

# **How To Spend Your Budget Dollars State Purchasing Procedures**

## **I. WHAT CAN WE BUY?**

“Commodities” are defined as standard articles of commerce in the form of material goods, supplies, products or similar items. Commodities do not include technology.

“Services” are defined as the performance of a task or tasks, which may include the use of a material good or a quantity of material goods. This definition includes technology which can be either a good or a service or a combination thereof (frequently referred to as “bundled acquisitions”).

“Technology” is defined as a good or a service or a combination thereof that results in a technical method of achieving a practical purpose or in improvements in productivity. Technology may be new or used.

## **II. WHY ARE THERE RULES?**

The goal of the State’s acquisition process is to acquire commodities, services and technology that enable State agencies to fulfill their respective missions while ensuring fair and open competition. The State’s acquisition process is designed to:

- (a) Guard against favoritism, improvidence, extravagance, fraud and corruption;
- (b) Ensure that the results meet agency needs; and,
- (c) Protect the interests of the State and its taxpayers. To ensure a competitive process, State statute provides for checks and balances to regulate and oversee agency procurement activities.

## **III. WHAT ARE THE RULES?**

Departments are now required to forward purchase requisitions using the SUNY On-Line Web Procurement System. Only requisitions for payments will continue in the paper format.

### **I. Publication in the New York State Contract Reporter:**

- 1. Preferred Sources: No publication is required at any dollar level.
- 2. Up to \$10,000: no publication is required.

3. \$10,000.01 to less than \$20,000: quarterly publication of a list of projected procurements by commodity and/or service, together with an explanation of how to apply for placement on any bidder lists and the procedure for providing advance notice by mail to those campus bidders lists.
4. \$20,000 and above: An individual notice for each proposed procurement must be published at least 15 business days in advance of the date on which a bid or proposal is due, unless a shorter period is specifically authorized by law. The New York State Contract Reporter accepts only online submissions through its website.
5. Sole Source, Single Source and Emergency Procurements for \$20,000 or Greater:
  - a) Where publication would otherwise be required, but is not feasible due to sole source, single source or emergency nature of a commodity or service, the campus must make a prior written request for an exemption and provide supporting documentation to OSC in accordance with the OSC Procurement and Disbursement Guidelines Bulletin G-107B. For emergency purchases, subsequent to approval by a campus senior officer, a verbal request for approval of an exemption, followed up with a written request, may be made to OSC, which will respond verbally as soon as practicable, and follow up with a written confirmation of its determination.
  - b) Campuses receiving an exemption from publication must subsequently publish a notice of either the letting or award of the purchase/contract, and the reasons for such exemptions, in the New York State *Contract Reporter*. For purchases/contracts which received an exemption and which require OSC approval, the campus must provide to OSC, prior to OSC approval, proof that the campus has requested the Empire State Development Agency to publish the notice of exemption in the New York State *Contract Reporter*. The notice should be placed as soon as possible. Campuses granted an exemption must maintain documented proof of compliance with the foregoing.

## II. Competitive selection process:

1. Purchases/Contracts up to \$50,000: A campus may purchase commodities or services directly from a responsible vendor of its choice. While no competition is required, a campus should take the steps necessary to ensure that prices are reasonable. Written documentation should be maintained by the campus to support both the selection of the vendor and the reasonableness of the price.

2. Purchases/Contracts from \$50,000.01 to \$125,000: A campus must solicit a minimum of three informal quotations or proposals from responsible vendors offering such commodity/services. At the campus' option and depending upon the situation, a more formal process may be used, but is not required.
3. Purchases/Contracts \$125,000.01-\$250,000: A campus must solicit a minimum of five formal sealed bids or proposals from responsible vendors. Where the solicitation of sealed bids or proposals is not practical, the campus may solicit, with the written approval of the campus president or designee, a minimum of five formal written quotations. Written documentation of such approval shall be maintained by the campus.
4. Purchases/Contracts over \$250,000: A campus must solicit a minimum of five sealed bids from responsible vendors. The purchase/contract must be sent to the Attorney General and OSC for approval.

Exemptions from competitive selection requirements:

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

1. The acquisition of commodities and/or services from preferred sources is exempted from statutory competitive procurement requirements. It is the declared policy of the University to purchase from preferred source suppliers whenever possible, after determining that the form, function and utility of preferred source products and services meet the University's requirements.
2. *Centralized State Contracts*: A campus may elect to purchase any commodities or services, regardless of amount, from an existing Office of General Services (OGS) centralized state contract following the procedures and requirements established by OGS, as appropriate for SUNY.
3. *Campus Submitted "Filed Requirement" with OGS*: Where a campus has previously submitted a "filed requirement" with OGS under a specific term contract (e.g. fuel oil, college catalogues), the campus must honor its commitment to the centralized State contract vendor in accordance with the provisions of the term contract.
4. *Campus Requests OGS to Purchase*: A campus may at any time request OGS to purchase a required commodity or service. The campus should submit the appropriate information to OGS and request that OGS complete the purchasing process, subject to OGS' agreement to do so.

5. Small Business, New York State Certified M/WBEs, Recycled or Remanufactured Purchases: Where commodities or services are available from small businesses or New York State certified M/WBEs; or where commodities or technology that is recycled or remanufactured is available, purchases may be made in amounts not exceeding \$125,000 without competitive bidding, in accordance with Section II (B)(1) above. Advertising requirements under NYS Economic Development Law still apply.
6. New York State Labeled Wines: New York State labeled wines, produced by a winery licensed in accordance with the requirements of NYS Alcoholic Beverage Control Law §76, shall be exempt from competitive requirements, regardless of amount. (State Finance Law §165(4-a)). A list of currently eligible wine shall be maintained by the Office of General Services.
7. Sole Source, Single Source or Emergency Contracts: Where competition would otherwise be required, but is not feasible due to the sole source, single source or emergency nature of the commodity or service, the campus must be able to justify and document the selection of the vendor and establish the reasonableness of the price. In accordance with the State Finance Law, exceptions to the general requirements for competitive selection shall only be made under unusual circumstances. The campus must maintain in its Procurement Record written justification supporting the sole source, single source or emergency determination. An example of substantiating single source procurement (limited number of suppliers) might be written documentation detailing prior substantial experience of the contractor in provision of the products or services customized to the SUNY environment or a certain service that only one contractor provides in addition to the service or technology being procured. An example of substantiating sole source procurement (only one supplier) would be written documentation detailing the unique nature of the requirement, how it was determined only one vendor could meet the need, and how it was determined the cost is reasonable. One method available to document the sole source status is to advertise in the *Contract Reporter* and only receive one response.
8. Revenue Contracts at \$10,000 and greater: Under many circumstances, contracts which require the University to provide consideration other than money (generally, “revenue contracts”) do not require a formal competitive selection process. However, in those instances in which competition is appropriate, the procedure in Paragraph II.B. above shall apply.
9. Intercollegiate Athletic NCAA Division 1 program contracts up to \$250,000, as described in Section III.C. below.

III. Required External Agency Approvals of Contracts and Purchase Orders:

- A. The University has committed to performing campus internal control reviews of the procurement function. An annual certification letter will be submitted to OSC denoting those campuses which have been determined to have adequate internal controls.
- B. The following approval levels shall apply under University flexibility, except as required in subsection D below.
  - 1. Contracts and purchase orders up to \$250,000 shall require no prior approval by any state agency, subject to the following exceptions (these exceptions do not apply to NCAA Division 1 Agreements described in Subsection C below):
    - a) A bid protest has been received prior to the time the contract or purchase order is fully executed;
    - b) The apparent low bid or best value is not selected;
    - c) The award is not made in accordance with the provisions of the IFB or RFP;
    - d) A single or sole source procurement.
  - 2. In the case of the above exceptions, contracts exceeding \$125,000 are subject to the approval of the attorney general and OSC after consultation with, but not prior to approval of, any other state agency.
  - 3. If none of the above exceptions apply, contracts exceeding \$250,000 are subject to the approval of the attorney general and OSC, after consultation with, but not prior approval of, any other state agency.
- C. Intercollegiate Athletics NCAA Division I Programs: For procurements related to the Intercollegiate Athletics, NCAA Division I programs, OSC has advised the University that the campus president or designee may, upon written determination, decide that competition is not feasible due to the unique nature of the program or circumstances, and authorize a procurement without competition, except that such authority shall not exist for contracts funded by personal service appropriations.

1. The circumstances supporting such determination must be consistent with standard NCAA Division I practices used for intercollegiate athletics program nationally. The selection must be justified and the prices demonstrated to be reasonable and competitive. This authority shall apply to intercollegiate athletics program agreements up to \$250,000.
  2. For all intercollegiate athletics NCAA Division I agreements, the exceptions noted in Paragraph B.1. above shall not apply, and no approval shall be required by any state agency for such transactions up to \$250,000.
- D. Except for those contracts in Subsection C above, for those campuses which lack adequate controls, the approval of the attorney general and OSC, but no other state agency, will be required for all contracts and purchase orders in excess of \$50,000, or in excess of \$75,000 for hospital contracts and purchase orders, until such time as the adequacy of internal controls can be certified.
- E. OSC approval is required for contracts where the University provides consideration other than money (generally revenue contracts), with a reasonably estimated value in excess of \$10,000.
- F. It is important to note that when determining the contract value the total contract term must be considered. Campuses should not continually enter into one-year contracts with the same vendor (below prior approval thresholds) to avoid obtaining a multi-year contract that would require prior approval. For audit purposes, purchases within a 60 day period, absent extenuating circumstances, will be treated as a single transaction.
- G. Contract work should not begin until all necessary approvals are received. Authorizing the start of work before all approvals are received is beyond the scope of a State employee's authority, and the employee may be held personally liable.

#### **IV. WHY DO ALL PURCHASES AND CONTRACTS HAVE TO GO THROUGH PURCHASINGS & PAYABLES?**

New York State Finance Law requires that all purchases made with state funds go through a centralized purchasing office. Purchase orders and vouchers, signed by designated agency officials, are required when buying and paying for goods and services. Employees have no jurisdiction to purchase on behalf of the College. The College can refuse delivery and payment on any purchases made by employees without an approved Purchase Order. Purchases made without Purchasing & Payables approvals are considered “confirming orders” and require justification. Confirming orders are rejected and the department must find other funds to make payment.

SUNY policy with respect to the review and execution of contracts dictates that every contract or agreement, unless previously reviewed and approved in a similar form, must be reviewed by University Counsel’s Office. SUNY Board of Trustees Resolution 83-17 authorized that only campus Presidents and their duly appointed designees are to execute contracts. Contracts include such documents as consultant/performer/speaker agreements, revocable permits, licenses, leases and affiliation agreements. All agreements; funded by the State or Foundation monies that require separate contracts or additional language from the vendor or firm to implement must be properly authorized by the appointed college designee. Please forward them to the Office of Purchasing & Payables for a preliminary review where it will be determined whether or not University Counsel’s Office needs to review. Only then will these agreements be authorized and executed. Failure to follow University and College procedures with respect to the review, approval and execution of contracts may subject the employee to personal liability for the financial commitment and other obligations of the agreement.

#### **V. HOW DO I PROCESS SPECIAL PURCHASES LIKE FOOD, GIFTS, REIMBRUSEMENTS, AND CONSULTANTS?**

**Food:** Food purchases must be program related. Department open houses, staff and other meetings and student information sessions are program related. If the Chair or Department decides to take the office to lunch, or you want to buy a pizza lunch for your student workers, that’s not program related. To receive funding to purchase food for a program process a paper requisition through our office to receive a standard voucher. You must show proper documentation for the program i.e. program flyer or meeting agenda and a list of participants. Most important thing to remember – do not just turn in a receipt after the fact!

**Gifts:** State Finance Law prohibits the use of state funds to purchase gifts for employees and students. If someone in the office is sick, has a death in the family or is leaving their position, do not use state money to purchase a gift. Donations to organizations are acceptable with proper documentation. Attach the announcement or request for gifts to the purchase requisition. Awards, commencement gifts and appreciation gifts to external parties are acceptable, but again need to be justified as program related.

**Reimbursements:** In rare instances, we will reimburse employees that use their own funds to purchase goods. You would fill out a reimbursement justification form with the proper documentation.

**Consultants:** Consultants are people who are hired for professional or technical advice or to perform job duties. An example of a consultant would be hiring people to perform or lecture, write grants, design publications, administer surveys or provide advice. In this situation, departments should complete the Employee/Independent Contractor Classification Checklist with Human Resources. If it is determined that the individual(s) is/are a consultant, an agreement must be completed by the department and approved by Purchasing and Payables. For services which total more than \$15,000, specific language and disclosure forms must be included in the agreement. Payment is made to the consultant when the work is complete and an invoice for the consulting services is provided. In instances where payment is required immediately after the service is performed, the check can be processed and available for that day. See the attached procedures for the lead time needed for this request and other requirements.

**Contracts:** Some vendors will require a contract or agreement to be signed before services are rendered or equipment can be rented. As mentioned previously, SUNY requires that all contracts and agreements are reviewed by the Business Affairs Office and SUNY Counsel. Only specific employees, designated by the President, whose signatures are on file with the NYS Office of the State Comptroller, can sign agreements for the College. Contracts signed by employees not designated are personally responsible for all terms of the contract they sign.

## **VI. ARE THERE OTHER WAYS TO BUY STUFF BESIDES SENDING A PURCHASE REQUISITION OVER AND USING A PURCHASE ORDER?**

If you plan to pick up your purchase directly from your vendor, a hand carry purchase order (PO) is available. When making small dollar purchases under \$500, there are five different options other than the standard requisition process. These five options are Yellow Book, College Store, Citibank Visa Purchasing Card, the College B.J.'s Card and Wal-Mart.

**Hand Carry PO:** If you want to purchase something locally and would like to go directly to the vendor to pick up your purchase, you can use a hand carry PO. Forward an on-line purchase requisition to Purchasing & Payables indicating on it that it is a “hand carry” and when you plan to pick it up. We’ll have the PO ready.

**Yellow Book:** The “Yellow Book” is a receipt book that can be signed out for purchases under \$200 made to local Potsdam vendors. A paper purchase requisition is required with the estimated purchase amount.

**College Store:** PACES is an auxiliary service of SUNY Potsdam. This relationship allows us to make small dollar purchases under \$500 in a confirming fashion. As purchases are made, please send a paper purchase requisition describing the purchase with a receipt attached to Purchasing & Payables for payment. **Please note, all purchases over \$500 must be ordered ahead of time on a purchase order, therefore do not use the confirming method for a purchase over \$500.**

**VISA Purchasing Card:** The VISA Purchasing Card (aka “P-card”) is available for credit card small dollar purchases with limits set by the department. Contact Susan Cobb at x2140 for more information and an application.

**College B.J.’s Wholesale Club Card:** The College has a B.J.’s card that allows employees to purchase merchandise from B.J.’s without tax. They will not accept a purchase order. Therefore, personal funds must be used and we will reimburse after the purchase is made. See a separate procedure for B.J.’s purchases.

**Wal-Mart:** Wal-Mart will not accept a PO. The College allows departments to purchase items from Wal-Mart through a reimbursement process similar to B.J.’s. Please bring a requisition to our office and pick up the proper forms and membership card before you make purchases at the store.

## **VII. SUNY SMRT INQUIRY SYSTEM**

SMRT, SUNY Management Resource Tool, is a web based program designed to give SUNY campuses and their department’s inquiry access to their state funded accounts for State Purpose, Dormitory, IFT, SUTRA and SUCF. SMRT provides:

- \*A basis for a fully integrated reporting tool
- \*Real-time, HR and Finance activity
- \*Printer Friendly Reporting
- \*Excel Download capabilities

To get access or change access in SMRT, contact Joy Maxwell @ 4875.

Please contact any member of the Office of Purchasing and Payables with questions, concerns or comments.

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