **Private Monies (non tax-levy dollars) - Are the requirements or procedures different for spending private dollars?**

- A. Those contracts funded independently such as by auxiliaries, related entities, and the CUNY Research Foundation ("R.F.") are not governed by New York State regulations and are not covered by these guidelines. However, if any contract is funded partially from New York State funds or if a contract is expected to convert to New York State funding in some future year, full compliance with New York State regulations and these guidelines is required from the outset.
- B. The CUNY Research Foundation, established to administer externally funded grants, is a legally separate corporate entity in the State of New York. As such, the regulations and procedures of the State and CUNY do not apply. 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.
- C. 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.
- D. 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.

44. **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 are action 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.

45. **How does the College engage consultants?**

- A. First, provide to Purchasing a purchase requisition stating the detailed scope of work and specific qualifications required of the consultant needed.

- B. Purchasing then will assist you in identifying potential consultants who meet your requirements and recommend appropriate procurement procedure. *Remember that hiring a consultant is handled just like any other purchase of services.* Therefore, 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 #13A.3).
- C. Purchasing will assist you in determining whether a current employee (able and qualified) can fulfill the requirements as part of his/her duties. Purchasing also will assist you in determining that hiring a consultant is less expensive and more economically advantageous than bringing in an employee.
- D. Remember that the potential consultant cannot be an employee at the University or an employee of any of the colleges at the University or an employee of any other New York State agency.
- E. Any consultant who is engaged by the University or the Colleges must be qualified to work for CUNY, including having appropriate immigration status and tax status.
- F. Consultants must sign a University-standard consulting agreement and complete various state-required forms. Consultant agreements that involve expending an amount exceeding \$20,000 in a fiscal year require a board resolution and must be signed by the General Counsel.

46. **What's the bottom line?**

Purchasing and Central will make all efforts on our part 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 purchase order must be issued by the Purchasing Department before an order is placed.
- ⇒ All purchase requisitions must include appropriate, active budget codes with sufficient funds to cover the purchase and complete and accurate specifications. If a budget transfer is necessary submit the transfer before submitting the purchase requisition.
- ⇒ All purchase requisitions must be properly authorized.
- ⇒ Timely submission of purchase requisitions will help to assure timely deliveries. We cannot assure timely deliveries when orders are put through with a "RUSH" status.