

## Procurement Policy and Procedures of The City University of New York

### **I. Purpose and Application**

- A. This Policy sets forth guidelines applicable to the procurement of commodities and services by The City University of New York (the “University”). This Policy shall constitute guidelines of the Board of Trustees of the University under Section 6218 of the New York State Education Law.
- B. This Policy applies to procurements of commodities and services using funds by the University, including all senior and community colleges and the Central Office. Funds covered by this Policy include: those appropriated by the State of New York (the “State”) or the City of New York (the “City”); student tuition and fees; and funds held by the State Treasury in income fund reimbursable accounts, such as technology fees. This Policy does not apply to procurements by The Research Foundation of the City University of New York, The City University Construction Fund, college associations, auxiliary enterprise corporations, college foundations, or other separately incorporated affiliated entities except as described in any policies, guidelines, or procedures issued by the University, including any Office of University Controller Financial Management Guidelines; however, this Policy does apply to contracts funded by any of these organizations but entered into by the University.
- C. References herein to the “University” shall include each of the University’s constituent colleges, including the Central Office.

### **II. Policy Statement**

- A. It is the policy of the University to procure commodities and services in a manner that promotes: (i) the wise, prudent, and transparent use of the resources of the University and the taxpayers of the City and State; (ii) compliance with all provisions of law governing procurements by the University; (iii) the acquisition of quality commodities and services at reasonable prices in a timely and efficient manner; (iv) the maximum feasible participation of New York State-certified minority- and women-owned business enterprises (“MWBE”) and service-disabled veteran-owned business enterprises (“SDVOB”) in University procurements, as required by law and University policy; and (v) the prevention of favoritism, extravagance, fraud, and corruption, or the appearance thereof.
- B. In furtherance of the above policy, the University shall conduct procurements in accordance with the procedures and other requirements set forth below.

### III. General Purchasing Requirements

- A. All University procurements, regardless of size, must adhere to the following general requirements:
1. complying with all applicable ethics rules, including purchasing commodities and services in the best interest of the University and adhering to the University's Conflict of Interest Policy and Sections 73 and 74 of the New York State Public Officers Law;
  2. complying with all laws, rules, and regulations that apply to the University, whether or not specifically described in this Policy, including the applicable provisions of the New York State Education Law and State Finance Law;
  3. conducting all University-wide and Central Office purchases through the Office of Budget and Finance and all college-specific purchases through the respective campus Purchasing Departments (collectively, "Purchasing Departments"); no other office or department may conduct procurements or otherwise bind the University to any purchase of commodities or services;
  4. estimating the applicable dollar value of a potential purchase to ascertain what procurement methods may be required (and prohibiting the artificial division of purchases in order to use the less formal procurement methods available to smaller purchases), and monitoring actual purchases made of the same commodity or service to determine whether additional procurement requirements may apply in the future to the same purchase;
  5. ensuring that the commodity or service sought satisfies the University's required form, function, and utility, and determining whether an Existing Contract (as defined in Section V(G)) offers commodities or services that can satisfy these requirements;
  6. using competitive solicitation methods (such as quotes, sealed bids, and sealed proposals) to the maximum extent practicable when conducting individual University procurements;
  7. only using form solicitation documents issued by the University's Office of the General Counsel;
  8. promoting the maximum feasible participation of MWBEs and SDVOBs in University procurements including, where applicable, setting participation goals on procurements to encourage MWBEs and SDVOBs to participate as subcontractors or suppliers and ensuring prime contractor compliance with such participation goals, as required by law and University policy;
  9. obtaining all necessary internal and external approvals required by applicable law and University policy, including those of the New York State Office of the State Comptroller (the "State Comptroller"), the Board of Trustees, the Office of the General Counsel, and the Office of Budget and Finance;

10. advertising procurements as required by applicable law and University policy;
11. maintaining a record of the procurement that demonstrates that all requirements of this Policy and of applicable law have been met;
12. awarding contracts to “responsive” and “responsible” vendors, as defined in applicable law;
13. complying with the University’s contract signing authority policies, as set forth by the Board of Trustees and as further delegated by the Chancellor and the General Counsel of the University;
14. only executing contracts and other agreements that have been approved as to form by the Office of the General Counsel; and
15. following such other procedures, manuals, memoranda, directives, and the like issued by either or both of the Office of the General Counsel and the Office of Budget and Finance that relate to this Policy.

#### **IV. Overview of Procurement Methods**

- A. The University may conduct procurements of needed commodities and services through a variety of methods. Among the most common methods are: (1) using preferred source offerings, existing centralized contracts of the State, the City, and the Federal government, University-wide contracts, “piggyback” contracts, and consortia contracts; (2) competitive solicitations of sealed bids and sealed proposals; and (3) entering into contracts using informal procurement methods, or on a sole source, single source, or emergency basis.
- B. The University may use Existing Contracts, which are established on behalf of the University by the Office of Budget and Finance or made available to the University by the State, the City, or the Federal government. Among other reasons, because the use of these Existing Contracts reduces costs by leveraging collective buying power and saves administrative time, this Policy requires that the University use these contracts under the circumstances set forth below. In addition, in instances where the Office of Budget and Finance has established University-Wide Contracts (as defined in Section V(E)) with vendors on an exclusive basis, the University must use those contracts in all instances unless an exception is granted by the Office of Budget and Finance. However, if no exclusive University-Wide Contract exists, then the University, through the applicable Purchasing Department, may elect to forgo using any Existing Contracts where the available contracts do not meet the University’s requirements, or where justified by price, as set forth in greater detail below. In those cases the University may instead conduct an individual procurement, including through bids, proposals, quotes, and other methods, or make purchases on a sole source, single source, emergency or other basis, as permitted by this Policy.

## V. Order of Purchasing Priority and Procurement Methods

A. The University shall conduct all procurements of commodities and services, including University-wide procurements, using the methods and procedures described in this Section V. However, in selecting a procurement method, the University shall adhere to the order or priority assigned to these methods in Section V(B) (such methods and priority, collectively, the “Purchasing Hierarchy”). Sections V(C) through V(G) provide a description of, and procedures for using, each procurement method in the Purchasing Hierarchy. Sections V(E)(3) and V(H) provide a description of exceptions to the Purchasing Hierarchy. The determination of the appropriate procurement method shall be made by the applicable Purchasing Department.

B. Purchasing Hierarchy. The University shall adhere to the following order of priority when conducting procurements:

1. *New York State Preferred Sources*;
2. *OGS Commodities Contracts*;
3. *University-Wide Contracts*;
4. *Other Centralized Contracts* of the State, City, and Federal government;
5. any of the following options, which shall be afforded equal priority:
  - *Campus Procurements* (with or without a formal competitive process depending on the total value of the procurement);
  - “*Piggybacking*” off of an established governmental contract (other than an OGS Commodities Contract or Other Centralized Contract); or
  - *Consortia Contracts* approved by the Office of the General Counsel and the Office of Budget and Finance.
6. *Sole Source, Single Source, and Emergency Procurements*, where appropriate, are exceptions to the above order of priority.

C. New York State Preferred Sources. In order to advance special social and economic goals of the State, the University is required to purchase select commodities and services from State-designated organizations that support employment of certain individuals, including those with disabilities, in correctional facilities, and who are blind. Currently, these organizations include the NYS Department of Correctional Services (“Corcraft”), the NYS Preferred Source Program for People Who Are Blind (“NYSPSP”), and the NYS Industries for the Disabled (“NYSID”) (collectively, and as updated pursuant to applicable law, “Preferred Sources”). The University is required to purchase from Preferred Sources commodities or services that meet the University’s form, function, and utility requirements and are offered at a price, as determined by the New York State Office of General Services (“OGS”), that is no more than 15% greater than the prevailing market rate (or in the case of Corcraft, commodities that are offered at a price that do not exceed a reasonable, fair market rate as determined by the Department of Correctional Services (“DOCS”). Purchases of commodities and

services from Preferred Sources are given the highest priority and are exempt from competitive bidding requirements. The University shall make purchases from Preferred Sources in the following manner, and in accordance with any guidelines issued by OGS relating to Preferred Sources (except to the extent such guidelines in their application to CUNY would conflict with applicable law):

1. When making any purchase the University must first consider using Preferred Sources generally. When purchasing commodities, the University must consider Preferred Sources in the following priority order: (1) Corcraft; (2) NYSPSP; (3) NYSID, or as otherwise required by the State. When purchasing services the University may afford each available Preferred Source equal priority, and if more than one Preferred Source can provide the required services, then price shall be the determining factor.
  2. When a commodity or service is available from a Preferred Source in the form, function, and utility required by the University, and at prices that are approved by OGS or DOCS as contemplated in Section V(C) above, then the University is required to purchase from the Preferred Source.
  3. If the University wishes to purchase a particular commodity or service through a competitive solicitation even when the commodity or service is available from a Preferred Source, then the University must compile defensible documentation and evidence justifying why the Preferred Source was not used. If a Preferred Source is not selected, then that Preferred Source also must be given prior written notice with an explanation and an opportunity to respond.
- D. OGS Commodities Contracts. OGS has established centralized contracts for a wide range of commodities (“OGS Commodities Contracts”). The University shall make purchases from OGS Commodities Contracts in the following manner:
1. Where no Preferred Source can meet the University’s form, function, and utility requirements for a commodities purchase, or where justified by price, the applicable Purchasing Department must determine whether the required commodity can be obtained through an existing OGS Commodities Contract. If a vendor on an OGS Commodities Contract can provide the needed commodities and meet the University’s form, function, and utility requirements, then the University shall make the purchase from such vendor, unless the applicable Purchasing Department makes the determination that it can obtain lower pricing from an alternate source.
  2. When soliciting alternate pricing, the University may seek pricing from the open market but, at a minimum, must seek pricing from vendors available through University-Wide Contracts and Other Centralized Contracts that are available. OGS Commodities Contract vendors must be allowed a minimum of two business days to match any lower price offered to the University. If the OGS Commodities Contract vendor provides written confirmation that it will match a lower price received by the University on the open market, then the University shall purchase from such OGS Commodities Contract vendor. If the

OGS Commodities Contract vendor is unable or unwilling to match the lower price, the University must document this in the procurement record and may proceed with the open market purchase.

- E. University-Wide Contracts. The Office of Budget and Finance has established a number of University-wide Contracts, some on an exclusive basis, with vendors for certain commodities or services (“University-Wide Contracts”). The University shall make purchases from University-Wide Contracts in the following manner:
1. If no applicable Preferred Source or OGS Commodities Contract can meet the University’s form, function, and utility requirements, or where justified by price, the applicable Purchasing Department must determine whether the required commodity or service can be obtained through an existing University-Wide Contract.
  2. If the University’s requirements can be met through an existing University-Wide Contract, then the University must purchase such commodities or services through the available University-Wide Contract, unless the applicable Purchasing Department makes the determination that it can obtain lower pricing from an alternate source. Any questions relating to University-Wide Contracts must be directed to the Office of Budget and Finance.
  3. In some instances the Office of Budget and Finance has established University-Wide Contracts with vendors on an exclusive basis. These exclusive University-Wide Contracts are an exception to the Purchasing Hierarchy and must be used in all instances on a first-priority basis by the University unless an exception is granted by the Office of Budget and Finance.
- F. Other Centralized Contracts. If no Preferred Source, OGS Commodities Contract, or University-Wide Contract can meet the University’s form, function, and utility requirements, or where justified by price, the University may make purchases of commodities and services through centralized contracts let by certain agencies and entities of the State, the City, and the Federal government. Specifically, the University may make purchases through (1) services contracts let by OGS and (2) contracts identified by the Office of Budget and Finance as having been procured by the following agencies and made available to the University: the City’s Department of Citywide Administrative Services; the City’s Department of Information Technology & Telecommunications; the Board of Education of the City of New York; the U.S. General Services Administration; and such other governmental agencies and entities as may be identified by the Office of the General Counsel and the Office of Budget and Finance (collectively, “Other Centralized Contracts”). The University shall make purchases from Other Centralized Contracts in the following manner:
1. Where no Preferred Source, OGS Commodities Contract, or University-Wide Contract can meet the University’s form, function, and utility requirements for a

purchase, the applicable Purchasing Department must determine whether the required purchase can be made through any Other Centralized Contract.

2. The University must use any available Other Centralized Contracts that have been identified in writing by the Office of Budget and Finance and that can meet the University's form, function and utility requirements.
  3. When considering Other Centralized Contracts the University shall afford each available contract equal priority, and shall award to the vendor that can meet the University's form, function, and utility requirements at the lowest price.
  4. In addition, the University may make purchases using a Campus Procurement, Piggyback, or a Consortia Contract, instead of using an Other Centralized Contract, when justified by price.
- G. **Purchases By Campuses.** If no Preferred Source, OGS Commodities Contract, University-Wide Contract, or Other Centralized Contract (collectively, "Existing Contracts") can meet the University's form, function, and utility requirements, or where justified by price, the University may make arrangements to purchase the needed commodities or services on its own, including, conducting its own procurement, making "piggyback" purchases through other governmental contracts, or purchasing through contracts established by purchasing consortia, as more fully described below. The options described in this Section V(G) shall be afforded equal priority.
1. **Campus Procurements.** If no Existing Contract is available that can meet the University's form, function, and utility requirements, or where justified by price, the University may purchase the needed commodity or service through an individual procurement conducted by the University (a "Campus Procurement"). In conducting Campus Procurements the University may, depending on the size of the resulting purchase, use informal purchasing methods (*e.g.*, internal research, quotes) or formal purchasing methods (*e.g.* competitive sealed bids or proposals).
    - a. **Informal Purchasing Methods.** When conducting a Campus Procurement, the University is generally required to use formal competitive purchasing methods such as sealed bids and sealed proposals (as further described below in Section V(G)(1)(b) below, "Formal Purchasing Methods"). However, when making purchases under certain dollar thresholds the University may use the informal purchasing methods described in this Section V(G)(1)(a) ("Informal Purchasing Methods") in lieu of Formal Purchasing Methods. Specifically, Purchasing Departments may use Informal Purchasing Methods for general purchases that are less than \$100,000, or such higher amount authorized by the State Comptroller. In addition, when award is made to a New York State small business or a New York State-certified MWBE or SDVOB, or when the University is purchasing recycled or remanufactured commodities or technology or

certain food products that are grown, produced or harvested in New York State, Purchasing Departments may use Informal Purchasing Methods for purchases up to \$200,000, as authorized by the State Finance Law (collectively, “Enhanced Informal Purchases”). When using Informal Purchasing Methods Purchasing Departments may make purchases from any responsive and responsible vendor whose goods or services meet the University’s form, function, and utility requirements and are offered at a reasonable price, as determined by the Purchasing Department. The University must follow generally-applicable procurement rules (including those listed in Section III) when using Informal Purchasing Methods. Informal Purchasing Methods include Purchasing Departments conducting research into products or services that meet the University’s needs, determining the reasonableness of pricing and vendor responsibility, and justifying the selection of a particular vendor in the procurement record. Purchasing Departments will determine the reasonableness of pricing as set forth below.

- i. For purchases that are less than \$20,000, Purchasing Departments must obtain multiple oral or written quotes, or conduct and document internal or external pricing research, or use a combination thereof. While no formal competitive processes are required, Purchasing Departments are encouraged to use competition where possible.
  - ii. For purchases of \$20,000 or more but less than \$50,000, Purchasing Departments must obtain a minimum of three written quotes from vendors.
  - iii. For purchases of \$50,000 or more but less than \$100,000 (or less than \$200,000 in the case of Enhanced Informal Purchases), or up to such higher amount authorized by the State Comptroller, Purchasing Departments must obtain written quotes from vendors after publicly advertising the procurement in accordance with applicable law and University policy.
  - iv. The University has determined a price to be fair and reasonable if it is within 15% of the lowest current price offered from other responsive vendors or within 15% of the other current pricing indicator used by the University. In the event an award is made to a responsive and responsible vendor whose price is greater than (but within 15% of) the lowest current offered price or other current pricing indicator available, the Purchasing Department must maintain documentation in the procurement record of the rationale for the selection of the vendor.
- b. Formal Purchasing Methods. The University shall use Formal Purchasing Methods for all purchases of \$100,000 or more, or in excess of such higher amount authorized by the State Comptroller. Formal Purchasing Methods shall include: (i) sealed competitive bids; (ii) requests for proposals; and (iii)

such other methods as may be approved by the Office of the General Counsel and the Office of Budget and Finance. In the case of sealed competitive bids, awards shall be made to the responsive and responsible vendor offering the lowest price, as determined by the applicable Purchasing Department. In the case of requests for proposals, awards shall be made on the basis of “best value” to the responsive and responsible vendor whose proposal optimizes quality, cost and efficiency, as determined by the applicable Purchasing Department and an evaluation committee. The University may reject all bids or proposals received, or make multiple awards, where the University determines that doing so shall be in its best interest.

2. **“Piggyback” Contracts.** If no Existing Contract is available that can meet the University’s form, function, and utility requirements, or where justified by price, the University may make purchases through contracts let by other governmental entities (a “Piggyback”) after obtaining the approval of the Office of the General Counsel and the Office of Budget and Finance and after obtaining all required external approvals.
  3. **Consortia Contracts.** In some instances, multiple entities have agreed to purchase commodities collectively as a consortium and at lower prices than would be otherwise achievable through purchases by such entities individually. If no Existing Contract is available that can meet the University’s form, function, and utility requirements, or where justified by price, the University may make purchases of commodities from contracts let by such purchasing consortia (“Consortia Contracts”), after obtaining the approval of the Office of the General Counsel and the Office of Budget and Finance and after obtaining all required external approvals.
- H. **Exceptions to the Purchasing Hierarchy.** In addition, the University may forgo the Purchasing Hierarchy in instances of documented sole source, single source, and emergency purchases. The University is not required to use Existing Contracts, Piggybacks, or Consortia Contracts, or follow Formal Purchasing Methods or Informal Purchasing Methods for Campus Procurements, in the following instances:
1. **Emergency Contracts.** In the rare case of an emergency arising out of 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 University buildings or property are threatened, the University may authorize the award of a contract on other-than-a competitive basis. For each such procurement, there shall be a declaration of emergency and a written record setting forth the basis for concluding that there was an emergency and the abbreviated procurement methods used to identify the selected contractor. The University shall submit such declaration and record to the Senior Vice Chancellor and Chief Financial Officer and to the General Counsel, and shall promptly submit any resulting contract to the City or State, as

appropriate, for payment. In all instances the applicable Vice President for Finance and Administration, or equivalent, shall make the final determination of whether an emergency procurement is appropriate.

2. **Single Source.** The University may authorize the award of a contract on other-than-a competitive basis, even though two or more firms can supply the required commodity or service, if the University determines that either: (a) one particular firm has unique knowledge or expertise with respect to the required commodity or service rendering the use of competitive procedures impractical; or (b) other material or substantial reasons exist for awarding the contract on other-than-a competitive basis. The University shall advertise each such procurement as required by law, and shall create and maintain a written record setting forth the basis for justifying the single source procurement, including the methods and rationale for selecting the contractor, alternatives considered and why the alternatives do not meet the University's needs, and a determination that the vendor's price is fair and reasonable. In all instances the Purchasing Department shall make the final determination of whether a single source procurement is appropriate.
3. **Sole Source.** When there is only one source for a required commodity or service, the University may authorize the award of a contract for that commodity or service on other-than-a competitive basis. The University shall advertise each such procurement as required by law, and shall create and maintain a written record setting forth the basis for justifying the sole source procurement, including the methods and rationale for selecting the contractor, a determination of exclusive capability of the vendor or product, alternatives considered, and a determination that the vendor's price is fair and reasonable. In all instances, the Purchasing Department shall make the final determination of whether a sole source procurement is appropriate.

## **VI. Policy Implementation and Amendments; Effect on Awarded Contracts**

- A. The University shall comply with this Policy, except in instances where an exception to this Policy has been approved in writing by the General Counsel and the Senior Vice Chancellor and Chief Financial Officer, or their successors or designees.
- B. The University shall comply with any procedures, manuals, memoranda, directives, and the like issued prior to or following the effective date of this Policy by either or both of the Office of the General Counsel and the Office of Budget and Finance that relate to this Policy ("Administrative Guidance"). Subject to the other provisions of this Section VI, in the event of any conflict between this Policy and any Administrative Guidance, this Policy shall govern to the extent of the conflict. This Policy supersedes and renders void the University's Purchasing Policy Manual approved by the Board of Trustees on October 23, 1995 and as may have been revised from time to time.

- C. The General Counsel and the Senior Vice Chancellor and Chief Financial Officer or their successors may modify, supplement, or update this Policy, subject to the Board of Trustees' ratification, as they may deem necessary to implement changes in law, regulations, and administrative requirements, and to ensure consistency with other University policies.
- D. Nothing contained in this Policy shall be deemed to (1) alter, affect the validity of, modify the terms of, or impair any contracts or agreements issued or entered into prior to the effective date of this Policy or (2) confer upon any person, firm, or corporation any right, remedy, claim, or benefit under, or by reason of, any requirement or provision hereof.

Adopted by the Board of Trustees on February 21, 2017