

**ROWAN UNIVERSITY**  
**CONTRACTING AND PURCHASING POLICIES & PROCEDURES**

*General Policy*

The policy governing contracting and purchasing at Rowan University is that contracting for goods and services and construction shall be conducted in a fair and open manner consistent with applicable laws, rules and regulations, to the benefit of the University and its mission of service to the students, faculty, staff and the community. In general, the acquisition of goods and services including construction and maintenance services shall be at the lowest cost for similar quality and quantity. Each vendor and potential vendor shall be treated openly and fairly, with an equal opportunity to obtain the business of the University. In addition, the procurement process at Rowan University is intended to be entirely transparent.

*State College Contracts Law*

Purchases and Contracts involving Rowan University as the receiver of goods and services, including construction and custodial and maintenance services, is governed by the State College Contracts Law (N.J.S.A. 18A:64-52 *et seq.*). Under the statute, the definition of “contracts” includes “contracts or agreements for the performance of work or the furnishing or hiring of services, materials or supplies as distinguished from contracts of employment.” Thus, employment contracts are not covered by these Policies and Procedures. A copy of the current State Colleges Contracts Law is attached hereto as “Appendix A.”

While the State College Contracts Law governs only those contracts set forth in N.J.S.A. 18A:64-52 *et seq.*, these Purchasing Policies & Procedures, as a matter of University policy, shall apply to all contracts (except employment contracts) regardless of whether the University provides the services, materials or supplies, or whether the University receives the services, materials or supplies, whether or not payment is received or made for such services, materials or supplies.

*Other Applicable Laws*

In addition to the State College Contracts Law, there are several other statutes, Guidelines and Executive Orders of the Governor that apply to the University’s purchasing and/or contracting process. Among the other applicable laws are:

Business Ethics Guide -- A Plain Language Guide to Ethical Conduct for Companies Transacting Business With the Rowan University. See [www.state.nj/treasury/purchase/ethics\\_guide.shtml](http://www.state.nj/treasury/purchase/ethics_guide.shtml)

Executive Order 129 – For procurements that are primarily for services, the vendor must comply with Executive Order 129 (now codified in N.J.S.A. 52:34-13.2) to show that all services provided to Rowan University must be performed within the United States.

N.J.S.A. 19:44A-20.14 – For all State contracts, including those of Rowan, a form evidencing disclosure of certain political contributions is required to be completed by a vendor and submitted to the Procurement Office prior to entering into any contract in excess of \$17,500. An exception to the time frame requirement exists where a demonstrated emergency exists.

N.J.S.A. 19:44A-20 – Another section of N.J.S.A. 19:44A-20 requires that any business that has received in any calendar year \$50,000 or more in public contracts (advertised and unadvertised, bid or bid waived) must file an annual disclosure statement with the New Jersey Election Law Enforcement Commission (ELEC) pursuant to N.J.S.A. 19:44A-20.13. This is the responsibility of the vendor, but failure to comply may result in the imposition of a financial penalty by ELEC. See [www.elec.state.nj.us](http://www.elec.state.nj.us).

New Jersey Prevailing Wage Act (N.J.S.A. 34:11-56.25 et seq.) – Prime contractors and subcontractors who perform work at Rowan must pay wages to its employees at the prevailing wage rate. See [www.stste.nj.us/labor/lsse/lspubcon.html](http://www.stste.nj.us/labor/lsse/lspubcon.html).

N.J.S.A. 52:32-44 – Business registration certificates, evidencing a bidder's registration with the New Jersey Department of Treasury must be submitted with a bid or prior to entering into other contractual arrangements that are 15% or more of the then current business threshold amount (currently \$28,300.00). In addition all contractors shall obtain similar certificates from their subcontractors.

The FY 2009 Appropriations Act, signed into law on June 30, 2008, provides an on-going pool of funding for NJ Build, the training program for minorities and women in the construction trades. Under the Act, all government agencies must allocate one half of one percent of the total cost of construction projects awarded which \$1M or more for the training program. The fund must be transmitted upon award of the public contract.

### *Role of the New Jersey State Comptroller*

The newly created Office of the New Jersey State Comptroller has been granted a new level of oversight for State institutions that have contracting power, including the New Jersey State Colleges & Universities. See N.J.S.A. 52:15C-1 *et seq.*

State law empowers the Comptroller's Office to review proposed public contracts valued at more than \$10M before advertisements are issued. Upon its review, the Comptroller may direct the University not to proceed with such a contract if the proposed vendor selection process does not comply with the law.

In addition, contracts valued at more than \$2M are to be reported to the Comptroller's Office no later than 20 business days after the contract is awarded, with a detailed description of the process used to select the vendor and a list of rejected or disqualified bids. Information received can trigger a financial audit by the Comptroller's Office.

### *Rowan Contracting Officer*

The principal Contracting Officer for Rowan University shall be the Vice President for Administration & Finance whose office is located at Linden Hall (x4144). The approval and signature of the Vice President is required for each formal contract governed by these Policies and Procedures. Purchases made through routine purchase orders processed through the Office of Procurement will not require approval of or execution by the Vice President provided the dollar amount of the purchase does not exceed \$\_\_\_\_\_, and the dollar amount is within the budget allocated to the entity processing the purchase order.

In the absence of the Vice President for Administration & Finance, contracts may be approved and signed by the President of the University, as Contracting Officer. In the absence of both the President and the Vice President for Administration and Finance, contracts may be approved and signed by the Controller, as Contracting Officer.

By approving and executing a contract with a term of one year or less calling for the expenditure of University funds, the Contracting Officer is certifying that funds are available within University accounts and may be applied to the contract approved. For contracts with a term in excess of one year, the Contracting Officer shall certify that he or she anticipates that funds will be made available, and all such contracts are subject to the availability of funds.

### *Office of Procurement*

The day-to-day activities of purchasing, including the preparation of bids, the processing of purchase orders, etc. shall be conducted by the Office of Procurement, which office reports directly to the Vice President for Administration & Finance. The Procurement Office is located at \_\_\_\_\_ (x\_\_\_\_). Questions regarding the

application of purchasing laws, rules and regulations as well as routine questions regarding the purchasing process shall be addressed to the Office of Procurement. Specific legal questions will be referred to the Office of General Counsel of the University only by the Office of Procurement or a senior officer of the University.

The Office of Procurement is headed by a Senior Director of Contracts & Procurement and the Director of Purchasing and is divided into two functional divisions: Construction Contracts and Supplies & Services. The Senior Director of Contracts & Procurement (hereinafter referred to as “Senior Director of Procurement”) also has responsibilities for contract review of all contracts including but not limited to those pertaining to real property, facilities use, grants, and other contractual arrangements entered into by the University; and coordinates the risk management function of the University.

#### *Internal Contract Review*

Before contracts are presented to the Vice President for Administration & Finance for execution, the contract must be reviewed by the Senior Director of Procurement. In the event a proposed contract is reviewed but not approved by the Senior Director, appeal may be made to the Vice President for Administration & Finance, the University’s Contracting Officer, whose decision is final.

Each Division of the University (President’s Office, Academic Affairs, Student Affairs, Advancement, Community relations and Administration & Finance) shall implement a policy that establishes levels of Divisional approvals needed for submission of a purchase requisition to the Office of Procurement. Each Division will notify the Office of Procurement of its policy, and the Office of Procurement will develop and implement the use of appropriate approval forms for use by the Divisions.

#### *Purchases or Contracts Not Requiring Public Bidding Process*

The State College Contracts Law established limited circumstances in which bids are not required for goods or services where University funds are to be expended. These circumstances are as follows:

Purchases or Contracts Below the Bid Threshold Amount. – Any purchase or contract below the bid threshold amount established from time-to-time by the New Jersey Department of Treasury (currently \$28,300 – see Note below) does not require public bidding. By adopting these Policies & Procedures, the University Board of Trustees authorizes the Contracting Officer to execute such contracts below the bid threshold, provided however, that all such purchases and contracts in excess of \$5,000 shall be reported to the Board of Trustees through the Budget & Finance Committee of the Board. Notwithstanding that a purchase or contract is below the bid threshold, the Office of Procurement shall employ the following procedures as to obtain the lowest responsible bid, most

advantageous to the University, price and other factors considered for the item or contract in question:

- (a) \$0 to 10% of Bid Threshold Amount (currently \$2,830.00) – may be by direct purchase – no quotes required;
- (b) Above 10 % of Bid Threshold Amount up to 20% of Bid Threshold Amount (currently \$5,660.00)– requires telephone quotes from at least three vendors;
- (c) 20% of Bid Threshold Amount to maximum under bid threshold – written quotes from at least three vendors.

Pursuant to N.J.S.A. 18A:64-70, if the Senior Director of Procurement deems it impractical to solicit competitive quotations, or having sought quotations, determines that an award should not be made on the basis of price and other factors, he or she shall file a written statement of explanation of the reasons and place the statement on file with the contract.

Purchases or Contracts Above the Bid Threshold Amount Where Public Bidding is Not Required. – The Vice President for Administration & Finance (or in his or her absence another Contracting Officer) may, but is not required, to approve any purchase or contract listed below that is above the bid threshold amount up to and including \$50,000 without submitting the purchase or contract to the Board of Trustees for advance approval; but nevertheless the purchase or contract shall be reported to the Board and published in the Board’s minutes. If the Vice President (or other Contracting Officer) determines that he or she should not approve the said purchase or contract, he or she shall cause the purchase or contract to be presented to the Board of Trustees for approval.

Any purchase or contract listed below that is above \$50,000 (and any other purchases or contracts not approved by the Vice President for Administration & Finance or other Contracting Officer under the immediately above paragraph) shall be presented to the Board of Trustees for approval by Resolution of the Board of Trustees upon the recommendation of the Contracting Officer and/or the President of the University:

1. Professional Services by a professional person or entity that is duly licensed as a professional under New Jersey law or services that are original and creative in character in a requisite artistic field;
2. Extraordinary unspecifiable services and products which cannot reasonably be described by written specifications,

subject however, to procedures consistent with open public bidding whenever possible;

3. Materials or supplies which are not available from more than one potential bidder;
4. Work performed by employees of Rowan University;
5. Printing of legal notices and legal briefs to be used in a legal proceeding involving the University as a party and the use of electronic data or media services, including the internet, for the printing of these legal notices and legal briefs, records and appendices;
6. Textbooks, copyrighted materials, student produced publications, library materials, binding or rebinding or library materials and specialized library services, including electronic database and digital formats;
7. Food supplies and services, including food supplies and management contracts for student centers, dining rooms and cafeterias;
8. Supplying of products or services by a public utility subject to the jurisdiction of the Board of Public Utilities;
9. Equipment repair service if in the nature of an extraordinary unspecifiable service and necessary parts furnished in connection with such services;
10. Specialized machinery or equipment of a technical nature which will not reasonably permit the drawing of specifications and the procurement thereof without advertising is in the public interest;
11. Insurance and insurance coverage and consulting services, provided that it is determined that such insurance or coverage shall be in accordance with the requirements for extraordinary unspecifiable services;
12. Publishing of legal notices in newspapers as required by law and the use of electronic data or media services, including the internet for the publication of legal notices;
13. The acquisition of artifacts or other items of unique intrinsic, artistic or historic character;

14. Collections of amounts due on student loans and amounts due on other financial obligations to the University, including amounts due on tuition and fees and room and board;
15. Professional consulting services by a professional person or entity that is duly licensed as a professional under New Jersey law;
16. Entertainment;
17. Contracts involving funds generated by student activities fees and expended by student organizations;
18. Printing such as of college catalogues, yearbooks and course announcements and the production and reproduction of such material in electronic and digital formats including compact discs;
19. Information technology;
20. Personnel and student recruitment or advertising;
21. Educational supplies, books, articles of clothing purchased by University for resale;
22. Graduation caps and gowns and award certificates or plaques;
23. Contracts with the national, state or, local governments;
24. Items available from vendors at costs below State contract pricing for the same product or service, which meets or exceeds the State contract terms or conditions;
25. Management contracts for bookstores, performing arts centers, residence halls, parking facilities and building operations;
26. Consulting services involving information technology, curricular or programmatic review, fund raising, transportation, safety or security;
27. Construction management services for construction, alteration or repair of any building or improvement; and
28. Purchase or rental of equipment of a technical nature when the procurement thereof without advertising is necessary in order

to assure standardization of equipment and interchangeability of parts in the public interest.

Note: At such time as the New Jersey Department of Treasury establishes a revised bid threshold amount, the University community will be notified of such revised bid threshold amount, and the revised threshold amount will from that point in time forward, apply the revised threshold amount to transactions governed by these policies.

If the University has advertised for bids on at least two occasions and either (1) has received no bids on each occasion; or (2) the University has determined that any and all bids are not reasonable as to price, based on the basis of cost estimates made by the University; or (3) on one occasion no bids were received and on one occasion all bids were determined to be unreasonable as to price. In such case the Board of Trustees may, by a two thirds vote of the authorized membership authorize a purchase, contract or agreement, provided that the University makes a reasonable effort to obtain the material, supply or services at a cost lower than the negotiated price from a governmental agency and the terms and conditions are not substantially different from those that were subject to the competitive bidding process.

Whether a particular purchase or contract is exempt from public bidding requirements is a determination to be made by the Office of Procurement in the first instance, but if there is disagreement with the determination made by the Office of Procurement, the determination will be made by the Contracting Officer, whose decision is final.

The above listing of purchases and contracts that are exempt from public bidding requirements is provided by New Jersey statute, and in particular the State College Contracts Law. That Law may be amended from time to-time by the New Jersey Legislature and if such amendment becomes law, then such amendment if contrary to any or all of the above listing, shall supersede such listing herein without the need to amend these policies and procedures. Amendments shall be communicated to the University community by the Office of Procurement and shall be considered a part of these policies and procedures upon such communication.

In the event a particular purchase or contract is exempt from public bidding requirements, the Office of Procurement may nevertheless require public bidding or a modification of the usual public bidding process as to obtain the purchase or contract on the best possible terms, price and other factors included. Typically, such modification will employ the obtaining of quotes from identifiable vendors.

Finally, in the event a particular vendor is identified as a State-approved vendor under the Department of Treasury, Division of Purchase and Property procedures, and listed as such in the public record, the University, through the Office of Procurement, may purchase from or contract with such vendor for contract specified products or

services without the need for public bidding. The University may, under the State College Contracts law, use existing contracts or bids from other New Jersey State and local government entities. Notwithstanding, the above, the Office of Procurement may negotiate with such State-approved vendor for a price that is lower than the price established by the Department of Treasury. Also, items available from vendors at costs below State contract pricing which meet or exceed State contract terms may be purchased as an exception to public bidding. See paragraph 24 under section *Purchases or Contracts Not Requiring Public Bidding* above.

Except as noted above for purchases or contracts up to \$50,000, all purchases and contracts exempt from public bidding shall require an affirmative vote of the Board of Trustees at a public meeting unless such purchases or contracts are below the bid threshold (in which case a written report to the Board of Trustees through the Budget & Finance Committee of the Board is required for all such purchases and contracts above \$5,000). The Office of Procurement shall keep and maintain a list of all purchases and contracts below \$5,000 for examination by the Budget & Finance Committee of the Board upon request.

Pursuant to N.J.S.A. 18A:64-70, bidding is not required because the amount of the purchase or contract is above the threshold, but is exempt from the bidding process. Quotations shall be solicited from at least three sources if the contract is not bid out, except that if three sources are not available, quotations will be solicited from as many as are available. This process does not apply to professional services. However, if the Contracting Officer deems it impractical to solicit quotations or after solicitation determines that other factors should determine the award of the contract, a written statement of explanation should be filed. The names and addresses of each responder to any advertisement or request for quotes or requests for proposal utilized in the selection process will be reported to the Board of Trustees through the Budget & Finance Committee, together with the amount of each response. If fewer than three sources are available and quotations are solicited from as many as are available, that fact also will be reported to the Board of Trustees in the manner set forth in this paragraph.

#### *Purchases and Contracts Requiring Public Bidding*

All purchases and contracts above the bid threshold limit (currently \$28,300.00) and not identified above as exempt from public bidding are required to be bid under applicable policies and procedures. All public bidding shall be performed by the Office of Procurement. The policies and procedures applicable to public bidding are set forth in N.J.S.A. 18A:64-65 *et seq*, See “Addendum A” attached hereto for a quotation of the statute.

All purchases and contracts exceeding the bid threshold amount and requiring public bidding shall be approved and executed by the Contracting Officer and reported to the Board of Trustees through the Budget & Finance Committee of the Board. The information provided to the Committee shall include the following:

- (a) Name and address of the contractor;
- (b) Term of Contract;
- (c) Total Amount of Contract; and
- (d) Purpose of the Contract.

In addition, the names and addresses and the amount of bid of all qualified bidders considered for selection will be reported to the Board of Trustees through the Budget & Finance Committee, as well as the amount of each bid.

The instructions to the bidders shall specify that unsuccessful bidders who wish to contest an award should contact the Office of Procurement within \_\_\_\_ days of the publication of the award. The Office of Procurement will advise the protester of the process for challenging the award. Normally, the first step in the processing of a challenge is to provide an informal hearing, conducted by a University officer, to examine the appropriateness of the process of selection.

#### *Contract Splitting Prohibited*

New Jersey statute and sound practice prohibits the splitting or subdividing of a contract in order to avoid all or a portion of the requirements of the bidding process. As provided in N.J.S.A. 18A:64-52 *et seq.*, “Where the doing of any work is incident to the performance or completion of any project which is single in character or inclusive of the furnishing of additional work, materials or supplies, or which requires the furnishing of more than one article of materials or supplies, all of the work, materials and supplies requisite for the completion of the project shall be included in one purchase, contract or agreement.” In short, the total requisition or order value shall not be split to avoid quote or bid requirements.

#### *Duration of Contracts*

Normally a contract may not exceed a term of three (3) years. The term of a contract does not necessarily coincide with a fiscal or calendar year. See N.J.S.A. 18A:64-79 and N.J.S.A. 18A:64-54. There are, however, certain kinds of contracts that may extend beyond three years, provided the contracts contain a clause making them subject to the availability and appropriation annually of sufficient funds to meet the extended obligations or contain an annual cancelation clause.. The contracts that may extend beyond three years include, but are not limited to the following:

- (a) Fuel for heating and other utilities (up to five years)
- (b) Plowing and removal of snow (up to five years)
- (c) Garbage collection and disposal (up to five years)
- (d) Purchase, lease or servicing of information technology (up to five years)
- (e) Insurance (up to five years)
- (f) Leasing or service of motor vehicles, machinery and equipment of any nature and kind (up to five years)

- (g) Vending operations , food supplies and food or college center management contracts(up to five years)
- (h) Services for energy conservation (up to ten years if in accordance with rules established by the BPU)
- (i) Retention of architect, engineer, construction manager or other consultant in connection with a specific construction project (length of time necessary to complete the project)
- (j) Management contracts for bookstores, performance arts centers, residence halls, parking facilities and building operations (up to five years)
- (k) Banking, financial and e-commerce services (up to five years)
- (l) Maintenance service for fire alarms, security systems and HVAC systems (up to five years)
- (m) Alternate energy services or equipment (up to ten years)

There are other kinds of contracts that may contain a term of over three years. For a determination of whether a specific proposed contract complies with the law that extends a term for longer than three years, contact should be made with the Office of Procurement prior to publicly advertising for a contract for materials, equipment or services.

The fact that a contract may be entered into for a term of three years or longer does not require that a contract be entered into for such a term. Sufficient justification for a contact term beyond one year must be submitted to the Contracting Officer upon the recommendation of the Sr. Director of Procurement before public advertising is made, and the justification for an extended term must include more than administrative convenience.

*Outsourcing of Work Substantially Similar to that Performed  
by Bargaining Unit Employees of the University*

Prior to the execution of any contract for the performance of work substantially similar to that performed by negotiations unit (union) employees, the University shall consult with the appropriate union representative regarding such action. The union representative shall have the right to review the supporting documentation concerning the contract and to an assessment of the impact of the contract on the bargaining unit employees of the University. N.J.S.A. 18A:64-84. Consultation with the appropriate union representative does not provide a “right of first refusal” or similar right for work at the University. The decision of whether to utilize Rowan employees (such as hiring Rowan staff on overtime basis) or hire external contractors is a matter for managerial decision based on the circumstances operable at the time of the decision.

*Special Provisions for Professional Services and  
Professional Consulting Services*

Pursuant to New Jersey Executive Order #26 (Governor Whitman 1994), the University has established its own procedures for competitive selection of architects, engineers and accountants.

The Contracting Officer is authorized to negotiate contracts for services described as Professional Services and Professional Consulting Services (accountants, architects and engineers) on an “on call” basis, exempt from the public bidding process, using the following procedures:

- (a) The University will develop a prequalification standard for each professional service;
- (b) Bi-annually the University, through the Office of Procurement, will publicly advertise for the services to be needed during the following fiscal year;
- (c) Potential vendors will submit written proposals to the Office of Procurement for the services required in response to the advertisement;
- (d) Vendors that meet the prequalification standard and evidence a desire to do business with the University will be evaluated by the Office of Procurement and the user office;
- (e) The vendors will be listed in the order of preference and the list will be presented to the Vice President for Administration & Finance;
- (f) The Vice President for Administration & Finance will select an appropriate number of vendors which will then be notified by the Contracting Officer, through the Office of Procurement, of their selection and be available for service as required by the University; and
- (g) The names and addresses of the selected vendors will be reported to the Board of Trustees.

Alternatively, if architect or engineering professional services are required for a specific project only and the University elects not to utilize an “on call” contractor for the project, a two-stage selection process may be used. First, the Office of Procurement, working with the office directing the project, will prepare a Request for Qualifications (RFQ) setting forth the nature and scope of the work and the selection criteria. The Office of Procurement will then generally advertise the job’s availability and the RFQ will be sent to firms that are known to specialize in the type of work required for the project. The Office of Procurement will then convene an internal selection team from the office primarily responsible for the project to reduce the responders to a “short list” of acceptable responders. Upon receipt of the “short list,” The Office of Procurement will then convene a larger selection committee consisting of members of the internal selection team and end-users (the Division or Office responsible for the application of the project), which larger selection committee will evaluate the “short list” and rank the responders in the order in which the responders will be best able to meet the needs of the project. The

Office of Procurement will independently consider the fee proposals from the “short listed” responders; and the Senior Director of Procurement and the head of the office responsible for the project shall make a joint recommendation to the Contracting Officer as to which responder shall be selected, but if the Senior Director of Procurement and the head of the office responsible for the project disagree, the matter will be discussed with the Vice President for Administration & Finance whose decision is final. Architects and Engineers selected by this alternate process shall be reported to the Board of Trustees, together with an indication that the alternate process was utilized.

Contracts for other professional services, such as legal services, shall be subject to the above process or contain appropriate elements of the process, at the discretion of the Contracting Officer.

#### *Special Provisions for Time & Materials Contracts*

A time and materials contract provides for the acquiring of supplies and/or services on the basis of (a) direct labor hours at specified fixed hourly rates that includes wages, overhead, general and administrative expenses and profit; and (b) materials at vendor’s cost, including if previously approved by the Office of Procurement as a part of the contract, material handling costs as a part of material costs. An alternate term to describe Time & Materials Contracts is “Standing Orders,” and time and materials vendors are sometimes referred to as “on call” vendors or contractors.

Generally speaking, a time and materials contract is not considered beneficial to the University because such a contract provides the vendor with little or no incentive to control materials cost or to efficiently manage the labor force. Rowan has, however, established certain procedures and processes that mitigate the negative aspects of a time and materials contract.

A time and materials contract may only be used for the following purposes (a) emergency services when Rowan employees are not qualified to perform the services or cannot reasonably be assigned to perform the services because of other assignments or general unavailability; (b) non-emergency services of the kind that are not generally performed by Rowan employees or would consume an excessive amount of work-time of Rowan employees and thus diminish the ability to provide necessary services.

Non-emergency time and materials contracts shall not be used if the service can be calculated by another measure and bid out in that manner. Justification for the use of these contracts must include a statement that an alternative calculation is not reasonably possible.

Construction work typically is not performed by Rowan maintenance employees, and may be the subject of time and materials contracts. However, time and materials contracts shall only be used when there is sufficient justification that outweighs the negative aspects of such contracts, as determined by the Senior Director of Procurement. If a University manager objects to the determination made by the Senior Director of

Procurement, he or she may appeal that decision to the Vice President for Administration & Finance for a final determination. Written justification for the use of time and materials contracts shall be kept in the contract file.

Except in the case of an emergency situation, the above-established quote and/or bid process will be employed on each occasion in which a time and materials contract is contemplated. Thus, for each time and materials contract (except for emergencies) that is contemplated as being below the bid threshold amount, the provisions set forth for such purchases set forth in these policies and procedures shall apply. Similarly (except for emergencies), if the time and materials contract is contemplated as being above the bid threshold amount, the bidding process will be followed unless the contract is exempt from such bidding policies and procedures by the State Colleges Contracts Law.

Each “time and materials” contract shall include a “not to exceed” limit established at the time of bidding or solicitation of quotations.

#### *Emergency Situations*

When the President of the University or the Contracting Officer has received sufficient reasonable information that an emergency exists that affects the health, safety or welfare of occupants of University property or the integrity of University owned property, requiring immediate delivery of materials or supplies or the performance of necessary work, the President or Contracting Officer, as the case may be, may award a contract for the work, materials or supplies needed to address the emergency.

If the materials, supplies or services are below the bid threshold, a contract shall be awarded following the procedures for such purchases or contracts set forth above, to the maximum extent reasonably possible under the circumstances.

If the materials, supplies or services may be provided from the list of existing Professionals or Professional Consultants, a contract shall be awarded following the procedures for such purchases or services set forth above, to the maximum extent reasonably possible under the circumstances.

If the materials, supplies and/or services may be provided under an existing time and materials contract, and there is justification for the use of such a contract, the approved vendor may be called in to perform the work. If the amount of the work exceeds the time and materials contract amount, the Contracting Officer must be notified of the justification prior to engaging the contractor for such work. Documentation of the reason for the use of a time and materials contract shall be kept in the contract file.

Otherwise, the emergency work shall be undertaken only after the procedures set forth in N.J.S.A. 18A:64-57 are complied with, as follows:

A written requisition for the performance of the work or the furnishing of materials or supplies certified by the employee in charge of the building, facility or

equipment where the emergency occurred is filed with the President of the University or Contracting Officer, as the case may be, describing the nature of the emergency, the time of its occurrence, the need for invoking the emergency provisions of the Statute and this section. The President or Contracting Officer, as the case may be, once satisfied that an emergency exists, is authorized to award a contract for the work, materials or supplies immediately to any vendor determined to be appropriate and available upon such terms and conditions that the President or Contracting Officer, as the case may be, shall deem reasonable under the circumstances. Upon furnishing the work, materials or supplies in accordance with the terms and conditions of the contract, the vendor furnishing the work, materials or supplies is entitled to be paid therefor and the University is obligated for the payment.

All emergency contracts entered into by the President or Contracting Officer shall be reported to the Board of Trustees at the next public meeting of the Board.

#### *Special Provisions Relating to Construction and Renovation Contracts*

Contracts for construction of buildings and improvements are governed by N.J.S.A. 18A:64-74 *et seq.* Contracts for construction and renovation of buildings shall be awarded to the “lowest responsible bidder whose bid, conforming to the invitation for bids, will be the most advantageous to the University.” N.J.S.A. 18A:64-76.1(b). The public bidding process shall be conducted by the Office of Procurement in accordance with public bidding laws applicable to the University.

Under no circumstances will a construction contract be awarded to a vendor unless there has been appropriate approval of a total project budget. The Board of Trustees shall have the authority to approve all total project budgets beginning at \$1M; the President of the University shall have the authority to approve all total project budgets between \$200K and \$1M; and the Vice President for Administration & Finance shall have the authority to approve all total project budgets below \$200K. The construction contract(s) to be awarded -- as well as all other contracts to be let for the project shall be within the budget approved. In the event it is determined at some point in time that the overall budget must be increased, the increase in budget must be specifically approved by the Board of Trustees, President or the Vice President for Administration & Finance, as the case may be, before any contract is awarded that is in excess of the original budget.

The total project budget shall include items such as: architect and engineering fees; permitting fees; advertisement, printing and bidding costs; construction contract costs; specialty consultant fees (e.g., commissioning agent); ff&e (fixtures, furnishings and equipment) and project contingency.

Contracts for new construction or renovation of buildings or facilities with a total project cost of \$500,000 or more shall be approved and awarded by the Board of Trustees.

The President of the University upon the recommendation of the Vice President for Administration & Finance may cause the Contracting Officer to award a construction contract, provided such project cost is below \$500,000. The University may not break up total project costs that in the aggregate may exceed \$500,000 so that Board of Trustees approval is not required. All construction contracts approved by the President of the University upon the recommendation of the Vice President for Administration & Finance and executed by the Contracting Officer shall be reported to the Board of Trustees through the Committees of Facilities and Budget & Finance of the Board.

Change Orders are a matter particularly unique to construction contracts. A change order is defined as a change in the plan or design in a project as directed and approved by the University. The Contracting Officer shall have the authority to approve contract change orders, provided that the total amount of change orders on a particular project do not exceeding ten percent of the contract amount and provided that the change orders are within the overall project budget approved by the Board of Trustees, President or Vice President for Administration & Finance, as the case may be. Application for approval of a change order shall be processed through the Office of Procurement to the Contracting Officer by the office requesting same. The office requesting the change order shall submit the application for approval to the Office of Procurement after appropriate review with the architect and/or engineer.

Contingency amounts and allowances also are a matters particularly unique to construction contracts. Contingency amount(s) and allowances shall be incorporated in an overall project budget approved as set forth above, and shall include only those items specifically identified by the University in advance and included in the total project. A contingency amount is the University's reserve amount in a total project budget for unforeseen circumstances such as a major change in scope or cost overrun due to unforeseen delays. The Contracting Officer may approve contingency payments as a change order only if directed by the University (not the vendor), and they are within the contingency amount and subject matter set forth in the approved budget. As with a change order, application for approval of payment from a contingency amount shall be processed through the Office of Procurement to the Contracting Officer by the office requesting same.

An allowance is the amount included in the base construction contract for relatively small changes in scope that may arise from a variety of sources, such as revisions required by the Division of Community Affairs after construction permits have been issued, University-directed changes or unforeseen conditions. Approvals shall be made by the project manager and approved by the head of the Office of Facilities, Planning & Construction and reported to the Office of Procurement and the Vice President for Administration & Finance. Any purchases of materials or services shall be made through the Office of Procurement if made to a vendor not already serving the project.

At the conclusion of a project, any unused contingency and/or allowance amounts shall be credited back to the University through a change order that reduces the total contract amount.

### *Recurring Contracts*

The Contracting Officer is authorized to approve and execute certain recurring contracts previously approved by the Board of Trustees, provided the Board of Trustees has identified the contract as a recurring contract at the time of initial approval. The Contracting Officer's authority to approve and execute recurring contracts is subject to a limitation of an annual price change not to exceed ten percent of the previous year's contract. This authority alleviates the need to submit numerous Board resolutions for recurring contracts for utilities, subscriptions and other services with the same vendor.

The Contracting Officer's authority to approve and execute recurring contracts is limited to three years beyond the termination date set forth in the initial approval, unless the Board of Trustees' approval establishes a lesser limit. After the Contracting Officer's authority to renew recurring contracts has expired, the successor contracts shall be submitted to the Board of Trustees for approval in the manner set forth above.

Each recurring contract, as approved and executed by the Contracting Officer, shall be reported to the Board of Trustees through the Budget & Finance Committee of the Board.

### *Contracts Not Requiring University Expenditure*

Contracts or agreements that do not require an expenditure of University funds or which potentially result in income to the University may be negotiated and entered into by the Contracting Officer. Contracts that generate annual revenues in excess of \$25K shall be reported to the Board of Trustees through the Committee of Budget & Finance of the Board. This exception does not apply to commercial contracts such as vending machine and copy machine contracts that confer a benefit on the contractor. The award of such contracts shall follow the normal University bidding procedures, except that the term of such contracts may be up to five years..

### *Application for and Acceptance of Grant Awards*

The Contracting Officer is authorized to apply for any and all grants from external entities, to enter into and execute any contracts related thereto and to fulfill the terms of the grant award including but not limited to the utilization of matching requirements made as a condition of the receipt of the grant award.

The receipt of all grant awards shall be reported to the Board of Trustees at the next regular meeting of the Board following receipt of the award.

### *Contracts Related to Real Property*

The Board of Trustees shall specifically approve all contracts and transactions involving the acquisition, conveyance or lease of real property owned by the University. Upon such approval, the contracts and transaction documents shall be executed by the Contracting Officer.

### *Record of Contracts Awarded*

The University shall maintain in the Office of Procurement a written record of all contracts entered into by the University under the within Policies and Procedures, and such record shall contain the following information: name and address of the vendor; term of the contract; amount; purpose of the contract; and any special circumstances attendant to its execution (such as emergency, recurring contract).

### *Summary of Board Actions & Reporting Requirements*

The following action items and reports to the Board, identified above, are here summarized:

#### Action Items for the Board:

- (a) Approval of Purchases and Contracts In Excess of Threshold (but over \$50,000) Not Requiring Public Bids
- (b) Contracts for New Construction or Renovation in Excess of \$500,000
- (c) Contracts and Transaction Documents Related to Real Property

#### Information Item to Board Directly

- (a) Emergency Approvals
- (b) Purchases and Contracts Above Threshold Not Requiring Public Bids, but below \$50,000
- (c) Grant Awards

#### Information Items to Board Through Budget & Finance Committee

- (a) Purchases and Contracts Below Threshold and Above \$5,000
- (b) Purchases and Contracts Above Threshold and Requiring Public Bids
- (c) Project Budgets for New Construction or Renovation Below \$500,000
- (d) Action Items (a), (b) and (c) for the Board Listed above (for recommendation)
- (e) Contracts Generating Revenue in excess of \$25,000
- (f) Executed Recurring Contracts

Information Items to Board Through Facilities Committee

- (a) Contracts for New Construction or Renovation Below \$500,000
- (b) Action Item (b) and (c) for the Board Listed Above (for recommendation)

*Previous Board Resolutions Revoked*

The within Policies and Procedures supersede any and all previous Board Resolutions not consistent herewith. Specifically, and without limitation, the following Resolutions are hereby rescinded:

- Resolution #12 Adopted September 12, 2001
- Resolution #23 Adopted June 19, 2002
- Resolution #12 Adopted April 26, 2006
- Resolution #10 Adopted June 14, 2006
- Resolution #11 Adopted June 14, 2006
- Resolution #9 Adopted April 25, 2007

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