



Research Foundation
The City University
of New York

230 West 41st Street
New York, NY 10036
212 417 8507
212 417 8510 fax
Richard.Rothbard@cityu.edu
www.rf.cuny.edu

Richard F. Rothbard
PRESIDENT

August 16, 2006

Mr. Steven E. Sossei
Audit Director
Office of the State Comptroller
Division State Services
State Audit Bureau
110 State St., 11th Fl.
Albany, NY 12236

RE: Research Foundation Response to the Office of the State Comptroller's Procurement and Contracting Practices Report 2004-S-89

Dear Mr. Sossei,

The Research Foundation of The City University of New York (RF) thanks the Office of the State Comptroller (OSC) for its diligent and thorough report on our Procurement and Contracting Practices. As in our earlier response, we welcome OSC's finding that the RF generally complies with its procurement policies and procedures, and have adjusted our policies and procedures to accommodate your recommendations. The Research Foundation manages well over \$300 million annually, which is comprised of thousands of grants involving hundreds of CUNY faculty and staff. We employ 12,000 full and part-time staff in any given year and purchase tens of thousands of items. The few examples cited in the review represent an infinitesimally small percentage of our total volume. Nevertheless, we strive constantly to improve and will use the opportunity raised by these findings and recommendations to examine and modify policies and practices where appropriate.

The following are the Research Foundation's responses to each of the recommendations mentioned in the OSC Procurement and Contracting Practices Report 2004-S-89.

OSC Recommendation # 1:

To comply with Foundation procurement policies, require central office and campus officials to obtain a minimum of three written or verbal bids or proposals for procurements at or exceeding the prescribed threshold amounts.

Research Foundation Response:

Agreed. We have updated our web-services and Principal Investigator (PI) training programs. We have strengthened our own enforcement efforts by insisting that these documents be presented

prior to processing the purchase order. Per RF Policies 501-D and 518-B, no payment requests in the amount of \$15,000 and above for private and state grants and for \$25,000 and above for federal grants will be processed without the requisite bids attached. Copies of the Policies are attached.

OSC Recommendation # 2:

Ensure that the justification(s) for using single or sole source contracts and personal service consultants are adequately documented whenever such contracts or consultants are used.

Research Foundation Response:

Agreed. We have reiterated to all Grants Officers and Principal Investigators that the RF will insist that, in the case of a single or sole source acquisition, the purchaser furnish the RF with adequate documentation explaining his/her reasoning behind the purchasing decision per RF policies # 501-D and # 518-B. We have clarified this requirement by revising these policies, drafts attached here. These policies will be presented and approved at the Winter 2006 RF Board of Directors Meeting. In the future, the RF will not process any payment requests or purchase orders not in compliance with the above-mentioned policies.

OSC Recommendation # 3:

Formally review Policies 501-D and 518-B and identify any conflicting guidance within them. Amend the policies as necessary.

Research Foundation Response:

Agreed. We have amended its procurement and contracting processes to eliminate any conflicting statements between the RF policies #501-D and #518-B. As already indicated in #2, we have made it clearer to the reader that policy #501-D deals primarily with the purchase of physical assets and the management of construction contracts, and that Policy #518-B concerns independent contractor agreements.

OSC Recommendation # 4:

Ensure that all Foundation business arrangements with SUNY and CUNY employees are fully consistent with pertinent provisions of the Public Officers' Law.

Research Foundation Response:

While we have no access to the state payroll system and, therefore, cannot know before the fact if there are any actual conflicts between the business arrangements with SUNY and CUNY employees and the Public Officers' Law, we have implemented procedures to heighten the awareness of CUNY officials and PIs regarding their obligations under the Public Officers' Law. RF Grants & Contracts (G&C) personnel are now required to remind PIs seeking reimbursement of the law's requirements. We have also sent each grants officer a copy of the Public Officers' Law, a copy of the Audit Report, and a memo discussing the grants officer's role in the implementation of this new policy.

OSC Recommendation # 5:

Do not use Foundation funds to pay claims that have been denied payment with State funds by OSC.

Research Foundation Response:

As with our response to #4 above, the RF has no mechanism through which we could be cognizant of any issue in this area. The RF is a separate and independent organization from CUNY. We have nonetheless relayed your concerns both verbally and in writing to CUNY officials on the rules of the reimbursement of this type of expense. Furthermore, we have asked them to implement procedures to prevent a reoccurrence of this problem.

The RF has changed our standard inquiry procedures, which will identify potential conflicts within this area. If the RF becomes aware that the CUNY or State official has requested reimbursement of an expense that has already been denied payment by the OSC, the RF will advise the individual to revisit the matter with the OSC.

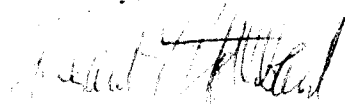
OSC Recommendation # 6:

Prior to paying invoices, require adequate supporting documentation of the products and services provided. Supporting documentation should include properly prepared receiving copies of purchase orders or receiving reports, when appropriate.

Research Foundation Response:

Agreed. Although our current policies have always had this requirement, we have increased our scrutiny of purchase orders and receiving documents for all grant-financed physical assets and services, and communicated this fact to all CUNY Grants Officers. The RF property manager now demands even greater completeness, accuracy and timeliness from CUNY property managers with regard to inventory of RF assets in their custody. The RF has also begun imaging all purchasing and receiving documentation so as to avoid the possibility of loss or misfiling.

Sincerely,



Richard F. Rothbard
President

CC: Mr. Matthew Goldstein, Chairman, RFCUNY
Mr. David Rankert, Acting Director, Internal Audit & Management Services, CUNY
Ms. Lisa Ng, Contracts Officer, NYS Division of Budget
Mr. Edward Kalaydjian, CFO, RFCUNY
Ms. Catherine McGrath, Chief Counsel, RFCUNY
Mr. Jacek Olszewski, CIO, RFCUNY
Mr. Jerry Steele, COO, RFCUNY

Subject: PURCHASE OF EQUIPMENT, SUPPLIES AND CONTRACT SERVICES

Policy No: 501-D

PURPOSE

Establish guidelines to insure that expenditure of funds for acquisition of equipment, supplies and contract services satisfy:

1. The needs of Principal Investigators/Project Directors for flexibility and minimum administrative burden.
2. Sponsor requirements regarding allowability, screening for availability, competitive bidding and documentation.
3. Sound purchasing practices and procedures, while providing for open & free competition to the maximum extent practicable and consistent with sponsor rules and regulations.

APPLICABILITY

The provisions of this policy shall apply to all officially designated persons, Principal Investigators and their designees, authorized to commit and expend funds.

POLICY

Contents:

Codes of Conduct

Overview

Procurement Reference Table

Purchase Contracts

Purchase Requisition

The RFCUNY Purchase Card (P-Card)

Purchases Under \$5000

Purchases Equal to or Greater Than \$5000

Care of Equipment

Transfer And Disposition of Equipment

Valuation of Equipment

Control of Non-Expendable Equipment

Vehicle Procurement Procedure

Telephone Installations

Leased Space

Insurance

Animal Purchases

Confirming Purchases

Chemical Substances

Construction Projects/Contracts

CODES OF CONDUCT

No employee shall engage in or permit illegal or improper purchasing practices, including but not limited to:

- kickbacks (anti kickback act and public law 99-6334)
- conflict of interest
- acceptance of gratuities
- elimination of competition or restraint of trade
- violation of minimum wage or payment schedule for construction contracts
- submission of equal or complimentary bidding

OVERVIEW

1. Propriety of Purchase

Goods and services to be purchased must be project related.

2. Budget Provision

Prior to the purchase process, Principal Investigators and or their designees must determine that adequate funds exist in the sponsored project budget in the proper expense category, and approval is secured as required pursuant to the provisions of a contract, grant or other external sponsored agreement.

3. Specifications

It is of utmost importance that accurate and complete specifications are prepared for submission to vendors so that they may respond to solicitations promptly, with quotations on the products or services to be purchased at the most reasonable prices. The following details may be used in preparing specifications, with additional information included where pertinent:

- a. Manufacturer's name and model number.
- b. Quantity required.
- c. Complete description of item including all technical specifications required such as horsepower, voltage, amperage, capacity, volume, color, dimensions, grade, packaging, style, etc.
- d. F.O.B. point and terms of payment, including prepayment.
- e. Delivery date required.
- f. and duration of service or warranty, if required.

Specifications should, wherever possible, be reasonable and flexible enough to allow substitutions. They should not be so restrictive as to preclude obtaining best quality materials or services at lowest possible cost.

4. Qualified Vendors

Qualified vendors must be used; they are those manufacturers and/or distributors who regularly engage in supplying the product or service to be purchased, and who have a demonstrated record of satisfactory performance. RF-CUNY, consistent with Federal and State Laws, encourages the use of small, disadvantaged, women-owned and minority businesses.

5. Competitive Bidding

Bids, based on common specifications, must be solicited from a minimum of three qualified vendors in accordance with the following chart. Every effort should be made to obtain the most reasonable price within established delivery requirements.

PROCUREMENT REFERENCE TABLE

Category	SPONSOR GROUPS				
	RF/Agency Funds	Federal	State	Private	City
Small orders 0-\$4,999.99	PO not required unless vendor requests	PO not required unless vendor requests.	PO not required unless vendor requests.	PO not required unless vendor requests.	Restrictive Varied agency rules apply. Consult with PA.
Requisition Required	= / > \$5,000	= / > \$5,000	= / > \$5,000	= / > \$5,000	Restrictive Varied agency rules apply. Consult with PA.
3 Written Bids required	= / > \$25,000	= / > \$25,000	= / > \$15,000	= / > \$15,000	Restrictive Varied agency rules apply. Consult with PA.
Orders using GSA/State/City Contract Pricing	No bids required	No bids required	No bids required	No bids required	No bids required. Consult with PA.
Equipment Screening Certificate	YES	YES	YES	YES	Restrictive Varied agency rules apply. Consult with PA.

PA (Project Administrator): Research Foundation designated project manager.

Definitions:

Equipment is defined in Section J. 16.a (1) of OMB Circular A-21, Cost Principles for Educational Institutions, as 'an article of non-expendable tangible personal property having a useful life of more than one year, and an acquisition cost which equals or exceeds the lesser of the capitalization level established by the organization for financial statement purposes, or \$5,000. The RF has established a lower capitalization level of \$1000 to conform to our F&A indirect cost recovery negotiated rates with sponsors.

However, for most New York City and New York State sponsors, a threshold for capitalization of assets is maintained at levels as low as \$250 and \$1,000 respectively. Therefore, these sponsor groups may require inventorying of these lesser-valued items under the University's INSITE system.

Types of Bids

The two types of bids in the solicitation process are verbal and written.

1. A verbal bid is a supplier's oral statement of price and any other information requested, made in person or by telephone, in response to a solicitation.
2. A written bid or proposal is a supplier's written statement of price and any other information requested, in response to a solicitation.

When bids are not required:

- a. A vendor is sole manufacturer and/or distributor of the product. The vendor, either on the quotation, e-mail or a signed letter on the vendor's letterhead, must certify this status.
- b. Purchase price of an item is established by a New York State, New York City or Federal GSA Contract.
- c. Single source procurement: A single source procurement is a purchase from a supplier who is chosen without soliciting the minimum number of bids or proposals, despite the fact that competition

exists, because of limiting factors (e.g. experience/service of supplier, product or service quality, market conditions). Single source procurements require justification of selection and a statement of reasonableness of cost from the ordering entity as well as approval of the RF.

When an emergency occurs, contact the appropriate staff member at the Foundation, to expedite processing.

Orders under \$5000 are the sole responsibility of Principal Investigators and/or their institutions.

6. Selection of Vendor

The primary basis is the most reasonable price quoted based on specifications supplied by the purchaser. In rare cases, circumstances may dictate selection of other than the lowest bidder, including: (a) completely unsatisfactory delivery date, (b) a substitute item offered is not a satisfactory equivalent. In this event, the Principal Investigator must submit a letter of justification.

7. Purchasing Authority

- a. Under \$5,000 - Orders less than \$5,000 may be prepared using the Small Order Form (RF-201) and sent directly to the vendor by the Principal Investigator. PIs may want to have the RF encumber the funds to insure adequate budget to pay the vendor.
- b. Equal to or over \$5,000 - Purchase Requisitions for purchases \$5,000 and greater must be sent to the Research Foundation for review and approval. Purchase Orders will be prepared and forwarded to the appropriate vendor by the Foundation.

8. Certification of Receipt of Order

Before the Foundation can pay a vendor invoice the Principal Investigator or his/her designee must certify receipt as to condition of equipment and adherence to specifications, particularly quality and price.

9. Title of Equipment

Title is generally vested in the Research Foundation of CUNY until the termination of the project, at which time title is transferred to the respective college. Sponsor regulations vary from project to project and must be adhered to at all times.

GENERAL PURCHASING INFORMATION Ordering Services, Supplies & Equipment

Purchase Requisition

Not all purchases of services, supplies and equipment require completion of a Purchase Requisition form RF208. Please check the sponsor related dollar value guideline chart above. When required, the following information should be filled out.

- PRSY number and budget category
- Description of the item(s) or services desired
- Delivery point—(note: City College requires all equipment destined for that campus be sent to a Central Delivery Address)
- Billing information for invoice delivery
- Attach quotations when required

The form must be signed by the Project Director and sent to RF CUNY for purchase order generation. The purchase order is sent directly to the vendor with copies to the Principal Investigator, the Property Manager if equipment is being purchased and your Project Administrator. **Purchase Requisitions are not to be sent directly to vendors. They do not constitute a purchase order and Principal Investigators may be liable for these costs in the event their projects cannot accept the cost.**

Purchase Contracts

In some cases, a purchase order alone may not be sufficient for ordering goods or services, since the RF may be exposed to liability, sponsor requirements may not be met or the project's schedules and objectives may be impacted. Example, a purchase order for: complex or custom made items of equipment; long term equipment maintenance and lease agreements; use of hotel facilities for meetings, conferences and seminars.

To ensure that all requirements are fulfilled, a formal written contract with the vendor is needed. The contract should include specific detailed information as it relates to performance, delivery dates, payments and all terms and conditions.

All Purchases made through the RF:

- must be made in accordance with RF Policy 501-D.
- must conform to approved award budget and sponsor requirements.
- are exempt from sales and use tax in New York, New Jersey, Florida, Missouri and Tennessee; the RF is exempt from NYC Hotel Occupancy Taxes as well. (contact [OTPS Teams](#)).

IMPORTANT:

- Funds must be committed before the termination date of the award.
- Your college may have a role in the approval of expenditures.
- The use of minority, disadvantaged, women-owned and small business vendors is encouraged.
- Principal Investigators will be held liable for all orders placed by their project staff directly to vendors.
- [Click here](#) for a list of vendors who have contracts with the State of New York and provide goods and services at discounted rates.
- The Research Foundation of CUNY has negotiated special discount prices with Sigma-Aldrich using the Purchase Card (P-Card) and ordering online. [Click Here](#) for information and sign up.

The RF CUNY Purchasing Card (P-Card)

The Research Foundation has established a program using the **RF CUNY Purchasing Card (P-Card)** as an alternative to Small Order Forms, Payment Requests and out-of-pocket expenditures. The P-Card, which is a VISA Card issued by JP Morgan Chase (Chase), can be used for purchases at all VISA merchant locations. The P-Card is linked directly to your project and allows you to have more control in its administration. While the user of the P-card must still follow the Research Foundation's Accounts Payable and Purchasing Policies and Procedures as outlined on our Website <http://www.rfcuny.org/>, using the P-card has several advantages:

1. It eliminates the need to prepare payment requests forms because all payments to the vendor are made at the point of sale. The Monthly Activity Statement that is sent to you by JP Morgan Chase documents all purchases made in each billing cycle. Instead of preparing payment requests for individual purchases, you will verify the accuracy of the transactions and forward the Statement, along with all the receipts and supporting documentation, to your Project Administrator, who will allocate the purchases to the appropriate expense account or category in your project.
2. It eliminates the need to use personal funds for travel or supplies, and the subsequent requests for reimbursement.
3. It facilitates the ease of merchandise returns/credits.
4. It reduces the need to keep excess petty cash for emergency purchases.
5. It enables cardholders to make purchases by telephone, fax or over the Internet.
6. In most cases, it eliminates the payment of sales tax, since most merchants will accept the tax-exempt number printed on the face of the P-card.

You may apply for the P-Card by downloading and completing the [JP Morgan Chase Purchasing Card Application \(PDF\)](#) and the Research Foundation [Purchasing Cardholder Agreement Form \(PDF\)](#) located on our Website <http://www.rfcuny.org/>. The completed application and cardholder agreement should be sent to the Project Administrator for the account.

If you have any questions regarding the P-Card, please contact Tracy Lake by e-mail at tracy_lake@rfcuny.org. or telephone 212 417-8551.

PURCHASES UNDER \$5,000

Follow these steps:

- Prepare a Small Order Form if the vendor requires one.
- Use the purchase card to purchase items over the phone or online.
- Order the item(s) directly from the supplier over the phone or by sending them the vendor's copy of the Small Order Form.
- After you receive the item, attach the vendor's original invoice and the receiving copy of the Small Order Form (if applicable) to a completed Payment Request Form (RF 021) and forward to RF-CUNY for processing. Remember to sign and date the form.
- Remind the vendor that RF CUNY is exempt from sales tax in certain states.

To be reimbursed for out-of-pocket expenses:

- Attach original itemized receipt to a completed Payment Request Form and forward to RF-CUNY for processing. Note: There will be no reimbursement of sale taxes. Place your order using Research Foundation of CUNY as the purchaser and give the vendor a copy of our Tax Exempt Certificate.

PURCHASES EQUAL TO OR GREATER THAN \$5,000 Sponsor Regulations govern requirements for Bids.

For Orders totaling \$5,000 or more:

- Prepare specifications of the items to be ordered
- Sponsors require that you obtain the best value for all purchases.
- Complete a Purchase Requisition Form (RF 208). Keep one copy for your records and send the original to the RF.
- The RF will send out a Purchase Order to the vendor, forward a receiving copy and a file copy to you and a copy to the Property Manager for your institution when equipment is ordered.
- When the item arrives, use the receiving copy of the P O. to certify its receipt
- Attach the receiving copy and the original invoice to a completed Payment Request and forward the documents to RF-CUNY for payment.

For Orders totaling \$15,000 (State sponsor funds) or \$25,000 (Federal and RF/Agency sponsor funds).

- Follow the same steps outlined above
- One additional step: three written bids must be obtained for such purchases and submitted with the purchase requisition.
- Sole vendor justification requires written certification by the principal investigator.
- Principal Investigator must submit written justification with requisition if the vendor with the lowest price is not chosen.

For Equipment costing \$5,000 per unit:

The College's Property Manager must approve in writing, all purchases of equipment items with sponsored funds that are to be delivered off-campus.

- Same steps as above and in addition, complete an Equipment Screening Certificate (RF 209) that must be certified by the appropriate college official, and forwarded with the Purchase Requisition.

CARE OF EQUIPMENT

The Principal Investigator is accountable for the following:

- Proper care, maintenance, storage and safeguarding.
- Reporting to the Property Manager, physically relocated, transferred, traded in, resale, damaged, surplus/disposed of/ lost/missing or stolen items of equipment. In addition where theft has occurred, the Principal Investigator must notify the College's Security office, local law enforcement authority, file a loss of property report, inform the College's Office of Sponsored Programs, the Sponsor and the Research Foundation of CUNY.
- Obtaining written sponsor approval for equipment modification or replacement.

TRANSFER AND DISPOSITION OF EQUIPMENT

This step occurs at the end of the equipment's useful life or at the termination of the Project

- Disposition of the equipment requires the written approval of the Research Foundation, or of your college if the title has been transferred.
- The RF will obtain title to equipment from the sponsor, where possible, and will transfer title to your college upon project termination. The college is committed to abide by any sponsor restrictions.

Please note: Equipment acquired through a PSC-CUNY award will be transferred to the college at project termination, or as otherwise determined by the University Committee on Research Awards.

VALUATION OF EQUIPMENT

The value or cost of all equipment must be established for accounting and reporting purposes. Value or cost is determined by including:

- The invoice cost, less any discount if applicable.
- Duty, excise and sales taxes (if any). The RF is exempt from sales tax in NY, NJ, FL, MO, TN.
- In-transit, delivery and other freight costs, including insurance.
- Installation charges.
- Component and accessory costs, if they are part of the equipment.

CONTROL OF NON-EXPENDABLE EQUIPMENT

Control Records:

- The University's INSITE system tracks all equipment purchased on sponsored projects. Periodic reviews of physical inventories are required to verify the location of items of equipment that are recorded in INSITE.
- The RF and the college Property Manager keep a record of all non-expendable equipment.
- The College Grants Office and the Property Manager receive a copy of the monthly Detail of Equipment report, which lists equipment charges under sponsored programs at the college.
- The college Property Manager places a University tag on non-expendable equipment and, when provided by the sponsor, additional decals. You must provide access to the Property Manager for this purpose.
- If required by the sponsor, the Research Foundation will prepare a final property inventory at project termination. The report is sent to the Principal Investigator and the college office of Sponsored Programs for verification. The Principal Investigator is responsible for sending the certified report to the Sponsor.

VEHICLE PROCUREMENT PROCEDURE

The Research Foundation of CUNY is responsible for the purchase and/or lease of motorized vehicles on project accounts.

- If the purchase or lease of a vehicle is included in your project budget, the Principal Investigator requesting the purchase or lease is responsible for compiling the required information pertaining to the proposed purchase. The specific model, features, accessories and estimated cost must be determined and submitted with the purchase requisition. In addition, the requestor must also provide a business justification for the purchase.
- The RF will secure insurance coverage through the RF's existing policy. Your account will be charged accordingly.
- Should any vehicle owned or leased by the RF be involved in an accident, contact the RF's insurance broker, InterCity Agency, Inc., at 718-423-5555.

TELEPHONE INSTALLATIONS

- All off-campus and on-campus projects that require special utilities or telecommunication installation must have funds specified for this purpose in the award document. Contact Grants and Contracts for information on installations.

LEASED SPACE

- If a project is to be housed off-campus in leased space, contact the appropriate OTPS Team. The RF Legal Department will review the lease to ensure its terms do not conflict with those of the approved budget award that is paying for the lease.
- A purchase order may not be used as a substitute for a lease.

INSURANCE

- The RF holds an insurance policy for **motor vehicles** owned or leased by the RF. If your project entails the use of such a vehicle, the RF will obtain an endorsement and charge your account accordingly.
- The RF's **general liability policy** provides coverage for short-term off-campus project sites.
- **All other coverage** (burglary, DP policies, fire, etc.) must be purchased separately. If coverage is needed, the RF will secure an endorsement to its appropriate existing policy and will charge your account.
- The RF can arrange for special **health insurance coverage** for staff and students traveling abroad, as well as for foreign students and faculty coming to the US on project-related business.
 - Travel must be for more than **15 days**.
 - Cost will be charged to your account.
 - Certain sponsors require this coverage. Contact your Project Administrators.
 - Special insurance requirements exist for construction projects/contracts. The minimum comprehensive general liability insurance coverage is \$1 million per occurrence, \$2 million aggregate for property damage and bodily injury. Certificate should also include Workers Compensation. Coverage as statutorily required and Professional Liability insurance in the amount of \$1 million per occurrence. Contracts involving automobile should have automobile comprehensive liability have coverage set at \$1 million. Any subcontractors or Sub-subcontractors hired by the general contractor must maintain liability insurance of the types and in the amounts specified above. The policy shall be obtained from an insurer licensed to do business in the state of New York and the insurer shall have a Best's rating of no less than B+.

Contact [Vincent Bilello](#) (212-417-8576) when any of the above insurance coverage is required.

ANIMAL PURCHASES

- Due to government regulations, research animal purchases require that the Animal Purchase Approval Form (RF 211) be attached to the Payment Request or Requisition Form prior to RF processing. The Facilities Manager must approve this form.

Important: Generally, projects with animal care under federally sponsored programs must have an approved protocol at the time of the award. The cover page of the application indicates whether or not animal subjects are included in the proposal.

Click on the icon to download RF 211 from the [RF Form Download Page](#).

CONFIRMING PURCHASES

Principal Investigators and staff who make commitments directly to vendors without following the purchasing policy and guidelines may violate a Sponsor regulation or requirement. It is understood that at times emergency purchases may be made where it is not possible to follow the approved Purchasing guidelines. In those cases, persons obtaining the goods may pay out of pocket or submit the vendor invoice to the RF.

a. Reimbursement to Individuals

When an individual uses personal (out-of-pocket) funds to pay for direct purchased goods or places an order for goods without following the RF purchasing guidelines, the invoice and payment request together with a written justification documenting why the purchasing process was circumvented must be submitted to the Research Foundation. The RF staff (*preferably a Purchasing manager*) will review the transaction and determine if it is a reasonable, allocable and allowable project expense based on the approved budget and OMB circular A21 guidelines.

It is important to note that when commitments against Sponsored funds are made on a confirming basis, the Principal Investigator risks assuming personal liability for the charge if the RF determines it is not an approved, project-related, cost.

CHEMICAL SUBSTANCES

Please Note: The following guidelines were created to comply with the New York State Right to Know Law regarding chemical substances in the workplace

- All Principal Investigators and/or Project Directors are required to have Material Safety Data Sheets (MSDS) readily available to respond to employee requests for information.
- All Principal Investigators and/or Project Directors are required to have Material Safety Data Sheets (MSDS) readily available to respond to employee requests for information.
- Check box on the Small Order Form (RF 201), the Purchase Requisition (RF 208) and the Purchase Order Form to indicate that you want the vendor to send the appropriate MSDS for the chemicals in your order.
- If the MSDS is forwarded to you with your order, send it to your college's Occupational Safety and Health Officer.
- Contact [OTPS Team](#) with any questions or if you have difficulty obtaining an MSDS from a vendor.

CONSTRUCTION PROJECTS/CONTRACTS

Due to the nature and complexity of construction contracts, special documentation is required in advance of preparing any construction contract. Only projects/purchase orders having the sign off/approval of the local college Facilities Manager will be processed. All construction projects need to have the following list of documentation included with the initial submission to the RF for review and approval before any contract can be drafted and issued.

- A Project Manual or a complete list of contract documents that will be referenced in the contract exhibit list (incl. Tech specs, architect drawings, bid proposal/package, etc.). Project proposals, bids, etc. based on a "walk through of the premises" are not acceptable.
- Name and address of project architect.
- Name and address of project manager/construction manager. Project managers hired to oversee projects cannot be placed on RF payroll. They are independent contractors hired using the Independent Contractor Agreement (ICA).
- Date of work commencement. **NO WORK IS TO COMMENCE ON AN RF PROJECT BEFORE THE RF AND THE CONTRACTOR HAVE SIGNED THE CONTRACT.** The sponsoring school is liable for any expenses and all liabilities incurred before the contract agreement date.
- Date of substantial work completion.
- Liquidated damages per day, if any.
- Is the contract to be completed for fixed stipulated sum or state conditions that may increase the contract total?
- If asbestos, mold or pollutants abatement is involved, a company certified and licensed for abatement services must do it.
- Indicate payment schedule for progress of work. Progress payments cannot exceed 75% of the total contract price up to the final billing.
- Indicate retainage percentage (minimum 10%) for incomplete work or unsettled claims. All contracts over \$25,000 must have a retainage amount held by the RF for a minimum of 90 days after completion of the project. Indicate it in contract bidding documents.
- Winning bidder (contractor) must provide a commercial general liability insurance certificate with Contractor as the insured and Owner (Research Foundation of CUNY), The City University of New York and The Dormitory Authority of the State of New York (DASNY) as separate additional insured. Please note language above. Being an additional named insured or certificate holder does not provide the same type of coverage needed.
- For architectural services contracts, the same insurance requirements as above apply for general liability insurance coverage as well as the architectural firm providing a Professional Liability insurance certificate with the same organizations as named certificate holders.
- Minimum comprehensive general liability insurance coverage is \$1 million per occurrence, \$2 million aggregate for property damage and bodily injury. Certificate should also include Workers Compensation. Coverage as statutorily required and Professional Liability insurance in the amount of \$1 million per occurrence. Contracts involving automobile should have automobile comprehensive liability have coverage set at \$1 million. Any subcontractors or Sub-subcontractors hired by the general contractor must maintain liability insurance of the types and in the amounts specified above. The policy shall be obtained from an insurer licensed to do business in the state of New York and the insurer shall have a Best's rating of no less than B+.
- Depending on the type and scope of work, a performance bond and/or a bid bond may be required of the contractor. All projects over \$100,000 will require the successful bidder to post a performance bond. An acceptable alternative to posting a performance bond is for the contractor to agree to accept minimum retainage of 20% of all invoices for a period of up to six months.

DRAFT: 518-C

A: PURPOSE

To establish policy and to guide project directors and others in the use of independent contractors on projects and accounts administered by the Research Foundation.

B: DEFINITION

An independent contractor is an individual (or firm) providing specific, personal services free from the direction and control of performance, including the means and methods used. *The general rule is that an individual is an independent contractor if the entity for which the services are performed has the right to control or direct only the result of the work and not the method of accomplishing that result.*

C: APPLICABILITY

This policy applies to all projects and Foundation accounts that will engage the services of an independent contractor.

D: BACKGROUND

Grants and contracts are awarded to the Research Foundation with the assumption that there is the staff and technical expertise to carry out the project without extensive outside assistance. ***Occasionally, independent contractors supplement a project's technical needs and provide specific services to the Research Foundation.***

Independent contractors fall into two categories:

1. A company or firm providing service to the public or to a broad clientele. This includes organizations supplying temporary office services.
2. Individuals who are clearly in business for themselves and offer their services to the general public, and as such are self-employed, e.g. certain physicians, lawyers, photographers, artists, and others in an independent trade, business or profession. This includes one-time professional lecturers and short-term professional consultants.

As a rule, if the determination is unclear, the prospective consultant is classified as an employee.

The IRS employs a number of factors to appropriately classify independent contractors. The legal analysis of this issue may be complex, and determinations are made on a case by case basis. Generally, if the answer to any of the following questions is "yes", in most cases the individual/prospective consultant will be categorized as an employee. ***Note that the final determination as to the appropriate classification will be made by the Legal Department of the Research Foundation.***

Factors supporting employee classification:

1. Is the work to be performed substantially similar to the work of other employees, or can the work be performed by an employee?
2. Are the services to be provided generally performed by or incorporated into the operations of the college?
3. Will the individual require on-going training and direction regarding how to complete the task, or is the individual receiving more than simply general directions and the objectives of the task?
4. Will the individual report to a Research Foundation/CUNY employee who has the right (even if such right is not exercised) to direct how, when, and where the individual does his/her work?
5. Will tools or supplies be provided?
6. Is the work to be done on a regular schedule (i.e., from 9:00 a.m. to 5:00 p.m.).
7. Is the time period basis for payment: hourly, daily, per job, or is there a fixed fee?

Factors supporting categorization of an individual/prospective consultant as an Independent Contractor:

1. Individual maintains a separate business with his/her own premises, materials and/or equipment;
2. Individual/prospective consultant has obtained or has applied for a federal employer identification number (EIN);
3. Individual agrees to specific work for a specific amount of money (ie: a fixed fee, hourly/daily rate) and controls means of performing work;
4. Individual may realize a profit or suffer a loss in connection with performing work or services;
5. Individual has right to control how, when and where he/she does the services to be performed.
6. Individual is NOT an employee of CUNY or the Research Foundation.

E.POLICY

1. Project directors **must be aware of the requirements** for independent contractors and indicate their proposed use in grant applications or contract proposals.
2. Unless the budget is flexible, a specific budget category with sufficient funds must exist before engaging any consultant or other independent contractor. Even in awards with flexible budgets, using consultants may be prohibited by the sponsoring agency if they were not specified in the project proposal. Approval of the individual (or firm) by the funding agency may be required by the terms of the award or agency regulations.
3. In addition to providing a budget for independent contractor services, the Foundation must receive adequate documentation justifying the need for the services of an independent contractor. ***The PI must provide a written justification for selecting a particular independent contractor to provide personal services without obtaining competitive bids for such services. This justification should include detail regarding the process used to select the particular contractor, the unique area of expertise of the contractor, the reasonableness of the contractor's fee in relation to the qualifications of the contractor, his/her normal charges, and the specific nature of the contractor's services.***
4. Subject to the foregoing and any funding agency restrictions, independent contractors who are not members of CUNY faculty and who participate in a project may be paid fees consistent with the usual rates for such services. Payment in these cases is a fee for service and not salary. No income taxes, social security or other insurance contributions will be withheld or deducted.
5. The classification of an individual as an independent contractor or an employee is determined by the Foundation. An Independent Contractor Request Form must be submitted with the appropriate accompanying documents and signed by the Project Director.
6. A written agreement establishes the basis for payment to an independent contractor. The services to be provided, period of performance, rate of pay and amount to be paid should be specified. Note that:
 - a. Services may commence only after an agreement has been signed by all parties.
 - b. Reimbursement to contractors depends on satisfactory performance.
7. Except in unique circumstances, the Foundation will not advance payment to independent contractors for personal services.
8. Use of both outside and intra-university consultants is subject to government regulations, in addition to CUNY and sponsor restrictions.

F. OPERATING PROCEDURES

Before contacting independent contractors, project directors should determine that the expense is allowable under funding agency and Foundation policies and that funds are available. Any prior approvals required by award or agency regulations must be obtained.

1. Request for Approval of an Independent Contractor Agreement

This request is submitted to the Research Foundation's Office of Legal Affairs for review of the following items:

- a. compatibility with all applicable regulations and policies;
- b. acceptability of determination of Independent Contractor status;
- c. availability of funds;
- d. adequacy of supporting documentation.

2. Independent Contract Agreement:

Written agreement with the contractor:

For amounts of \$5,000.00 or more, the Foundation enters into an agreement with the independent contractor. The following supporting documentation should be submitted with the request:

a. A written work statement outlining the work to be accomplished (a "Scope of Work.") The Scope of Work should outline what will be accomplished, the dates by which tasks are to be completed, who specifically will perform the work and where it will be performed, and the method(s) by which the work will be performed.

b. Written justification why the particular personal services of the Independent Contractor are needed, and the specific reference to the need for such services in the proposal to the sponsor should be noted, if it is referenced in the proposal.

c. contractor's current curriculum vitae or descriptive literature, in the case of a firm. (A brief statement describing the contractor's qualifications and the basis for selection may be substituted.)

3. Payments. The project director authorizes the Foundation to make payments to contractors.

a. For each payment, submit a Payment Request with an invoice reflecting services rendered to date. Indicate "Final" on the last claim for payment

b. Invoices should include:

- billing rate, amount due, dates and type of service;

-contractor's original signature, and;

- certification that deliverables have been received, if applicable.

G. IMPLEMENTATION

The provisions of this policy are effective immediately.