



# **Summary Purchasing Guidelines:**

*How to Request for Goods and Services from Purchasing Departments*

Promulgated by the Office of University Controller in conjunction with the Office of the General Counsel

November 2015

## Introduction

When procuring goods and services, The City University of New York (“CUNY” or “University”) must follow NYS law, including NYS Finance Law and NYS Education Law, executive orders, and requirements passed by CUNY’s Board of Trustees. CUNY also follows the New York State Procurement Guidelines. These guidelines and requirements are designed to encourage competition, obtain fair and reasonable prices of goods and services, ensure transparency of operations, and to deter favoritism and malfeasance. Additionally, the NYS Comptroller and the NYC Comptroller<sup>1</sup> have the authority to approve or deny payments and/or contracts and perform audits on various CUNY transactions.

Each campus has designated a Purchasing Director to provide its end-users/stakeholders with the goods and services required for its operations. The Purchasing Director is responsible for the provision of effective, timely and cost efficient goods and services while ensuring compliance with all applicable, laws, rules and regulations.

**It is the Purchasing Director’s responsibility to purchase goods and services on behalf of the Purchasing Director’s campus.** However, end-users have a role in every stage of the procurement process. The following summary is intended to allow end-users to quickly become more familiar with the purchasing process, including their role in the process, the various legal and regulatory rules that apply to CUNY employees with respect to purchasing goods and services, and what to expect when requesting a purchase. End-users are encouraged to refer to the “Frequently Asked Questions (FAQs) about Procurement at The City University of New York” for more detailed information on each of these topics and others related to purchasing.

In addition, while these guidelines are a resource, each campus may have additional requirements not identified in this document. **End-users should always engage the Business Office at their respective campuses to learn additional information about the budgeting, purchasing, and accounts payable process.**

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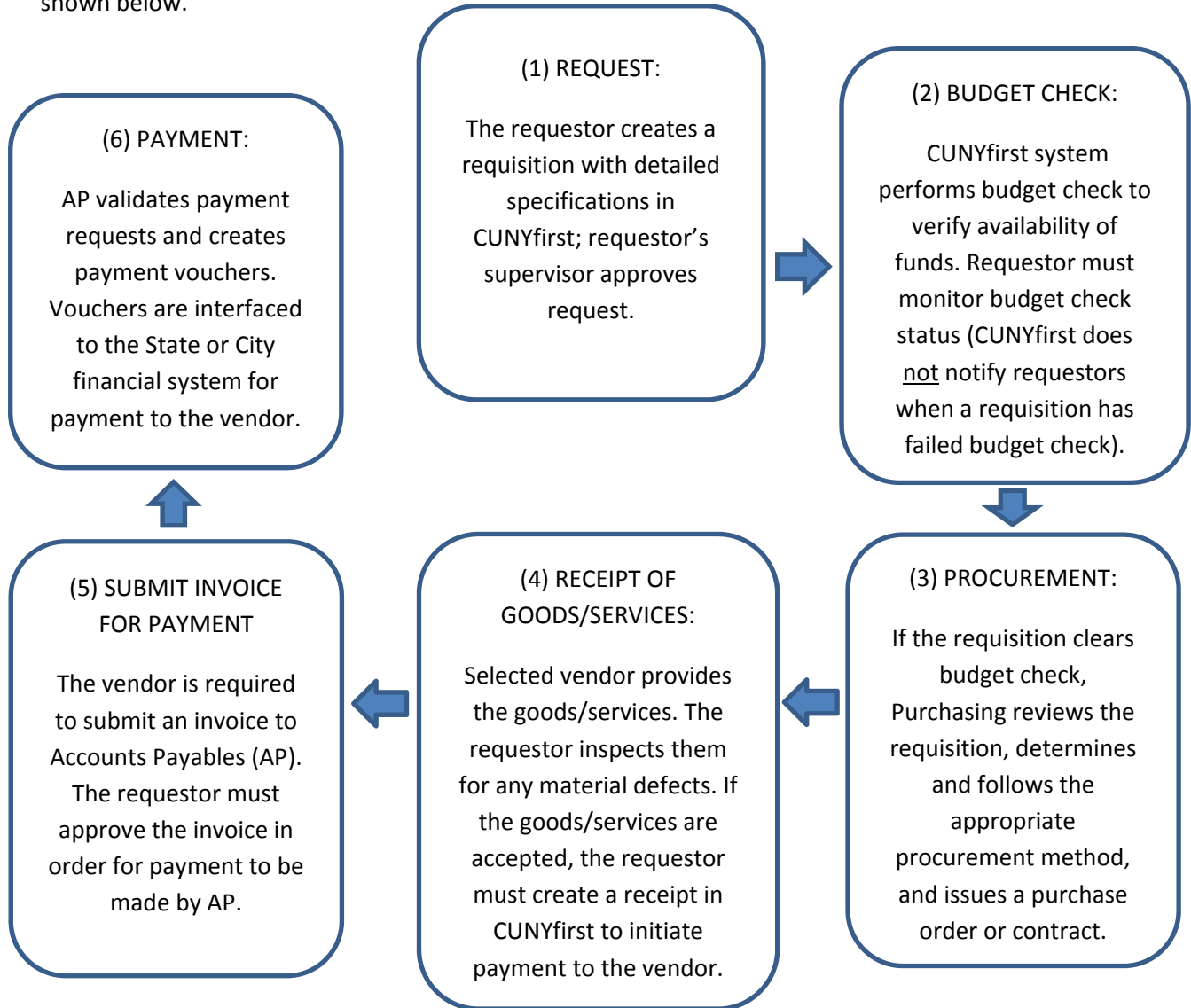
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<sup>1</sup> While the NYC Comptroller reviews community college expenditures, CUNY is not subject to the NYC Procurement Policy Board rules. All campuses must adhere to CUNY’s procurement guidelines which generally conform to the NYS Procurement Guidelines.

## Section 1 Overview

### 1.1 Stages in the Procurement Process

There are six distinct stages to the process of procuring goods and services, each of which requires active participation by all stakeholders. End-users should familiarize themselves with the six stages shown below.



### 1.2 End-Users May Not Make Purchases or Sign Contracts

Unless specifically delegated by the General Counsel, or sub-delegated in writing by the Purchasing Director and reported to the Senior Vice Chancellor of Legal Affairs, no one other than the Purchasing Director may make purchases or sign agreements, contracts, or purchase orders or other procurement-related documents on behalf of the University. Regardless of any delegation, no agreement may be signed on behalf of the University / College until the agreement has been reviewed and approved by CUNY's Office of the General Counsel. **It is a violation of NYS Finance law and University policy to procure goods and services without acquiring the necessary approvals and documents.**

Please review Exhibit A – Advisory Memo from General Counsel and Senior Vice Chancellor for Legal Affairs dated January 31, 2011 for additional information on guidelines regarding which roles have contract signing authority on behalf of the University and under what circumstances.

### **1.3 Source of Funds/Contracting Entity**

The rules indicated in these guidelines apply to all purchases made using tax levy funds or where the college/the University is the contracting entity.

Purchases funded by separately incorporated related entities are governed by different rules when the separately incorporated entity (as opposed to a college/the University) is the contracting party. For example, purchases by student associations are governed by the Fiscal Handbook for the Control and Accountability of Student Activity Fees; purchases by the Research Foundation are governed by Research Foundation purchasing regulations; and purchases by auxiliary enterprise corporations are governed by rules developed by each auxiliary enterprise corporation's board of directors as well as the guidelines set forth in the Office of Budget & Finance Financial Management Guidelines for Auxiliary Enterprise Corporations.

### **1.4 Fiscal Year**

CUNY's fiscal year runs from July 1 to June 30. All goods and services must be **received** by June 30 of a given fiscal year in order to be charged to that fiscal year. Items in transit or services not yet completely performed will be charged against the next fiscal year.

## **Section 2 Identifying Goods and Services**

End-users are encouraged to share product and vendor research. Purchasing Departments request that end-users base their requisitions on performance rather than brand or vendor preference or loyalty. The Purchasing Department can assist with providing outlines for specifications or with questions that you must answer in order to provide the Purchasing Department with the clear, detailed specifications.

### **2.1 Market Research / Sales Calls**

**End-users may conduct market research and may engage in preliminary conversations with potential vendors about their products and services.** In conducting market research, an end-user may find it useful to coordinate with the Purchasing Department and in some cases to conduct a Request for Information (RFI). When engaging in preliminary conversations with potential vendors, end-users should remind vendors that purchases must be conducted by the Purchasing Department. If a vendor's (sales) representative asks you to sign any written document, such as an order, letter, memorandum of understanding, letter of intent, or contract, refuse to do so and immediately refer the vendor's representative to Purchasing. Refusing to sign a vendor's document protects you, protects the College and the University, and protects the vendor (who in some cases may not get paid based on a signature to their own document).

Once a procurement process is underway – that is, once a decision is made to make a purchase – end-users are prohibited from direct contact with any vendor who may be selected to provide the goods or services. Any such contact could result in the disqualification of the vendor.

It is recommended that you contact multiple vendors for your market research and provide the same information to all suppliers.

## **2.2 Specifications**

**The requester must provide a clear, accurate description of the goods (commodities) and services.**

Specifications, including such information as dimensions, materials, capacities, performance, and warranties, must be established and written clearly and unambiguously in order to accurately and objectively compare competing products and services and to ensure acquisition of the desired product. For simple commodity purchases, these specifications may be somewhat informal. In each case, it is important to indicate the timing requirements and constraints on your CUNYfirst purchase requisition. Note that, if a vendor prepares or assists in preparing the specifications for a purchase, that vendor cannot be selected to provide the goods or services being purchased.

## **2.3 “Approved Equal” Determination**

When making a purchase, CUNY is permitted to name a particular brand, model number, manufacturer, or standard in the specifications. A vendor must be permitted to offer, in its bid submission or proposal, an alternative product as a proposed substitute (identified as such with the pricing offered). The vendor must provide supporting evidence that the proposed substitute has the salient characteristics specifically identified in the solicitation. The Purchasing Department will work with the end user to evaluate the proposed substitute product and determine whether to deem it an “approved equal” i.e. an acceptable substitute for the specified product. However, please remember that “approved equal” is a legal standard. If a proposed substitute is offered by a vendor, and the end user does not want to accept it, then the end user must provide its reasons in writing, and Purchasing must consult OGC in making a determination as to whether they may refuse to deem such substitute an approved equal.

# **Section 3 Purchasing Processes**

## **3.1 Purchasing Hierarchy**

CUNY uses a University-wide collaborative purchasing process for core goods and services managed by the Office of the University Controller – Procurement (University-wide contracts) with decentralized purchasing at the colleges to meet specific needs (college-specific procurements).

Generally, CUNY is required to purchase goods and services from the following sources and in the following order (subject to availability and certain restrictions with respect to, e.g. prices):

**CUNY PURCHASING HIERARCHY**

<p><b>1. Preferred Source</b></p>	<p>Additional information on available products and services can be found at:  <a href="http://www.ogs.state.ny.us/pr ocurecounc/pdfdoc/pslist.pdf">http://www.ogs.state.ny.us/pr ocurecounc/pdfdoc/pslist.pdf</a></p>	<p><b>NYSID</b> (NYS Industries for the Disabled)  <b>NYSPSP</b> (NYS Preferred Source Program for People who are Blind)  <b>Corcraft</b> (Dept. of Corrections/Furniture)</p>
<p><b>2. University-Wide Contracts and other Centralized Contracts</b></p>	<p>Where feasible, the Office of the University Controller – Purchasing, leverages CUNY’s buying power to procure goods and services on favorable terms by entering into a University-wide contract with a vendor.           If there is no University-wide contract, products and services centrally procured by these City and State departments must then be considered, if available.</p>	<p><b>CUNY</b>  <b>OGS</b> (NYS Office of General Services)  <b>DCAS</b> (NYC Department of Citywide Administrative Services)  <b>DOE</b> (NYC Department of Education)  <b>DOITT</b> (NYC Dept. of Information Technology &amp; Telecommunications)  <b>GSA</b> (General Services Administration)</p>
<p><b>4. Requests for Quotations          Telephone Quotations          Requests for Proposals          Invitation for Bids          Piggybacking          Consortia Contracts</b></p>	<p>The method used will depend on the type of goods and/or services being acquired, the total value, and other circumstances.</p>	<p><b>RFQ</b> (Informal Competitive)  <b>TQ</b> (Informal Competitive)  <b>RFP</b> (Formal Competitive)  <b>IFB</b> (Formal Competitive)</p>
<p><b>5. Single or Sole Source</b></p>	<p>Whenever possible, a competitive process is used to select the most suitable vendor. However, in some cases single / sole source procurement will be appropriate. For guidance, see the Purchasing FAQs or discuss with the Purchasing Department</p>	<p><b>Non-Competitive</b></p>

**3.2 Supplier Diversity - MWBE / SDVOB**

The University takes an active approach to diversifying our supplier base and encouraging purchases from NYS-certified minority and women-owned businesses (MWBE) and NYS-certified service disabled veteran owned business (SDVOB). The University sets annual MWBE and SDVOB participation goals and each campus is required to make a good faith effort to achieve these goals. End-users should consider NYS-certified MWBE and SDVOBs in their purchases during any preliminary outreach.

For additional information on CUNY's Supplier Diversity program, visit [www.cuny.edu/selltocuny](http://www.cuny.edu/selltocuny). The NYS MWBE Directory can be accessed on <https://ny.newnycontracts.com/> and the NYS SDVOB Directory can be accessed on [www.veterans.ny.gov/business](http://www.veterans.ny.gov/business).

### **3.3 Time Frame**

The time frame for purchasing varies widely depending on, among other factors, the purchasing process determined to be appropriate. The total dollar value of the purchase is one of the most significant factors affecting the time frame. For example, purchases in excess of \$50,000 will require advertising, and purchases in excess of \$100,000 will often require a formal purchasing process. Each such requirement increases the amount of time it takes to complete the purchase. On the other hand, if the purchase can be made under an existing contract, the time frame may be greatly reduced regardless of the dollar value of the purchase. End-users should discuss with their Purchasing Departments the anticipated time frame for completing a particular purchase.

### **3.4 Board of Trustee Approval**

Purchases of five hundred thousand dollars (\$500,000) or more require approval by the Board of Trustees, by means of board resolutions adopted at regular meetings held throughout the calendar year. For these purchases, end users must take into account both the effect of this requirement on the time frame for the purchase and the fact that the proposed purchase may be rejected by the Board. The Board has the power and the duty to purchase materials, services, equipment and supplies and to control and keep up the buildings and grounds occupied and used by the colleges.

### **3.5 Pre-Proposal / Pre-Bid Conference**

A "pre-proposal conference" or "pre-bid conference" (which may include a site visit) is an opportunity for prospective vendors and their potential subcontractors to visit the campus location where a project is to be completed or where some work is to be performed during a time scheduled by the University. These conferences facilitate the solicitation process by allowing vendors to appraise first-hand the scope of a given project or requirement and providing vendors the opportunity to ask questions regarding the procurement.

### **3.6 Split Ordering**

End-users are not permitted to split order goods and services as a means to alter the nature or dollar value of planned acquisitions in order to shorten the time frame, avoid approvals, or otherwise circumvent procurement rules.

## **Section 4            Additional Guidelines for Certain Purchases**

There are additional guidelines and considerations to be taken into account with respect to certain types of purchases. This Section provides additional information on consultant services, construction, emergency purchases, information technology, printing services, and small-dollar P-card purchases.

### **4.1    Consultants**

The University may engage individuals or firms to provide services not otherwise available at CUNY. However, before a consultant can be engaged, the end user is responsible for determining that there are no current employees who can fulfill the requirements as part of their duties and that hiring a consultant is less expensive and more economically advantageous than hiring new or additional employees. Note that, pursuant to the Public Officer's Law, no former CUNY employee may be engaged to perform services for CUNY within two years following the employee's separation from service with CUNY.

If the requestor believes that a particular consultant is the only one able, or is otherwise uniquely qualified, to perform the services needed, then the end user must (a) provide to the Purchasing Department an explanation as to why this one specific consultant is uniquely qualified or the only option to perform the services, (b) identify which other consultants were considered, (c) explain why each of the other consultants considered were determined to be inadequate, and (d) explain how it was determined that the price being charged is reasonable.

A detailed scope of work, the specific qualifications required, and proposed payment terms are needed for any solicitation effort and for the contract. The scope of work must be prepared by the end user/requestor; the scope of work can never be prepared by the consultant who will be providing the services. All consultants will be required to sign the appropriate form of agreement, as developed by CUNY OGC; no consultant-proposed agreement will be considered. All agreements for services paid for with tax-levy funds in excess of \$100,000 must receive pre-audit approval from the NYS Comptroller.

### **4.2    Construction**

All construction related services must be approved by the Office of Facilities, Planning, Construction and Management (FPCM), regardless of the source of funding (and even if the services are free to the College). The Colleges are prohibited from: making any alteration or change to the physical structure of the campus; making any capital improvements and/or initiating any acquisitions involving renovation, repairs, or improvements to facilities, whether interior or exterior; and/or hiring of architectural and engineer consulting services without prior approval as to form by the FPCM regardless of funding source. Therefore, call Campus Facilities/Planning first.

Usually FPCM will handle the procurement of construction services. However, construction services that do not involve making any alteration or change to the physical structure of the campus (for example, furniture, carpeting, window treatments) or making any capital improvements and/or initiating any acquisitions involving renovation, repairs, or improvements to facilities may, in consultation with CUNY



OGC, be procured by the College. The College must use the University's specifications outline form in describing the scope of work (in addition to providing drawings and the like) and work closely with the Purchasing Department to ensure that the College receives the services needed.

### **4.3 Emergency Purchases**

The law defines "emergency" for the purposes of procurement as an unforeseen occurrence or condition or situation where a threat to health, safety, life or limb exists, or where a necessary service is threatened with material damage or suspension, or where College buildings or property are threatened. Note that this definition does not cover an end user's desire to receive goods and service on short notice; poor planning does not constitute an emergency.

During emergencies involving an immediate threat to health and safety, call 911. You may also wish to contact Campus Security, Campus Facilities, and the VP of Finance/Administration. If you require any type of good or service, contact your Purchasing Department or Business Office. The Purchasing Department will facilitate all emergency purchases, which include notification to the Senior Vice Chancellor of Legal Affairs and Vice Chancellor of Budget and Finance. In case of an emergency, do what is necessary to contain and manage the emergency.

After the emergency, end-users will be asked to provide the following information: (1) explain the situation – why emergency procurement is necessary; (2) what the campus did/purchase and why the plan was reasonable; (3) provide assurance that it is a one-time occurrence; and (4) provide assurance that the emergency procurement procedure is not being used to avoid normal competitive solicitation.

### **4.4 Information Technology (IT)**

All computer-related procurements require approval by the campus's Chief Information Officer ("CIO") to prevent duplicative and incompatible purchases. The Purchasing Departments are prohibited from acting on requisitions for computer-related goods until approved by the CIO or its designee. All software agreements, including online End User License Agreements and other electronic "click through" agreements are also subject to review and approval by the Office of the General Counsel before services can be provided.

### **4.5 Printing Services**

New York State Printing Law requires competition for all printing purchases in excess of \$50,000. Contracts for printing services are limited to two years. Ask your Purchasing Department for the printing specifications outline and use it when requesting printing services. The law requires that Purchasing keep samples of the printed product(s) in the procurement file for inclusion with the voucher (request for payment) and for audit purposes. Many colleges take advantage of existing printing contracts, such as the DCAS Master Commercial Printing Requirements Contract.

### **4.6 Small Dollar Transactions: P-cards**

Some individuals at the University have been issued procurement cards (p-cards) for certain small dollar transactions. Please note, however, that p-cards issued to the University community (excluding

Purchasing Departments) may not be used to purchase services, software or IT hardware. P-card holders must adhere to the p-card regulations and existing purchasing guidelines. **The uses of p-cards are also subject to University procurement regulations and the lack of knowledge of such regulations does not absolve any responsibility.** For additional information, please review the p-card guidelines issued by the Office of the University Controller.

## **Section 5 Managing Your Purchase Order / Contract**

### **5.1 Payment to Vendors**

A requisition, a Purchase Order, a valid invoice submitted by the vendor to the Office of Accounts Payable, and a Receiving Report, generated by CUNYfirst, are all required in order to process a vendor payment. Please review the CUNYfirst Job Aid: Creating Purchasing Receipts. A CUNYfirst receipt along with signed and dated supporting documents must be submitted to the Office of Accounts Payable. **The Office of Accounts Payable cannot start the payment process without a CUNYfirst receipt generated by the end-user.**

Upon receipt of all required documents, the Office of Accounts Payable generates a CUNYfirst voucher which is sent to the City or the State, and then the City or the State issues a payment to the vendor. **If payment of an invoice is delayed longer than thirty (30) days, the New York State Prompt Payment Legislation will automatically impose an interest payment to the vendor (if the calculated amount of the interest payment is in excess of ten dollars). Fees incurred will be charged back to the budget of the end user's department.**

### **5.2 Prepayment Policy**

**The University usually does NOT prepay for goods or services.** A contract or purchase order is a legal document between CUNY and the vendor that guarantees payments upon the successful delivery of the requested goods and services within the established time frames and free from any defects or damages. In certain instances, such as subscriptions to academic journals or electronic software, the Business Office may preprocess payments. However, prepayment in these circumstances is considered an exception and not a routine business practice.

### **5.3 Return Policy**

In limited circumstances, the University may return the goods ordered. Please note that some items are not returnable or may incur a restocking fee. Any fee from the vendor will be charged back to the budget of the end user's department. Contact the Purchasing Department for additional instructions.

### **5.4 Manufacture Defects / Incomplete Orders**

Once the Purchasing Department has issued a purchase order, the information regarding the order will be available in CUNYfirst (you may also receive a copy of the purchase order). As the end-user, you are responsible for verifying within a reasonable time frame that the quantity and quality of goods or services received match the specifications on the original order. If you notice a manufacture defect or

an incomplete order, stop using the product or service, repackage the item in its original packaging and contact the vendor. If you're unable to resolve the issue with the vendor, contact the Purchasing Department so that they can initiate the return.

## **5.5 Performance Evaluations**

The Purchasing Department requests that you provide feedback on the performance of vendors. It is always helpful for the Purchasing Department to understand if a vendor is providing great (or poor) service to the University. If you are dissatisfied with a vendor's performance, send the Purchasing Department specific reasons for your dissatisfaction so your concerns and issues can be included in the Purchasing Department's files and can help provide a basis for not selecting this vendor for a future purchase.

Vendors must be given written notice of the College's dissatisfaction and provided an opportunity to address the issues raised and/or to fix the problem(s). Take detailed notes regarding the conversations you have with a vendor who have provided unsatisfactory goods or services, including the date, time, and name(s) of the individual(s) of such conversations. The State generally discourages purchasers from disqualifying vendors, so strong evidence of dissatisfaction is necessary to disqualify a vendor for future purchases.

## **Section 6 Important Legislation Affecting Procurements**

### **6.1 Procurement Lobbying Act**

Communicating with the vendors is restricted during the procurement process to ensure a level playing field for vendors and to avoid attempts to influence a procurement. The Procurement Lobbying Act (attached hereto as Exhibit B):

- prohibits vendors from contacting anyone other than a designated contact person ("Designated Contact") during certain periods (e.g. during an Invitation for Bids solicitation process);
- requires CUNY to direct all communications concerning a potential procurement to the Designated Contact during these periods; and
- requires CUNY and all of its campuses to record and maintain documentation regarding certain communications made by vendors and their representatives during these periods.

**The Procurement Lobbying Act applies to all members of University community and to the business community interested in or doing business with the University.**

If an employee receives a "Contact" (i.e. oral, written or electronic communication that a reasonable person would infer are attempts to influence a procurement at the College/University) from a vendor during a Restricted Period, he/she must complete, sign, and immediately submit a Record of Contact form to the Purchasing Department even if the employee is the Designated Contact. This form is available from your Purchasing Department.

If a vendor knowingly and willfully violates the law, then the vendor and its subsidiaries, related entities, and successor entities will be found "non-responsible" (defined in the law) and may not be awarded the contract. Two such findings within four years will result in debarment, that is, the vendor will be made ineligible to respond to any solicitation or be awarded any (New York State) procurement contract for four years from date of the second finding of non-responsibility. Existing contracts with such vendors may also be terminated.

## **6.2 Project Sunlight**

Project Sunlight, an important component of the Public Integrity Reform Act of 2011, is an online database that provides the public with an opportunity to see the individuals and entities that are interacting with government decision-makers. Unlike the Procurement Lobbying Act, which applies during the procurement process, the reporting rules of Project Sunlight apply only when no procurement process with respect to a good or service has been initiated. The University must report, within five business days where feasible, any "appearance" between covered individuals that concerns a potential procurement, regardless of whether any actual procurement is anticipated at the time. **Any individual at the University who has the power to exercise discretion in a procurement is a covered individual.**

For the purpose of the Act an "appearance" is a substantive interaction that is meant to affect the decision-making process of the University. Only in-person meetings and video conferences are considered appearances. Phone calls, emails, letters, and faxes are not considered appearances and are not reported into the State's Project Sunlight database.

If you are involved in an appearance that requires reporting under the Project Sunlight rules, you do not need to personally enter the information regarding the appearance into the State's database. Instead, you must complete the Project Sunlight Disclosure Form. The form is available on the webpage for the Office of the General Counsel (<http://www.cuny.edu/about/administration/offices/la.html>). If you are at Central, send this form to [Project.Sunlight@mail.cuny.edu](mailto:Project.Sunlight@mail.cuny.edu). Otherwise, return the form to your campus' Ethics Officer.

For more information please see CUNY's Project Sunlight Policy memo and FAQs, available at: <http://www2.cuny.edu/about/administration/offices/legal-affairs/project-sunlight/>

## **6.3 Public Officers' Law / NYS Executive Order No. 1 (Sample Products / Trial Offers); Conflicts of Interest**

This law and executive order prohibits CUNY employees from receiving gifts or gratuities of more than a nominal value (e.g. baseball cap with vendor's logo). This legislation is intended to prevent vendors from (a) influencing CUNY in the performance of official business; or (b) providing a tip, reward, or sign of appreciation for any official act by the employee. **All employees of CUNY (regardless of funding source) are required to follow the Public Officers' Law and Governor's Executive Order No. 1: Establishment of Ethical Conduct Guidelines.**

Vendors frequently attempt to send samples and test products or offer to provide “trial” services to members of the University as a means to garner interest in their products and/or services. In order to ensure compliance with this law and executive order, end-users should never accept any of these. Only the Business Office may agree to accept such samples and trial offers on behalf on a department.

In addition, A CUNY employee may not engage in activities that would create or appear to create a conflict with their positions or raise suspicion among the public that they are likely to be engaged in acts that are in violation of their public trust. CUNY employees are prohibited from participating in hiring or making contracting decisions related to a family member, and no former CUNY employee may be engaged to perform services for CUNY within two years following the employee’s separation from service with CUNY. Other rules for avoiding conflicts of interest cover such areas as outside employment, providing services as a vendor while employed by CUNY, and investments in corporations involved in transactions with CUNY.

For additional information, please review Public Officers Law Handbook for State employees at: <http://jcope.ny.gov/pubs/POL/pol.html>

#### **6.4 Freedom of Information Law**

New York State’s Freedom of Information Law (“FOIL”) allows members of the public to access records of governmental agencies, including CUNY. FOIL provides a process for the review and copying of an agency’s records. When there is a request for documents, records, or statistical information, requesters should be directed to send a written request to the Records Access Officer of your college.

### **Questions?**

The Purchasing Department is here to guide you through the process and to assist you in obtaining the goods and services needed while following laws and regulations that protect the University’s assets. Your first point of contact is your Purchasing Department. You may also contact the Office of the University Controller as a secondary resource for additional procurement guidance.