

Financial

Board of Trustees Policy

SUBJECT: Purchasing	NUMBER: 6.4
	DATE: December 15, 2014
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Purpose

The purpose of this policy is to establish the manner in which goods and services must be purchased by SUNY Schenectady, as required by NYS General Municipal Law 104-B.

Policy

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Overview

The purchase of goods and services by SUNY Schenectady (hereinafter referred to as the “College”) is governed by the General Municipal Law and the policies and procedures of the College’s Board of Trustees. In accordance with the General Municipal Law, this policy shall be renewed annually by the Board of Trustees.

It shall be the policy of the College to competitively purchase goods and services in order to assure the prudent and economic use of public monies in the best interest of Schenectady County citizens, and to acquire goods and services of maximum quality at the lowest cost and without favoritism.

The following are key aspects of the policy:

- a. All purchase documents, including supporting documentation and quotes, must be sent to the College’s Finance Office upon completion of a requisition and, most importantly, prior to committing to a purchase. All purchases must be made using the Banner online requisition system; unless the purchase is being made by an authorized purchaser whose workstation is not connected to the Banner system. In that case, submission of a paper requisition form is acceptable.
- b. All computer and software purchases should be coordinated with the Information Technology Department in order to standardize equipment and reduce costs.
- c. Any purchases of goods and/or services related to the College facility, plus all copier, paper, and telephone purchases should be coordinated by the Office of Administration.
- d. College personnel should use existing State and Federal contracts where available and will participate in shared services agreements offered through the State University of New York in order to aggregate demand and take advantage of the price discounts available through these contracts.
- e. Departments wishing to purchase goods and services should use the College’s portion of the Empire State Purchasing Group (ESPG) web site to solicit verbal and written quotations. Contact the Office of Administration for training on use of the site.
- f. Documentation to support the expenditure of funds to purchase goods and service must include the following:
 - i. Purchases over \$1,000 and less than \$5,000 require at least three (3) verbal quotes from vendors supported by e-mail correspondence (a completed certification must be submitted along with the purchase order documentation);

ii. For purchase contracts (as hereinafter defined) - purchases of \$5,000 or more but less than \$20,000, must have at least three (3) written quotes from vendors;

iii. For public works contracts (as hereinafter defined) - purchases of \$5000 or more but less than \$35,000, must have at least three (3) written quotes from vendors; and

iv. Public bidding is required when purchases of supplies or equipment is more than \$20,000 in a fiscal year, or when a public works contract is to exceed \$35,000 in any fiscal year.

- g. If one or more of the exceptions to bidding set forth in this policy apply, the procurement does not require a competitive bid; however, the grounds for such exception must be noted in writing on the purchase order.
- h. While competitive bidding is not required for professional services and true leases, Departments should work to obtain the best value for the College, and should issue formal requests for proposals at least every five (5) years for on-going professional services.

Ethics in Public Contracting

Notwithstanding any other requirements, individuals involved in the procurement of goods and services for the College shall comply with, and mindful of, the following:

- Protection of confidential information in relation to proposals and offers.
- Employee conflict of interest policies.
- Gratuities and kickbacks are strictly prohibited.

Each successful bidder or vendor under this policy who wishes to supply the College with goods, work, equipment, or services shall submit to the College, prior to acceptance of the contract, a statement on a Department standard form indicating that the contractor, its officers and employees do not have a conflict of interest relative to supplying the work, equipment or services to be provided. Pursuant to the General Municipal Law, it shall be a misdemeanor for any member of the College Board of Trustees or any College employee to be in any way or manner interested, directly or indirectly, in the furnishing of work, materials, supplies or labor, or in any contract therefore into which the College is empowered to enter.

With some limited exceptions set forth in law, no Board of Trustees member or employee shall have an interest in any contract with the College if he or she, individually or as a member of a board, has the power or duty to: (a) negotiate, prepare, authorize or approve the contract or authorize or approve payment thereunder; (b) audit bills or claims under the contract; or (c) appoint an officer or employee who has any of the powers or duties set forth above.

Additionally, no member of the Board of Trustees, the President, or any College employee shall have an interest in a bank or trust company designated as a depository, paying agent, registration agent for the investment of funds of the College. The provisions of this section shall in no event be construed to preclude the payment of lawful compensation and necessary expenses of anyone holding any of the aforesaid positions.

Any member of the Board of Trustees or College employee who has, will have, or later acquires an interest in, or whose spouse has, will have, or later acquires an interest in, any actual or proposed contract, purchase agreement, lease agreement or other agreement, including oral agreements, with the College shall publicly disclose the nature and extent of such interest in writing to his or her immediate supervisor and to the Board of Trustees as soon as he or she has knowledge of such actual or prospective interest. Such written disclosure shall be made part of and set forth in the meeting minutes of the Board of Trustees.

Initiating a Purchase

When a member of the faculty or staff identifies a business need that can be satisfied through the purchase of goods or services, they should obtain the approval of their department head. Once that approval is given, the on-line Banner purchasing system should be used to enter the purchase in the financial system and to generate a requisition. Please note, for purchases of IT goods and services, please contact the IT department.

Additionally, it should be noted the following are exceptions to the online Banner requisitions, and currently require paper requisitions to expedite payment:

- College employee reimbursements for non-travel expenses
- Chartwells
- Sunoco
- The College Store
- Staples
- Manpower/Kelly Services
- SGA/FSA/The SCCC Foundation
- Fed Ex
- EMTs
- Petty cash
- Medical insurance
- Medicare

For purchases of copiers, paper, and items related to the campus facilities and telephones, please contact the Office of Administration. Invoices or backup material should be forwarded to the Finance Office.

Authority to Purchase

The authority to purchase lies with the Board of Trustees unless it is expressly delegated in this policy to authorized individuals acting on behalf of the College. The Vice President of Administration shall be the chief purchasing official for the College, responsible for the day to day implementation of this policy.

Each department head shall serve as the principal purchasing official for his or her department, and may make expenditures for the procurement of supplies, services, and equipment included within his or her approved annual operating budgets consistent with this policy. Department head shall be responsible for the procurement of supplies, services, equipment and public works projects needed to satisfy the business needs identified within his or her business unit, with assistance as required from the Finance Office. To initiate a purchase, see the previous section of this policy entitled "Initiating a Purchase."

A department head is the senior person in a business unit reporting directly to the College President. Currently, the following individuals and titles within the College are considered to be department heads:

Dr. David Clickner, Interim Vice President of Academic Affairs
Patrick Ryan, Vice President of Administration
Sabrina McGinty, Assistant Vice President of Student Affairs
Sean Maguire, Vice President of Workforce Development & Community Education
Stacy McIlduff, Executive Director of Development
Chief Information Officer
Paula Ohlhaus, Chief of Staff

Per NYS General Municipal Law, this information shall be updated biennially.

Department heads are encouraged to plan their purchases when submitting their budget for the year. If regular purchases are made from specific vendors to supply goods and services essential to the normal functioning of the department, an annualized purchase that encumbers all the projected expenditure at the beginning of the fiscal year may be the most efficient and least costly way to effectuate the purchase. The Finance Office can provide guidance on how to make annualized purchases of goods and services.

The Vice President of Administration shall serve as the principal purchasing official for the purchase of goods and services needed for the proper functioning of the College, including but not limited to furnishings, telephony, copying equipment and supplies, and commodities related to facility maintenance.

Competitive Bidding

With some exceptions identified in this policy, New York State law requires competitive sealed bidding for purchase contracts in excess of \$20,000 and for all contracts for public work involving expenditures in excess of \$35,000, and for the contract to be awarded solely on the basis of the lowest price. If you need to purchase goods or services over these threshold amounts, and are not sure of the procurement rules, contact the Office of Administration for guidance.

The term "purchase contracts" means the purchase of equipment, supplies, and materials. The term "contract of public work" means contracts for services (other than professional services), labor or construction.

When a contract involves acquisition of both goods and services, the contract should be viewed as a "purchase" and not a "public work" for purposes of competitive bidding if the services are minor, incidental or customarily provided by the vendor as a component of the purchase.

Conversely, if the services are extensive, substantial, or involve specialized skills so that the acquisition of the commodity is incidental to the work, the contract should be treated as a contract for public work.

In determining the necessity for competitive bidding, the aggregate amount to be expended for an item or commodity in a fiscal year must be considered. Disaggregated purchasing should not be used to avoid purchasing thresholds and competitive bidding requirements.

Bid Specifications

When making a purchase, it is important to draft specifications that will communicate to prospective suppliers the particular needs of the purchasing unit, without unnecessarily limiting the field of potential bidders. Typically, specifications should be drafted with sufficient input from subject matter experts to assure the College purchases goods and services that satisfy its business needs. It is through the use of bid specifications that all bidders are provided a common standard by which to be measured and provide assurance that they will be competing on a common and equal basis.

Specifications must be drafted to allow vendors supplying reasonably equivalent items to compete on an equal basis. The specifications shall be drafted by the department head, or in the case of purchases subject to competitive bidding requirements (i.e. purchases exceeding \$20,000 for purchase contracts, and \$35,000 for public works contracts), by the Office of Administration with input from the appropriate subject matter experts.

Specifications may not be restrictive, fixed, or manipulated, so as to stifle competition. They should be drafted to foster competitive solicitation, resulting in the lowest price and best quality for the College.

If a brand name product represents an industry-wide standard, a brand name may be listed in

the specifications as long as the specifications provide an "equivalency clause"; that is, language that specifies a particular brand or its equivalent.

Where a brand name or equal specification is used, the solicitation shall contain explanatory language that the use of a brand name is for the purpose of describing the standard of quality, features, functions, and/or product performance and is not intended to limit or restrict competition.

Bid Deposits

Bid and performance bonds, or any other security as required, may be requested for supply, service or construction contracts to protect the College's interests. Any such bonding requirement shall be clearly set forth in the solicitation. Bid or performance bonds shall not be used as a substitute for a determination of a bidder or offeror's responsibility. Bid deposits from contract awardees shall be held in escrow by the College until the conclusion of the contract; bid deposits from unsuccessful bidders shall be returned following contract award.

Advertisement of Bids

Adequate public notice of the procurement opportunity shall be given, normally twenty (20) calendar days prior to the date set forth therein for the opening of bids, unless it is determined by the Vice President of Administration that less than twenty (20) days is adequate; provided, however, that under no circumstances shall the public notice be less than five (5) business days.

Such notice shall include publication of a legal notice in the newspaper(s) of general circulation as designated by the College (currently, the *Daily Gazette*). Additionally, all procurement opportunities shall be placed into an online electronic procurement system website (currently, the Empire State Purchasing Group) by authorized users. Language on the College's website shall direct those interested in supplying goods and services to the College, to visit the website for vending opportunities.

Opening and Awarding of Bids

Unless one of the exceptions to bidding outlined below exempts the purchase from competition, bids shall be opened publicly in the presence of one or more witnesses at the time and place designated in the solicitation documents. Generally, the bids will be opened by the Office of Administration or a designee, with at least one other individual from the College in attendance. In no event shall there be less than two (2) individuals from the College in attendance at the event. A record will be made of the bid opening, identifying all individuals in attendance, signed by the attending College representatives.

The bid and such other relevant information deemed appropriate, together with the name of each bidder, shall be recorded; the record of the bid opening and each bid shall be open to public inspection.

Rejection of Low Bid

Generally speaking, following a competitive bid, the contract must be awarded to the lowest bidder. Two exceptions to this general rule are as follows:

- Non-compliance with bid specifications
- Non-responsibility of the bidder

If a proposal does not provide items that have been specified in the solicitation document, the College has legitimate business reasons for rejecting the bid, as it would not meet the needs of the College.

"Responsibility" generally involves a bidder's qualifications and ability to perform in accordance with the terms and conditions of the contract. Factors such as financial responsibility, accountability, legal capacity, reliability, past performance, integrity, skill, capacity, ability, judgment, and moral worth may also be considered.

Upon finding a bidder "non-responsible", the College must afford the bidder due process by providing an opportunity to be heard prior to a final determination of non-responsibility.

Debriefing

The College will, upon request of an unsuccessful bidder, provide a debriefing regarding the reasons that the proposal or bid submitted by the unsuccessful bidder was not selected for an award. The opportunity to make such a request will be stated in the solicitation document, which shall provide a reasonable time for requesting a debriefing. For purchase contracts valued at less than \$20,000 the debriefing shall be conducted by the department head and shall include a representative from the Office of Administration. For all other procurements, debriefings shall be conducted by the Vice President for Administration.

Appeals and Protests

Any actual or prospective bidder, vendor, or contractor who is aggrieved in connection with the solicitation or award of a contract may, after undergoing a debriefing, may file a written protest to the President and/or the Board of Trustees.

The protest shall be filed prior to the opening of request for proposals or bids unless the person did not know the facts prior to the solicitation opening. In such case, the protest shall be submitted within five (5) calendar days after such aggrieved person knows or should have known of the facts giving rise to the protest. This policy shall be stated in the College's solicitation document.

In event of a timely protest, the department head shall not proceed further with the solicitation

or award of the contract until all administrative remedies have been exhausted or until the Board of Trustees makes a determination on the record that the award of the contract without delay is necessary to protect substantial interests of the College.

The department head's decision shall be final and conclusive unless, within, five (5) calendar days from the date of receipt of the decision, the contractor mails or otherwise delivers a written appeal to the Board and commences an action in a court of competent jurisdiction.

Exceptions to Bidding

The major exceptions to formal bidding requirements are making small purchases, purchasing from existing federal, New York State (including the NYS Office of General Services and SUNY) and county contracts, making sole source or single source procurements, purchasing goods or services from preferred sources, purchasing in response to an unforeseen emergency, true leases, and procurement of professional services. College personnel are strongly encouraged to purchase from existing federal, state, county and SUNY contracts to achieve cost savings where possible.

Federal Contract (General Services Administration)

The law allows the College to make purchases directly from certain federal General Services Administration contracts. For more information on which contracts may be used and proper procedure, speak with the College's Finance Office.

State Contracts and Contracts issued by any County within New York State

If sufficient funds are included in the Department's annual budget and the department head determines a good or service available on New York State (Office of General Services or State University of New York) contract or a contract issued by any New York county meets the needs of the department at a fair and reasonable cost, then the department head is authorized to purchase goods and services directly from such a contract. Please note, when purchasing from other county contracts, that contract must include a provision extending use to other local governments.

Sole Source

"Sole source" means a procurement in which only one vendor is capable of supplying the required goods or services. In making a "sole source" determination the College shall document at a minimum: the unique benefits to the College of the item as compared to other products available in the marketplace; that no other product provides substantially equivalent or similar benefits; and that considering the benefits received, the cost of the item is reasonable, in comparison to other products in the marketplace. In addition, there should be documentation that there is no possibility of competition for the procurement. A memorandum from the Vice President of Administration is needed to declare a purchase as having sufficient sole source justification.

Single Source

A "single source" procurement is one in which although two or more vendors are capable of supplying the required goods or services, the College, upon written findings setting forth the material and substantial reasons therefor, may award a contract to one vendor over the other. A memorandum from the Vice President of Administration is needed to declare a purchase as having sufficient single source justification where competitive bidding would otherwise be required.

Preferred Source

When goods or services are being purchased from a preferred source, the competitive bidding rules do not apply. Suppliers that are qualified as preferred vendors are listed with the New York State Office of General Services. "Preferred" status is accorded to:

- a. Commodities produced by the correctional industries program of the Department of Corrections and Community Supervision;
- b. Commodities and services produced by any qualified charitable non-profit-making agency for the blind approved for such purposes by the Commissioner of the Office of Children and Family Services;
- c. Commodities and services produced by any special employment program serving mentally ill persons, which shall not be required to be incorporated and which is operated by facilities within the Office of Mental Health;
- d. Commodities and services produced by any qualified charitable non-profit-making agency for other severely disabled persons approved for such purposes by the Commissioner of Education;
- e. Commodities and services produced by a qualified veterans' workshop providing job and employment-skills training to veterans where such a workshop is operated by the United States Department of Veterans Affairs; or.
- f. Commodities and services produced by any qualified charitable non-profit-making workshop for veterans approved for such purposes by the Commissioner of Education.

Emergencies

The Vice President of Administration, with the approval of the President and the Board of Trustees, may make or authorize others within the College to make, emergency procurements when there exists a threat to health and welfare of the students, faculty and staff, or a threat to the safety of College buildings and grounds. These situations must arise out of an accident, "Act of God" or other unforeseen occurrence or condition. Approval by the Board of Trustees

shall be given at its next regularly scheduled meeting following the emergency.

True Leases

True leases are neither purchases nor contracts for public work and, thus are not subject to competitive bidding. A true lease shall not contain a purchase option. Although true leases are exempt from competitive bidding, departments should obtain competitive quotations for leases whenever possible.

Professional Services

Generally, professional services involve specialized skill, training and expertise, use of professional judgment or discretion, and/or a high degree of creativity.

Professional Service contracts up to \$35,000 will be awarded at the discretion of the College President, with the goal of achieving the best value for the College.

Professional Service contracts expected to cost \$35,000 or more will require the issuance of a formal request for proposal (RFP). Such RFPs shall be advertised in the manner provided in this policy for competitive bids. Resulting contracts shall be awarded to the company offering the best value to the College upon approval of the Board of Trustees. The solicitation shall state the relative weight of cost and technical evaluation criteria.

"Best value" means the basis for awarding contracts for professional services to the offerer that optimizes quality, cost and efficiency, among responsive and responsible offers. Such basis shall reflect, wherever possible, objective and quantifiable analysis.

Minority and Women Owned Businesses

It shall be the policy of the College to encourage New York State certified Minority and Women Owned Business Enterprises (referred to hereafter as MWBEs) to participate in contract opportunities with the College and to afford MWBEs an equal opportunity to compete for work on College contracts. The College shall take all reasonable measures to ensure MWBEs are made aware of contract opportunities for which they may be qualified. The College shall adhere to the policy promulgated by the County of Schenectady for offering such contracting opportunities to MWBEs.

Small Purchases

Formal competitive bidding is not required for purchases less than \$20,000 for commodities, equipment and materials, and purchases less than \$35,000 for public works projects (together herein referred to as "small purchases"). For pricing, verbal or written quotes must be obtained from at least three (3) vendors. If the business unit is unable to obtain quotes from three (3) vendors within a reasonable time frame, the efforts as well as the reasons for such

failure must be set forth in the purchase documents.

All quotes, along with a copy of the solicitation, must be included in the purchase packet sent to the Accounts Payable Office to finalize the purchase. Documentation to support the expenditure of funds to purchase goods and services must include the following:

- a. Purchases over \$1,000 and less than \$5,000 require at least three (3) verbal quotes from vendors supported by e-mail correspondence (a completed certification form must be submitted in the packet); and
- b. Purchases of \$5,000 or more, but less than \$20,000, must have at least three (3) written quotes from vendors.

Please note that the aforementioned cost threshold is annual of like items and not single purchases. Splitting purchases to fall below the bidding thresholds so as to avoid the competitive procurement rules is not in compliance with New York State procurement laws.

Completing a Purchase

A purchase is completed when the Finance Office issues a purchase order after the business unit's submission of a completed purchase package. A completed purchasing package will consist of a solicitation documentation and vendor responses. Responses may include documentation of verbal quotes, written quotes on company letterhead or more formal vendor proposals. The purchase order will encumber the funds to be used to pay for the goods and services and, will then be sent to the selected vendor to finalize the order.

Contracts

If a professional service is planned for over \$20,000 per year, the department head must first provide a draft contract to the Vice President of Administration, who will submit same to the College Attorney for legal review. Every purchase contract over \$20,000 and every public work contract over \$35,000 must be submitted for approval by the Board of Trustees, but contracts must first go through this review process. Once approved by the Board of Trustees, work may commence. All invoices submitted under approved contracts must be accompanied by a requisition, as well as a copy of the resolution by the Board of Trustees.

Signing Authority

The College President is the authorized signing authority for all College contracts unless otherwise provided herein or otherwise by a Board of Trustees resolution.

For all contracts with a value less than \$35,000, the Vice Presidents of Administration is authorized to sign on behalf of the College.

For all contracts with a value less than \$10,000, the applicable department head is authorized to sign on behalf of the College.

Payment for Purchased Items/Issuance of Checks

Payment for purchased items will occur after all goods and services have been received and found to be satisfactory, and an invoice has been received from the vendor. Payment will normally be made within 30 days of receipt of the invoice unless disputed.

If payment needs to be made in another manner, please contact the Finance Office on a case-by-case basis to make other arrangements.

Credit Cards

Some purchases require the use of a credit card. For this reason, the College may maintain credit card account(s) with a banking service provider. The Vice President for Administration is responsible for the distribution of College credit cards to officers and employees of the College and shall account, monitor, retrieve, and generally oversee compliance with the College's credit card policy. The Vice President for Administration shall establish a system of internal accounting controls to monitor the use of College credit cards and for approval of credit card invoices before payment.

An officer or employee of the College shall use a College credit card for the sole purpose of purchasing goods or services for approved official business of the College. An officer or employee using a College credit card shall submit such documentation as required by the Vice President for.

If a credit card is issued to an officer or employee of the College, that individual is responsible for its protection and custody and shall immediately notify the Vice President for Administration if the credit card is lost, stolen or the subject of suspected credit card fraud. An officer or employee issued a College credit card shall return the credit card upon the termination of his or her employment or service with the College.

An officer or employee who makes unauthorized use of a College credit card will be subject to any and all criminal laws, discipline consistent with College policy, and any applicable collective bargaining agreement.

Grant Funds

Any procurement procedures required to be followed by the departments as a condition of the receipt of any federal, state, or county grant awarded to the College shall supersede any provision to the contrary set forth in this policy; except that to the extent that the standards

and thresholds within this policy meet or exceed the requirements of the grantor, this policy shall be adhered to.

Compliance with Laws - Certificate of Non-Collusion

Any contractor doing business with the College shall comply with all the laws in the County of Schenectady, the State of New York, and of the United States of America which affect municipal contracts, and provide at its expense, any and all permits, licenses and registrations required for the fulfillment of this agreement, and more particularly the Labor Law, the Immigration and Naturalization Laws and Regulation, the General Municipal Law, the Workers' Compensation Law, the Lien Law, Personal Property Law, State Unemployment Insurance Law, Federal Social Security Law, State, Local and Municipal Health Laws, Rules and Regulation, and any and all regulations promulgated by the State of New York and of amendments and additions thereto, insofar as the same shall be applicable to any contract awarded hereunder with the same force and effect as if set forth at length herein.

A key component of State law is a Certification of Non-Collusive Bidding. Any exceptions to this requirement shall only be made pursuant to Section 103-d of Article 5-A of the General Municipal Law or any other applicable area of law.

By submission of their bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of knowledge and belief:

- a. The prices in the bid have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor;
- b. Unless otherwise required by law, the prices which have been quoted in the bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly, to any other bidder or to any competitor; and
- c. No attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

A bid shall not be considered for award nor shall any award be made where a, b, and c above have not been complied with.

Procedures

The Vice President of Administration shall annually review this Policy and make recommendations to the Board of Trustees relating thereto as he or she deems appropriate.