

PROCUREMENT FREQUENTLY ASKED QUESTIONS (FAQs)

Answers were prepared by Thomas Hippchen, former Associate Vice Chancellor of Procurement with information available as of Friday, November 29, 2024 and apply to SUNY institutions that are governed by NY State Finance Law. Since NYS procurement laws and rules may change, you should always consult with campus counsel to determine if the answers are applicable to the specific procurement situation and still accurate.

ADVERTISING

Per [Economic Development Law §143](#) SUNY, like other State agencies, is required to advertise all procurement opportunities over \$50K in the [New York State Contract Reporter](#) (NYSCR) for, at least, fifteen (15) business days. SUNY must designate a contact person(s) who vendors are limited to contacting with questions about the procurement. If a vendor contacts someone other than the designated contact(s), it may be a violation of State Finance Law Section 139-j and require reporting.

- ***Does re-solicitation of a procurement require another NYSCR ad?***

Per [Economic Development Law §144.1 \(b\)](#), you are not required to advertise “procurement contracts being re-bid or re-solicited for substantially the same goods or services, within forty-five (45) business days after the date bids or proposals were originally due.”

- ***Is advertising required for revenue contracts?***

While State Finance Law does not expressly require a formal competitive bidding process, it is a best practice to seek competition. Conducting a formal competition demonstrates that an award is fair, reasonable, and in the best interest of the University. See [SUNY Procedure 7566 Revenue Contract](#) for details.

- ***Are there exemptions from advertising in the NYS Contract Reporter?***

The Office of the State Comptroller (OSC) may grant a campus exemption from advertising a procurement under three instances, which are outlined in the [NYS Procurement Guidelines](#):

- Emergency procurement p. 15
- Single source exemption request p. 12
- Sole source exemption request p. 13

No other state agency or person may grant these exemptions.

- ***What is Project Sunlight?***

Project Sunlight is an online database established in the [Public Integrity Reform Act of 2011](#) that is aimed at providing the public with transparency regarding the appearances made by individuals and entities before the New York State government. Regarding procurement, it requires State agencies to provide to the Office of General Services (OGS) certain information regarding meetings with vendors about a possible procurement.

- ***When is a Project Sunlight form required to be completed?***

- See the most recent (2021) training presentation concerning [Project Sunlight](#).

SUNY PROCUREMENT

- ***What is SUNY Flex?***

SUNY Flex refers to a section in [NYS Education Law §355.5 a.\(iii\)](#) which allows SUNY to negotiate with OSC:

- higher dollar thresholds for contracts needing their review and approval;
- the time frame for a determination on the approval of such contracts; and
- exempts SUNY from required external approval when entering into contracts from any other state officer or agency.

- ***What may SUNY Flex change?***

The above reference section of Education Law exempts SUNY from the following required approvals:

- Division Of the Budget (DOB) B-1184 (not including campus lets); and
- Office of Information Technology Services (OITS) Plan to Procure (PTP)

It also establishes a higher dollar threshold for review and approval of certain SUNY procurements by the Office of the Attorney General (OAG) if applicable and OSC.

The current dollar thresholds for procurements are:

- ✓ ≥ \$150K for Healthcare Facilities
- ✓ ≥ \$75K for State-operated Campuses
- ✓ ≥ \$200 for SUNY use of an OGS centralized contract.

OAG has no statutory time limit on review and approval of contracts on behalf of OSC. OSC has seventy-five (75) calendar days to review and make a determination on a procurement. OSC may request from SUNY additional time to make a determination.

- ***What doesn't SUNY Flex change?***

SUNY's procurement flexibility does not exempt SUNY from

- [Requirement](#) to advertise in the NYSCR;
- Procurement requirements in [State Finance Law](#); and
- Requirements regarding [revenue contracts](#).

- ***When is OAG approval required?***

OAG serves as the legal review of all contracts (not purchase orders) requiring OSC approval. SUNY must submit all procurement contracts ≥\$75K and all revenue contracts ≥\$25K that are subject to OSC's approval.

- ***When is OSC approval required?***

SUNY is required to submit all procurements (purchase orders and contracts) to OSC at these dollar values:

- ≥ \$150K for Healthcare Facilities
- ≥ \$75K for State-operated Campuses
- ≥ \$200 for SUNY use of an OGS centralized contract.

Additionally, SUNY is required to submit all revenue contracts ≥\$25K to OSC.

- ***Is SUNY required to follow NYS Executive Orders?***

It depends on how applicability of the Executive Order (EO) is stated. Sometimes an EO will clearly state that it applies to SUNY. If it does not, you should always confer with campus counsel. Here is some general guidance:

The EO probably does not apply to SUNY if the EO states that it applies to all executive agencies and defines "executive agency" as any department, agency, division, commission, bureau or other entity of the state over which the Governor has executive power or authority. The Governor does not appoint the SUNY Chair of the Board of Trustees.

The EO probably applies to SUNY if the EO states applicable to state agencies:

- applies to all executive agencies including those where the head of the agency is not appointed by the Governor; or
- all public-benefit corporations, public authorities, boards, and commissions, for which the Governor appoints the Chair, the Chief Executive, or the majority of Board Members.

CONTRACTS ELIGIBLE FOR USE

- ***Is SUNY required to use NYS Office of General Services (OGS) centralized contracts?***

SUNY is **required** to use OGS [commodity](#) contracts but **NOT** required to use OGS technology or service contracts because, per § 163.4 b. (i), the Chair of the SUNY Board of Trustees is not appointed by the Governor.

SUNY **may** use OGS service or technology contracts but must follow the specific instructions on how to use those contracts.

- ***Are campuses required to use System-wide contracts?***

State-operated campuses are required to use System-wide contracts designated by System Administration as “mandatory use” to be in compliance with NY State Finance Law §163(3) & (4) and outlined in the [NYS Procurement Guideline’s](#) (p.7).

- ***Can SUNY use US General Services Administration (GSA) contracts?***

According to State Finance Law, SUNY may use GSA contracts but must get permission from OGS, and depending on the value of the contract, OAG and OSC. Check with campus counsel prior to making a GSA contract purchase.

- ***Can SUNY buy from consortia, cooperatives or group purchasing organizations (GPOs)? And, if so, are there any restrictions?***

SUNY may purchase commodities from a consortium (cooperative or GPO); however, SUNY cannot buy technology or services from these entities. Campuses need to follow the [Consortia Purchasing Guidelines](#) established by the NYS Procurement Council. If there are services or technology that a campus wants to purchase from a consortium, the campus should pursue the [Piggybacking \(Using Other Existing Contracts\)](#) process available via State Finance Law.

- ***What is the difference between adoption of a consortium contract and piggybacking?***

Adoption of a consortium contract can be done in lieu of using a NYS centralized contract or, in the procurement hierarchy) as an alternative to a purchase on the open market. It may allow for additional conditions (e.g., MWBE goals, rebates) to be added to the basic consortium contract. It may also allow SUNY to simply add a rider (NYS Ts and Cs) rather than writing an entirely new contract. If over \$75K, it requires OAG and ASC review and approval.

Use of an existing contract via piggybacking is limited to the Ts & Cs established in the original contract, although it requires SUNY to create a separate, SUNY specific agreement. Besides OAG and OSC approval, regardless of the dollar amount, OGS must approve the use of the existing contract before it can be executed.

PROCUREMENT PROCESSES

- ***Procurement Methodologies***

- Discretionary (or informal procurement) may be done for contracts with a total value under \$125K.
 - Contracts potentially over \$50K still need to be advertised in the NYSCR;
 - Selection must be justified by :
 - ✓ Demonstrating reasonableness of price; and
 - ✓ The selection of the vendor.

If you chose to limit potential vendors to NYS Small Business Enterprises contracts with a total value under \$500K may be awarded discretionally.

If you chose to limit potential vendors to NYS certified Minority- or Woman-owned Business Enterprises and/or Service Disabled Veteran-owned Business Enterprises contracts with a total value under \$750K may be awarded discretionally.

- Sealed Bid/Proposal (or formal procurement) must be done for contracts with a total value of \$125K or more.
 - Invitation for Bids (IFB)
 - ✓ Used for procuring a commodity
 - ✓ Selection of award based on low price or
 - Request for Proposals (RFP)

- ✓ Typically Used for procuring a service or technology
- ✓ Selection of award based on best value (cost and technical factors)

- ***What is an RFI? Can a make a purchase after conducting one?***

A Request For Information (RFI) is a method for campuses to gain information (potential vendors, pricing product and service options, etc.) about a specific area of a potential solicitation.

It is **NOT** a means for making a purchase. To make a purchase, all procurement rules must be followed. If the information garnered from the RFI is used to write specifications for a n IFB or RFP, there may be restrictions on vendor participation in the resulting solicitation. If only one vendor's information was used to write the specification for the solicitation that vendor is prohibited from bidding on the product and/or service (See *NY State Finance Law section 163-a and Section 163(2)* for information on the statutory prohibitions applicable to this and discuss with your campus counsel).

- ***What are Discriminatory Jurisdictions (Omnibus Procurement Act)***

Section 165(6)(b) of the State Finance Law requires the Commissioner of the Department of Economic Development to develop a list of jurisdictions that impose sanctions or otherwise restrict the ability of New York State companies when they compete for contracts on an equal basis within those jurisdictions.

The current list of discriminatory jurisdictions identifies the following jurisdictions as continuing their discriminatory policies against New York State bidders: ***Alaska, Hawaii, Louisiana, South Carolina, West Virginia, and Wyoming.***

- Section 165(6)(d) of the State Finance Law requires all State agencies, and Section 2879(5)(d) of the Public Authorities Law requires all public authorities and public benefit corporations, to deny businesses from these jurisdictions with discriminatory policies against New York State contracts and placement on any bidders list if two conditions are met:
 - ✓ the potential vendor's "principal place of business" is in a jurisdiction that discriminates against New York businesses, and
 - ✓ the goods and services being offered are substantially manufactured, produced or performed anywhere outside New York State.
 - ✓ In addition, Section 165(6)(c) of the State Finance Law requires state agencies and Section 2879(5)(c) of the Public Authorities Law requires public authorities and public corporations to deny business from discriminatory jurisdictions placement on bidders lists.

- ***Can SUNY prepay for something?***

SUNY's Office of General Counsel advises: [NYS OSC Guide to Financial Operations \(GFO\)](#) references [New York State Finance Law §§ 109\(1\) and 179-e\(5\)](#)

- As a general auditing requirement, agencies are not allowed to make payments in advance.
- Payments should be made on the basis of actual services completed in accordance with the terms of an agreement.
- If the industry standard is that a service needs to be paid for up front (e.g. software licenses, it is not really a pre-payment. OSC may approve such an arrangement if the parties prescribe such payments in their agreement (e.g. real-estate acquisition down payments, rental agreements, specialized equipment manufacturing [i.e., scientific equipment, elevators]).

- ***Vendor Responsibility (VendRep)***

- [SUNY's requirements](#) and [process](#) are like all other State agencies, including those entities who are exempt from completing the questionnaire.
- Remember: *Contract assignment with \$100,000 or more remaining on the agreement also requires a questionnaire from the vendor to which the contract is assigned. And, if the prospective vendor has a subcontractor who may be paid \$100,00 or more.*

- *Are memberships exempt from advertising?*

There is no GFO section regarding membership in an association. Membership (basic, no value-added services) in an association has not been viewed by OSC as a procurement opportunity and does NOT require advertising.

- *What is considered a legitimate state expenditure and what is not?*

Per Office of General Counsel, NYS Finance Law §163.2 outlines the operating principles. The objective of state procurement is to facilitate each state agency's mission while protecting the interests of the state and its taxpayers and promoting fairness in contracting with the business community. Additionally, The Office of the University Auditor (OUA) suggests that to determine if the purchase of an item/service is allowable with State funds, it should be:

- reasonable;
- necessary;
- directly related to the campus (align with/supportive of the institution's mission); and
- adequately documented.