Employee Guidelines
SUNY College at Geneseo

Executive Order 127
Providing for Additional State Procurement Disclosure

A detailed explanation of the requirements of “Executive Order 127 – Providing Additional State Procurement Disclosure” may be obtained at the Office of General Services web site (http://www.ogs.state.ny.us).

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Purchasing & Central Services
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A. PURPOSE

Executive Order 127, dated June 16, 2003, was issued by Governor Pataki to increase public disclosure of attempts to influence the award of procurement contracts, other than those that must be awarded after a competitive bid process to the lowest responsible bidder. EO 127 seeks to maintain public confidence in State procurement processes through open, efficient and effective contract processes. To meet these goals, State agencies and authorities are directed to systematically seek disclosure of the identity of persons or organizations whose purpose is to influence decisions regarding procurement contracts, real estate transactions and public works. All procurement contracts and amendments commencing on or after August 14, 2003 are subject to EO 127.

B. APPLICABILITY

EO 127 applies to all state agencies and authorities, including the State University and the State University Construction Fund, with respect to procurement contracts when: (1) the award will not be based on lowest price; and (2) annualized expenditures will be in excess of $15,000.

The following list illustrates the types of procurement contracts covered by EO 127 and is not intended to be limiting.

1. Statewide term contracts or agency specific (single agency) contracts for procurement of services and technology under Section 163 of the State Finance Law.
2. Emergency procurement contracts.
4. Sole Source procurement contracts.
5. Multiple Award procurement contracts.
6. Strategic Partnership procurement contracts.
7. Contracts from piggybacking on another public entity’s contract.
8. Joint procurement contracts with another public entity.
9. Non-auction types of real estate transactions, including: purchase, sale, lease, or other acquisition and grant of interest in real property.
10. Public works, including but not limited to architect, engineering and surveying services contracts (unless the award is made to the lowest responsible offeror).
11. Mini Bid procurements under back-drop contracts when the award is made on the basis of “best value” rather than lowest price.
12. Preferred Source procurements.
13. Revenue contracts.

Contract Amendments

EO 127 applies to any amendment to any procurement contract having an annual value in excess of $15,000, if such amendment requires a change in the scope of the procurement contract and the state agency needs to seek formal approvals of the amendment. Exercise of a renewal option is also a procurement determination that could be the subject of an attempt to influence and it could constitute an amendment within the definition of a procurement contract. EO 127 would not apply to change orders or work orders that do not require formal approvals by control agencies. However if the change order or work
order is subject to formal approvals, it could constitute an amendment that is covered by EO 127.

C. CONTRACTS EXEMPT FROM EO 127

Procurement contracts that, by law, must be awarded to the lowest responsible bidder, or that must be awarded on the basis of lowest price under a competitive bid process, are excluded from coverage.

Following are examples of exempt procurements:

1. **Contracts with an estimated annual value less than $15,000.**
2. **Centralized or agency specific (single agency) contracts for procurement of commodities** under Section 163 of the State Finance Law. (That law requires award of commodities contracts on the basis of lowest price to a responsive and responsible offerer.)
3. **Contracts awarded to the lowest responsible bidder** (subsequent to competitive bid).
4. **Contracts for departmental printing** under Section 7 of the State Printing and Public Documents Law (Section 3 of such Law requires letting of the contracts to the lowest responsible bidder.)
5. **Contracts for public works, construction, reconstruction, alteration, repair or improvement of any state buildings.** (Section 8 of the Public Buildings Law directs that a contract be awarded to the lowest responsible and reliable bidder.)
6. **Contracts for services or technology** when the award is to be determined by lowest price.
7. **Mini-bid procurements** under backdrop contracts when the award will be based solely on lowest price.
8. **Real property sold to the highest bidder at public auction.**
9. Transactions in which a covered entity obtains goods or services directly from another state agency.

D. COLLEGE REQUIREMENTS

1. The College must ensure that submitted bid or proposal documents contain the names and other identifying information concerning every person or organization retained, employed or designated by the prospective contractor to attempt to influence the procurement process and whether such person has a financial interest in the procurement.

2. The College must record information about persons or organizations attempting to influence the procurement process and make that information available for public inspection.

3. The College must make a responsibility determination regarding the potential contractor before awarding a procurement contract based on the information disclosed by that contractor. Specifically, the College must determine whether a contractor has complied with the information required by EO 127 and if there has been a finding of non-responsibility with regard to compliance with EO 127 within the last five years.
[Note: A state agency is precluded from awarding a procurement contract to a contractor who has been previously found non-responsible under EO 127 unless it makes a finding on record that such contract is in the best interest of the State, notwithstanding the prior finding of non-responsibility.]

4. All procurement contracts must include a termination clause allowing the College to cancel if the contractor’s certification is subsequently found to be incomplete, false or inaccurate.

E. CONTRACTOR REQUIREMENTS

Contractors must disclose the identity of persons or organizations retained, employed or designated by them to attempt to influence a procurement process. Specific information to be disclosed by the contractor includes, but is not limited to the following:

1. The names of persons or organizations authorized to lobby on their behalf. *Generally, this does not include employees of the contractor acting in the normal course of their employment.* It would apply to such employees if their duties include attempting to influence procurement.

2. The contractor must also disclose whether it has been found non-responsible for failure to comply with EO 127 during the prior five-year period.

Failure of a potential contractor to provide the information may result in a determination that such contractor is non-responsible and not eligible for award of the procurement contract. In addition, EO 127 requires that a potential contractor certify in the procurement contract that the information provided is complete, true, and accurate.

F. HOW DOES EO 127 APPLY TO ME?

EO 127 applies whenever the College is conducting a procurement that is not exempt (contract will exceed $15,000 and criteria for award includes factors other than cost). **College employees who are contacted by persons or organizations in an attempt to influence the procurement process are obligated to gather and record identifying information from the person or organization** (name/address/phone number/place of employment/occupation) and submit such information to the Director of Purchasing & Central Services. (See Section H. below for how to record and submit contact information).

**As procurements subject to EO 127 arise, the Director of Purchasing & Central Services will contact the appropriate department head(s) to schedule training for the faculty and staff who will be involved with the procurement to ensure proper activation and compliance with EO 127.** In addition, and as a matter of course, campus departments should advise the Director of Purchasing & Central Services of any purchases that will be subject to EO 127 during the initial planning stages of the procurement process.

[Note: EO 127 also applies to the College when it is directly involved and/or directly benefiting from a procurement even though it may not have the decision-making authority regarding the procurement.]
G.  WHAT IS AN “ATTEMPT TO INFLUENCE”?  

An “attempt to influence” the procurement process occurs when a person other than a State University or Fund Trustee, officer or employee attempts to influence: (1) the preparation of specifications or RFP; (2) the solicitation, evaluation or award of a covered procurement contract.

H.  HOW DO I RECORD CONTACTS?  

The “Covered Entity Record of Contact” form (EO 127 Form 5) has been prepared to facilitate recording of contact information and sets forth the required elements. It may be completed electronically or in hard copy form and is available on the Purchasing & Central Services web site at: http://purchasing.geneseo.edu/forms.php.

Records of contact and any questions regarding EO 127 should be directed to:

Rebecca E. Anchor, director  
Purchasing & Central Services  
Erwin Hall 218  
Tel: (585) 245-5100/Fax: (585) 245-5005

I.  WHEN IS EO 127 ACTIVATED?  

EO 127 is activated as soon as the initial decision is made to proceed with a procurement, such as the decision to obtain a specific commodity or service. EO 127 obligations continue through award of the procurement contract and apply to any subsequent amendments or changes.

All College employees involved in a procurement process should be advised, understand, and be following the process for reporting contacts to ensure the requirements of EO 127 have been activated and that records of contacts are made for incorporation into the procurement record.

Are the requirements of EO 127 activated by receipt of advertising material?

No. EO 127 does not apply to the ordinary course of commercial transactions such as the distribution of advertising materials.

Are the requirements of EO 127 activated by intra-agency communications?

No. EO 127 is not activated by intra-agency communications.

Are the requirements of EO 127 activated by inter-agency communications?

As a general rule, EO 127 does not regard inter-agency communications as attempts to influence the procurement process. However, the role of the state agency and the nature of the inquiry will determine whether EO 127 is activated and, in rare instances, inter-agency communications will be subject to EO 127. For example, if a contractor contacts a College employee regarding a procurement for which the College will benefit but does not have the decision making authority, and
urges action or seeks to impact or cause a determination and reasonably appears to be an attempt to influence the procurement process, the communication would be subject to EO 127. The College would have an obligation to record such contact and refer the information to the state agency or authority responsible for the procurement.

Is EO 127 activated by a response by a contractor to a Request for Information (RFI) issued by a state agency?

No. EO 127 requires disclosure and record keeping of contacts once a determination has been made with respect to a planned procurement. An RFI is generally used as a means to collect information upon which to base a decision; it is not a tool employed to award a procurement contract. At the RFI stage, a determination to proceed with a procurement has not been made.

What kinds of communications are covered by EO 127?

EO 127 applies to all forms of contact between a state agency and a contractor, including but not limited to, telephone conversations, correspondence, electronic mail and person-to-person discussions.

Must there be a financial interest present for there to be an attempt to influence the procurement process?

No. A financial interest is not necessary for EO 127 to be activated. Once an initial decision or determination to proceed with a procurement is made, EO 127 is activated and a record is made of the identity of each person or organization that attempts to influence the procurement process, regardless of whether such person or organization has a financial interest in the procurement.

J. AM I REQUIRED TO RECORD EVERY CONTACT?

No. The College is required to keep a compiled record from persons or organizations that are deemed retained, employed or designated to attempt to influence a procurement, as well as those who, while not designated, actually do initiate such communications. When contact is made with a College employee regarding an ongoing procurement, good practice is to record all contacts when they appear to be an attempt to influence the procurement.

Record keeping and referral of contacts should continue during the term of a procurement contract. The decision by the College to proceed with an amendment to an existing contract is an example of when the continuing requirement to obtain disclosure of information would arise.

[Note: In the event the contractor has not identified a person or organization attempting to influence a procurement, but a contact is recorded, the Purchasing Department will make diligent inquiry to resolve the discrepancy, including consideration of whether it is a technicality, irregularity or omission, which is not intentional and therefore waivable.]
K. FAILURE TO COMPLY WITH EO 127 BY A COLLEGE OFFICER OR EMPLOYEE

The Order provides that any State University or Fund trustee, officer or employee who fails to comply with the Order shall be subject to appropriate disciplinary action. In addition, where such conduct violates the Public Officers Law, such matter shall be referred to the State Inspector General and the State Ethics Commissions, as may be appropriate.