



Category:
Financial
Legal and Compliance

Responsible Office:
[University-wide Procurement](#)

Other Requirement Title:
Utilization of NYS Preferred Sources

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This procedure item applies to:
Community Colleges
State-Operated Campuses
Statutory Colleges

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Summary

To advance special social and economic goals, certain providers have "preferred source" status under NYS Finance Law §162. The acquisition of approved commodities and services from the Preferred Sources are exempted from statutory competitive procurement requirements and take precedence over all other sources of acquisition.

This procedure sets forth guidelines to assist the state-operated campuses and community colleges of the State University of New York (University) in their procurement of commodities and services from Preferred Sources. The preferred sources are the New York State Department of Correctional Services Division of Industries (Corcraft); qualified charitable non-profit-making agencies for the blind approved by the Commissioner of the Office of Children and Family Services ("OCFS"); qualified charitable non-profit-making agencies for other severely disabled person approved by the Commissioner of Education ("SED") and qualified veterans' workshops approved by the Commissioner of Education. In addition, OCFS has appointed the New York State Preferred Source Program For People Who Are Blind ("NYSPSP") and SED has appointed the New York State Industries for the Disabled, Inc. ("NYSID") to facilitate orders amongst the respective approved charitable non-profit-making agencies.

Requirement

Preferred source status is accorded to the following entities:

- A. Commodities produced by Corcraft.
- B. Commodities and Services produced by any qualified, charitable, non-profit-making agency for the blind approved by the Commissioner of Social Services and facilitated by NYSPSP.
- C. Commodities and Services produced by any qualified, charitable, non-profit-making agency for the other severely disabled persons approved by the Commissioner of Education and facilitated by NYSID.
- D. Commodities and Services produced by a qualified veterans' workshop providing job and employment skill training to veterans, operated by the United States Department of Veterans Affairs, that manufactures products or performs services within the State and is approved by the Commissioner of Education and facilitated by NYSID.
- E. Commodities and Services produced by a qualified charitable non-profit-making workshop for veterans

approved by the Commissioner of Education and facilitated by NYSID.

Please note that although University may elect to procure services from Corcraft, Corcraft it is not accorded preferred source status for the procurement of services and as such this purchase is subject to the competitive rules of State Finance Law §163.

I. Approved Products and Services

The Office of General Services (OGS) posts a list of all commodities and services that are available and being provided by Preferred Sources at: <http://ogs.ny.gov/procurecounc/pdfdoc/psguide.pdf>. This list, referred to as the "List of Preferred Source Offerings" (List), contains generic groups of commodities and services as well as specific items. It also references Preferred Source catalogs and other literature detailing approved as well as non-approved commodities and services offered for sale by Preferred Sources [1].

The University is only required to procure commodities and services that have been approved by the New York State Procurement Council. These commodities and services are found in Sections A and D of the List.

II. Priority Among Preferred Sources

A. Approved commodities available in the form, function and utility required by the University must be purchased from Preferred Sources in the following order of priority:

1. Corcraft
2. NYSPSP
3. NYSID

B. Approved services available in the form, function and utility required by the University must be purchased from a Preferred Source in the following manner:

1. Equal priority is accorded to NYSPSPS and NYSID.
2. If more than one Preferred Source meets the service requirements, cost shall be the determining factor in selecting among the qualified sources.

III. Advertisement

No publication in the New York State Contract Reporter (NYSCR) is required for purchases from the Preferred Sources, regardless of the dollar level.

IV. Subcontracting

Purchases from the Preferred Sources are on SUNY's Exemption List and therefore are not subject to subcontracting requirements.

V. Procurement Process

The acquisition of commodities or services from Preferred Sources is exempted from statutory competitive procurement requirements.

A. Commodities

1. Campus determines and defines its needs for commodities.
2. Campus checks Preferred Source List for approved item and reviews catalog and product specifications:
 - a. if the commodity is not on the approved List, campus may utilize OGS centralized contracts or an appropriate procurement source in accordance with applicable law as specified in section 163 of New York State Finance Law; or
 - b. if the commodity is on the approved List and has the "A NYS Approved Preferred Source Item"

designation, campus makes form, function and utility determination.

[NOTE: To apply the form, function and utility standard, the campus should define the commodity in terms of the minimum essential requirements, which will meet its needs. Every effort should be made to purchase from the Preferred Source so long as the item meets the campus' needs. Requirements may include quality, quantity, delivery, packaging, performance standards and compatibility, among others. Requirements should not be inflated or overstated to eliminate Preferred Source suppliers; nor, should the purchasing campus acquire a Preferred Source product which is materially unsuited to the needs of the campus.

In making the form, function and utility determination, purchasing campuses should at least consider the following:

- Does the commodity offered by the Preferred Source meet either campus specifications or industry standards which may be applicable?
- If the commodity has deviations from specifications, will it still suffice or substantially meet the minimum requirements for function a performance?
- Are delivery schedules, installation requirements and performance standards reasonable, necessary and within accepted commercial practices? For example, is the divergence between the purchasing campus' desired delivery date and the Preferred Source's delivery date within reason or so great as to impede the campus from accomplishing its goals (e.g., six weeks vs. six months)?
- Has the Preferred Source been consulted with? Can the Preferred Source make necessary accommodations to meet the purchasing campus' needs?]

3. If the commodity meets campus requirements, the campus should confirm the price does not exceed a reasonable fair market price^[2] if purchasing from Corcraft or is no greater than fifteen percent above prevailing market prices if purchasing from NYSPSP or NYSID ^[3]and if so, makes the purchase from the Preferred Source(s).
4. If the campus determines that the commodity does not meet the form, function or utility required, or the price exceeds the statutory thresholds, the campus shall provide a written notification to the Preferred Source at the address provided in the List of Preferred Source Offerings at least 10 days prior to the date indicated in (c) below:
 - a. describing the basis for its finding;
 - b. providing the name address and phone number of the responsible campus purchasing official; and
 - c. indicating the date on which the NYSCR advertisement (if required) will be placed, or the date on which competitive solicitations will be made by the campus.
 - d. Proof of notification should be retained by the campus.
5. Within 10 days, the Preferred Source(s):
 - a. may indicate agreement with the campus decision; or
 - b. provide no response to the campus; or
 - c. provide written notice to the campus that it disagrees with the campus decision.
6. If (a) or (b) in step 5 occurs, the campus proceeds with an alternate procurement (and if over \$50,000, begin with an advertisement in the NYSCR).
7. If (c) in step 5 occurs, the Preferred Source may consult with, or negotiate the procurement with the campus. The campus should set reasonable timeframes to reach a conclusion with the preferred source.
 - a. if negotiations are successful, the campus may purchase from the Preferred Source; or
 - b. if unsuccessful within the timeframe set by the campus and communicated to the Preferred Source, the campus notifies the Preferred Source of their plan to proceed with an alternative

procurement and then proceeds accordingly.

8. The Preferred Source may file an objection with the campus president which becomes part of the Procurement Record, along with all other findings and actions related to the purchase.

B. Services

1. Campus determines and defines its need for services and develops service specification including the elements of their form, function and utility.
2. Campus checks Preferred Source List to determine if the service is approved.
 - a. if the service is not on the approved List, campus proceeds with alternative procurement; or
 - b. if the service is on the approved List, campus contacts the Preferred Source(s) and provides the detailed scope of services needed.
3. Within 10 days of campus notification:
 - a. if the Preferred Source does not respond, the campus proceeds with an alternative procurement; or

[NOTE: campus decides to pursue a competitive procurement, and one or more Preferred Sources elects to "bid" on that procurement, the campus must award on the basis of "best value," irrespective of the Preferred Sources' special status. In this case, Preferred Sources are treated as any other vendor.]
 - b. if a Preferred Source(s) responds that it wants to provide the service, the campus proceeds to step 4.
4. The campus determines if the Preferred Source service meets the campus's form, function and utility requirements:
 - a. If the Preferred Source service meets the campus's requirements, the campus may proceed with the procurement. If the procurement is valued in excess of \$50,000, the Preferred Source obtains OGS price approval, after the campus concurs to the proposed price proposal provided by the Preferred Source. The campus should not put the service out to bid to determine prevailing market price but may issue a request for information if unsure of offered scope of services or price.. To assist OGS, the campus should provide any price information they have available in order to ensure that the prevailing market price is accurately identified for the campus' specific services.
 - b. If the service does not meet campus requirements, the campus must notify the Preferred Source and then proceed with an alternative procurement. [see above NOTE under A. Commodities 2]]
5. The Preferred Source may file an objection with the campus president which becomes part of the Procurement Record, along with all other findings and actions related to the purchase.

[1] Not all items on the Preferred Source websites are approved Preferred Source items. Only items tagged with "A NYS Approved Preferred Source Item" are actually available to purchase as a preferred source item. All non-tagged items may only be purchase after following the competitive bidding requirements of State Finance Law § 163.

[2] State Finance Law § 162 (5)(a)

[3] State Finance Law § 162 (6)(b)

Definitions

Form, Function and Utility – The minimum essential requirements that will meet the campus’s needs. These requirements are defined by the campus. Requirements may include quality, quantity, delivery terms, packaging, performance standards, and compatibility, among others. Requirements should not be inflated or overstated to eliminate Preferred Source suppliers; nor, should the purchasing campus acquire a Preferred Source product which is materially unsuited to the needs of the campus.

State Procurement Council – The policy-making body established under State Finance Law §161 that is responsible for the study, analysis and development of recommendations to improve State procurement policy and practices, and, for development and issuance of guidelines governing State agency procurement.

Procurement Record – Documentation of the decisions made and the approach taken in the procurement process (State Finance Law §163 (f)).

Related Procedures

[Purchasing and Contracting \(Procurement\)](#)

Forms

There are no forms relevant to this requirement.

Other Related Information

[NYS OGS - Preferred Source Guidelines](#)

[List of Preferred Source Offerings](#) The University is only required to buy products and services that are found in Sections A and D of the List.

[CORCRAFT](#)

[NEW YORK STATE PREFERRED SOURCE PROGRAM FOR PEOPLE WHO ARE BLIND](#)

[NEW YORK STATE INDUSTRIES FOR THE DISABLED](#)

Authority

NYS Finance Law §162

Appendices

There are no appendices relevant to this requirement.