

**PURCHASE COLLEGE ADVANCEMENT CORPORATION (PCAC)
REQUEST FOR PROPOSALS (RFP) SU-120312**

RFP Number
SU-120312

Dated
December 3, 2012

Description
Legal Services for Senior Living Learning Center

Contract Term
Two years, beginning on or about 01 Feb 2013

Calendar of Events - Procurement Timetable
Release of RFP Dec 31, 2012
Pre-Bid Meeting Jan 9, 2013 @ 10:00 AM
Question Period Jan 9 - Jan 14, 2013 COB
Answers to Questions Jan 18, 2013
Proposal Due Date/Time: Jan 23, 2013 @ 1:00 PM
Anticipated Awardee Notification Jan 31, 2013
Vendor De-Briefing upon request after notice of award

Location of Service
Purchase College
State University of New York
735 Anderson Hill Road
Purchase, New York 10577

Designated Contacts
For New York State/SUNY administrative policy/procedure:
Nikolaus D. Lentner
Director of Purchasing & Accounts Payable
telephone 914-251-6070
fax 914-251-6075
email L@purchase.edu

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For technical information & clarification of detailed specifications:
Wayne M. Rush, P.E.
Project Manager
telephone 914-251-6138
fax 914-251-6041
email wayne.rush@purchase.edu

PART I: GENERAL STANDARD INFORMATION AND INSTRUCTIONS

A. Request for Proposal (RFP)

Purchase College Advancement Corporation (PCAC) is dedicated to environmentally sustainable practices. In an effort to conserve resources and reduce waste, the RFP will only be available electronically in PDF format at the following website:

<http://www.purchase.edu/purchasemeansbusiness>

B. Proposal Submission

When submitting a Proposal, you must:

1. Prepare a clearly readable document. Attach all required information.
2. Indicate any deviations from the specifications and if necessary attach separate documents and/or explanation.
3. **Sign the Proposal.** By signing you indicate full knowledge and acceptance of this Request for Proposal (RFP) including Exhibits A and A-1. The Proposal must be completed in the name of the proposer, corporate or otherwise, and must be fully and properly executed by an authorized person.
4. **Submit four (4) complete bound proposals, one of which must have original signatures.** Proposals should be sealed and submitted as specified in Part II. Proposals are to be addressed to:

Nikolaus D. Lentner, Director
Purchasing & Accounts Payable Office
State University of New York
Purchase College
735 Anderson Hill Road
Purchase, NY 10577-1402

5. Proposals must be received in the Purchasing & Accounts Payable Office by the due date and time. Offerers mailing their Proposals must allow sufficient time to ensure receipt of their Proposals by the time specified. Offerers are cautioned that, although using a trackable mailing/courier/messenger service, Proposals must be received in the Purchasing & Accounts Payable Office by the due date and time. While Proposals may be signed for by Purchase College Mail Operations personnel prior to the due date and time, this does not guarantee that the Purchasing & Accounts Payable Office will receive the Proposal by the Proposal due time. No Proposal will be considered that is not physically received in the Purchasing & Accounts Payable Office by the Proposal due date and time. Electronically transmitted Proposals will **NOT** be accepted.

C. Pre-Bid Proposal Meeting

There will be a non-mandatory Pre-Bid Proposal vendor meeting on the date and time indicated on page 1 in the Calendar of Events - Procurement Timetable in the Student Services Building, Conference Room 332 (the “fish bowl”) at Purchase College, State University of New York, 735 Anderson Hill Road, Purchase, New York 10577.

For directions to Purchase College, see <http://www.purchase.edu/AboutPurchase/VisitorsGuide/Directions/>

For a campus map, see <http://www.purchase.edu/sharedmedia/admissions/campus%20map.pdf>

D. Open Question Period

The College will allow for a question/answer period as indicated in the Calendar of Events– Procurement Timetable on page 1. All questions must be submitted in writing, citing the particular RFP page, section and paragraph numbers where applicable. All questions must be EMAILED to arrive no later than the Close of Business on the date indicated, and should be directed to email address wayne.rush@purchase.edu. Questions received after the closing date for inquiries will not be answered. Only written answers are official. All questions and answers will be issued as addenda to this RFP, and will be posted to <http://www.purchase.edu/purchasemeansbusiness> by the date indicated on page 1.

E. Vendor De-Briefing Meeting

Upon notification of the selection and award of a contract, unsuccessful vendors are entitled to, and shall receive, upon request, a debriefing of the results of their response to this Request for Proposals. Request for debriefing by an unsuccessful bidder should be made within thirty (30) days after the award of the contract.

F. Contract Award Protest Procedure

Upon notification of the selection and award of the contract, the bidder or offeror whose bid or proposal was not selected as the successful bid or proposal is entitled to submit a Bid Protest in accordance with SUNY’s Contracts Award Procedure (Document # 7561). The SUNY’s Protest Procedure is available at http://www.suny.edu/sunypp/documents.cfm?doc_id=699. Please note that the Protest Officer is Nikolaus D. Lentner; contact information is located on page 1 of this RFP.

G. Standard Contract Clauses

Any contract resulting from this RFP shall include Exhibit A (Standard Contract Clauses, State University of New York) and Exhibit A-1 (Affirmative Action Clauses, State University of New York), the provisions of which shall take precedence over any provision in the RFP. These clauses relate to, among other things, assignment of the contract, availability of funds, non-discrimination, affirmative action, non-collusion, worker’s compensation.

H. Affirmative Action Policy

New York State Executive Order No. 6, regarding equal employment opportunities states:

It is the policy of the State of New York that equal opportunity be assured in the State's personnel system and affirmative action provided in its administration in accordance with the requirement of the State's Human Rights Law and the mandate of Title VII of the Federal Civil Rights Act, as amended. Accordingly, it is the responsibility of the State's Department of Civil Service to enforce the State's policy of ensuring full and equal opportunity for minorities, women, disabled persons and Vietnam era veterans at all occupational levels of state government.

In keeping with this policy, Purchase College mandates compliance internally and for all organizations with which it conducts business. The determination of contract award will include a review of evidence supplied by each Offerer regarding compliance with the State's Affirmative Action policy. Accordingly, an Offerer's Proposal must include its organization's affirmative action policy, and agree that all presentations and materials will be free from racial, religious, or sexual bias.

I. Minority and Women-owned Business Enterprises

It is the policy of the State University of New York to take affirmative action to ensure that minority and women-owned business enterprises are given the opportunity to demonstrate their ability to provide goods and services at competitive prices.

GOALS FOR MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES PARTICIPATION: For all State Contracts in excess of \$25,000.00 whereby each SUNY campus is committed to expend or does expend funds in return for labor, services including but not limited to legal, financial and other professional services, supplies, equipment, materials or a combination of the foregoing or all State Contracts in excess of \$100,000.00 whereby Purchase College is committed to expend or does expend funds

for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon, Contractor shall exert good faith efforts to achieve a participation goal of **fourteen percent (14%)** for certified Minority-Owned Business Enterprises and **twelve percent (12%)** for certified Women-Owned Business Enterprises.

J. Gramm-Leach-Bliley Act

In performing this contract contractor will receive, maintain process or otherwise will have access to confidential information on students and/or customers of Purchase College. Pursuant to the Gramm-Leach-Bliley Act (P.L. 106-102) and the Federal Trade Commission's Safeguards Rule (16 CFR Part 314.2), you must implement and maintain a written Information Security Program in order to protect such customer information. Customer information is defined in relevant part under the Safeguards Rule as "any record containing nonpublic personal information as defined in 16 CFR §313(n)" (the FTC's Privacy Rule) "about a customer of a financial institution, whether in paper, electronic or other form" (16 CFR §314.2). Examples of nonpublic personal customer information include, but are not limited to, name, address, phone number, social security number, bank and credit card account numbers and student identification numbers.

The safeguards that contractor implements under the Program must comply with the elements set forth in 16 CFR §314.4 and must achieve the objectives enunciated in 16 CFR §314.3, namely to: 1) insure the security and confidentiality of student and/or campus customer records and information; 2) protect against any anticipated threats or hazards to the security or integrity of such records; and 3) protect against unauthorized access to or use of such records or information which could result in substantial harm or inconvenience to any student and/or campus customer.

K. Proposal Confidentiality

All Proposals submitted for Purchase College Advancement Corporation consideration will be held in confidence. However, the resulting contract is subject to the New York State Freedom of Information Law (FOIL). Therefore, if an Offerer believes that any information in its Proposal constitutes a trade secret or should otherwise be treated as confidential and wishes such information not to be disclosed if requested, pursuant to FOIL, (Article 6 of the Public Officers' Law), the Offerer shall submit with its Proposal a separate letter addressed to: Patricia Bice, *Records Access Officer, Purchase College, State University of New York, 735 Anderson Hill Road, Purchase, NY 10577-1402*, specifically identifying the page number(s), line(s) or other appropriate designation(s) containing such information, explaining in detail why such information is a trade secret and formally requesting that such information be kept confidential. Failure by an Offerer to submit such a letter with its Proposal identifying trade secrets will constitute a waiver by the Offerer of any rights it may have under Section 89(5) of the Public Officers' Law relating to protection of trade secrets. The proprietary nature of the information designated confidential by the Offerer may be subject to disclosure if ordered by a court of competent jurisdiction. A request that an entire Proposal be kept confidential is not advisable since a Proposal cannot reasonably consist of all data subject to FOIL proprietary status.

L. Sustainable Procurement

It is expected that Contractor will support the purchase of products that will minimize any negative environmental impacts of the contract. In order to facilitate a healthy market in sustainable products, all parties involved in the procurement and utilization of materials must engage in both waste recycling and the initial purchase of products containing recycled content. It is in the interest of public health, safety and welfare and the conservation of energy and natural resources to use and promote environmentally responsible products, including packaging and transportation products and methods.

The successful vendor shall comply, when applicable, with the policy of the State of New York and the State University of New York that all purchases shall incorporate sustainable procurement policies and practices.

In accordance with the provisions of Section 165(3) of the State Finance Law:

The State University of New York is required to purchase recycled products, if available, made with recycled content in accordance with rules and regulations established by the State Department of Environmental Conservation in development of that agency's Recycling Emblems Program. If the cost of a recycled product does not exceed the cost of a product made without recycled content by 10% (or 15% if over 50% of the recycled materials are generated from the New York State waste stream), the recycled product must be purchased.

M. Omnibus Procurement Act of 1992

It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises as Bidders, subcontractors and suppliers on its procurement contracts. Information on the availability of New York State subcontractors and suppliers and a directory of minority and women-owned business enterprises is available from: NYS Empire State Development, 625 Broadway, Albany, New York 12207, email esd@empire.state.ny.us, website <http://www.empire.state.ny.us/>.

N. Restrictions on the Activities of Current and Former State Officers and Employees

Contractors and their employees are cautioned that the hiring of former state employees may violate the Ethics Law. The governing provisions are set forth in Paragraphs 73 and 74 of the Public Officers Law, and the underlying principle of the law is

to prevent conflicts of interest, and encourage ethical behavior. The law may be found on the following web site: <http://www.jcope.ny.gov/law/ethics.html>.

While the two most relevant paragraphs of law are contained below, any questions relating to interpretation of the Public Officers Law should be directed to the Ethics Commission at (518) 432-8207 or (800) 873-8442 {(800) 87-ETHIC}.

Public Officers Law Paragraph 73(8)(a)(i) and (ii):

73. 8. (a) (i) No person who has served as a state officer or employee shall within a period of two years after the termination of such service or employment appear or practice before such state agency or receive compensation for any services rendered by such former officer or employee on behalf of any person, firm, corporation or association in relation to any case, proceeding or application or other matter before such agency.

73. 8. (a) (ii) No person who has served as a state officer or employee shall after the termination of such service or employment appear, practice, communicate or otherwise render services before any state agency or receive compensation for any such services rendered by such former officer or employee on behalf of any person, firm, corporation or other entity in relation to any case, proceeding, application or transaction with respect to which such person was directly concerned and in which he or she personally participated during the period of his or her service or employment, or which was under his or her active consideration. Former State employees may be retained by a Contractor under contract with a state agency, after he or she leaves State service, provided that they are not placed back at their former agency during their two year postemployment period or engaged in any other activities that would violate the lifetime bar provision of Public Officers Law Paragraph 73(8)(a)(ii). An individual who, following a hearing, is found to have knowingly and intentionally violated the provisions of Public Officers Law Paragraph 73(8)(a)(i) may be subject to a civil penalty in an amount not to exceed ten thousand dollars (\$10,000.00) for each violation.

O. Determination of Vendor Responsibility

New York State procurement law requires that State agencies award contracts only to responsible contractors. Additionally, the Comptroller must be satisfied that a proposed contractor is responsible before approving a contract award under Section 112 of the State Finance Law. Section 163 of the State Finance Law (SFL) requires that contracts for services and commodities be awarded on the basis of lowest price or best value “to a responsive and responsible offerer.” Section 163 (9) f of the SFL requires that prior to making a contract award, each contracting agency shall make a determination of responsibility of the proposed contractor.

In accordance with these procurement laws, Purchase College will conduct an affirmative review of vendor responsibility for all organizations or firms with which it conducts business. In doing so, Offerers are required to file the required Vendor Responsibility Questionnaire online via the New York State VenRep System or may choose to complete and submit a paper questionnaire. To enroll in and use the VendRep System, see the VendRep System Instructions available at www.osc.state.ny.us/vendrep or go directly to the VendRep System online at <https://portal.osc.state.ny.us>. For direct VendRep System user assistance, the OSC Help Desk may be reached at 866-370-4672 or 518-408-4672 or by email at helpdesk@osc.state.ny.us. Offerers opting to file a paper questionnaire may obtain the appropriate questionnaire from the VendRep website http://www.osc.state.ny.us/vendrep/forms_vendor.htm or may contact SUNY System Administration for a copy of the paper form.

P. Sales and Compensating Use Tax Documentation

Pursuant to New York State Tax Law Section 5-a (Chapter 60, Part N, Laws of 2004, and amended Chapter 62, Part L, Laws of 2006), for procurements of \$100,000 and greater, Purchase College must collect a completed Contractor Certification form ST-220-CA from Contractors. (Contractors must also forward a completed form ST-220-TD to the NYS Tax Department.) The link to obtain the blank form ST-220-CA is: http://www.tax.state.ny.us/pdf/2006/illin/st/st220ca_606_fill_in.pdf

Q. State Finance Law §§ 139-j and 139-k

1. a. Prior to approval by Purchase College, or, if applicable, the Office of the State Comptroller, of the contract for which this solicitation has been issued, an Offerer shall not communicate with Purchase College other than with the persons identified in this solicitation as Designated Contacts, or with a person who the Designated Contacts has advised the Offerer is also a Designated Contact.

b. **The Designated Contacts for this RFP are identified on page 1 of this RFP.**

i. Policy and Procedure of the State University of New York State Finance Law §§ 139-j and 139-k, enacted by Ch. 1 L. 2005, as amended by Ch. 596 L. 2005, effective January 1, 2011, regulate lobbying on government procurement, including procurements by State University to obtain commodities and services and to undertake real estate transactions.

Generally, the law restricts communications between a potential vendor or a person acting on behalf of the vendor, including its lobbyist, to communications with the officers and employees of the procuring agency designated in each solicitation to receive such communications. Further, the law prohibits a communication (a “Contact”) which a reasonable person would infer as an attempt to unduly influence the award, denial or amendment of a contract. These restrictions apply to each contract in excess of \$15,000 during the “restricted period” (the time commencing with the earliest written notice of the

proposed procurement and ending with the later of approval of the final contract by the agency, or, if applicable, the State Comptroller). The agency must record all Contacts, and, generally, must deny an award of contract to a vendor involved in a knowing and willful Contact. Each agency must develop guidelines and procedures regarding Contacts and procedures for the reporting and investigation of Contacts. The agency's procurement record must demonstrate compliance with these new requirements.

Accordingly, neither a potential vendor nor a person acting on behalf of the vendor should contact any individual at State University other than the person designated in this solicitation as State University's Designated Contact, nor attempt to unduly influence award of the contract. State University will make a record of all Contacts, and such records of Contact will become part of the procurement record for this solicitation. A determination that a vendor or a person acting on behalf of the vendor has made intentionally a Contact or provided inaccurate or incomplete information as to its past compliance with State Finance Law §§ 139-j and 139-k is likely to result in denial of the award of contract under this solicitation. Additional sanctions may apply.

A complete copy of the State University of New York Procurement Lobbying Policy and Procedure is available for review at www.suny.info/policies.

2. Each Offerer shall submit with its Proposal a written affirmation of its understanding of the State University's procurement lobbying procedures and agreement to comply with such procedures. Please see form B: http://www.suny.edu/sunypp/documents.cfm?doc_id=282
3. Each Offerer shall submit with its Proposal written disclosure as to whether the Offerer has been determined to be non-responsible within the previous four years by reason of having violated NY State Finance Law § 139-j or having intentionally provided false or incomplete information to a Governmental Entity with respect to its compliance with NY State Finance Law § 139-j; and certification that the Offerer has provided accurate and complete information with respect to the Offerer's compliance with NY State Finance Law §§ 139-j and 139-k within the previous four years. Please see form C: http://www.suny.edu/sunypp/documents.cfm?doc_id=283

R. Consultant Disclosure Legislation

Chapter 10 of the Laws of 2006 amends State Finance Law §§ 8 and 163 by requiring that contractors annually report certain employment information to the contracting agency, the department of Civil Service (DCS) and Office of the State Comptroller (OSC). As a result of these changes in law, State contractors will be required to disclose, by employment category, the number of persons employed to provide services under a contract for consulting services, the number of hours worked and the amount paid to the contractor by the State as compensation for work performed by these employees. This will include information on any persons working under any subcontracts with the State contractor. Contractor will follow all rules and regulations of Consultant Disclosure Legislation requirements. Please see web site <http://www.osc.state.ny.us/agencies/gbull/g-226.htm>. A properly completed Form A, AC 3271-S (must be submitted by successful vendor: www.osc.state.ny.us/agencies/forms/ac3271s.doc).

Form B, Contractor's Annual Employment Report, will be required annually for each period ending March 31.

S. Diesel Emissions Reduction Act of 2006 (the "Act")

The Contractor certifies and warrants that all heavy duty vehicles, as defined in New York State Environmental Conservation Law (ECL) section 19-0323, to be used by the Contractor, its Agents or Subcontractors under this Contract, will comply with the specifications and provisions of ECL section 19-0323 and any regulations promulgated pursuant thereto, which requires the use of Best Available Retrofit Technology ("BART") and Ultra Low Sulfur Fuel ("ULSD"), unless specifically waived by DEC. Qualification for a waiver under this law will be the responsibility of the Contractor. Annually, but no later than March 1st, the Contractor shall complete and submit directly to the State University of New York ("SUNY"), via electronic mail, the Regulated Entity Vehicle Inventory Form and Regulated Entity and Contractors Annual Report forms at the Department of Environmental Conservation ("DEC") website: <http://www.dec.ny.gov/chemical/4754.html> for heavy duty vehicles used in the performance of this Contract for the preceding calendar year. The Contractor shall certify to SUNY, and submit with each application for payment, the Contractor and Subcontractor Certifications form, which states that the Contractor will comply with the provisions of Section 20.23."

T. Payment Terms

Payments under the resulting contract award shall be made to the Contractor, upon receipt of goods/services and properly approved and completed invoice/s submitted to the attention of PCAC. The Contractor shall provide complete and accurate billing invoices in order to receive payment for its services. Billing invoices to be submitted must contain all information and supporting documentation required by PCAC. Payment for invoices submitted by the Contractor shall only be rendered electronically unless payment by paper check is expressly authorized by the Vice President for Administration or designee, in her/his sole discretion, due to extenuating circumstances. Such electronic payment shall be made in accordance with ordinary New York State procedures and practices. The Contractor shall comply with the OSC procedures to authorize payments. Authorization forms are available at the OSC website at www.osc.state.ny.us/epay/index.htm, by email at epunit@osc.state.ny.us

or by telephone at 518-474-4032. The Contractor acknowledges that it will not receive payment on any invoices submitted under this contract if it does not comply with the OSC's electronic payment procedures, except where the Vice President or designee has expressly authorized payment by paper check as set forth above.

Payment shall be made net 30 days from receipt of an acceptable invoice. Interest for any unpaid balance will accrue pursuant to Section 179g of the New York State Finance Law that is 30 days past receipt of a SUNY acceptable invoice.

U. Information Security Breach and Notification Act

Contractor shall comply with the provision of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa and State Technology Law, Section 208). Contractor shall be liable for the costs associated with such breach if caused by Contractor's negligent or willful acts or omissions, or the negligent or willful acts or omissions of Contractor's agents, officers, employees or subcontractors.

V. Iranian Divestment Act of 2012

As a result of the Iran Divestment Act of 2012 (Act), Chapter 1 of the 2012 Laws of New York, a new provision has been added to the State Finance Law (SFL), § 165-a, effective April 12, 2012. Under the Act, the Commissioner of the Office of General Services (OGS) is charged with developing a list (prohibited entities list) of "persons" who are engaged in "investment activities in Iran" (both are defined terms in the law). Pursuant to SFL § 165-a(3)(b), the initial list is expected to be issued no later than 120 days after the Act's effective date, at which time it will be posted on the OGS website.

The successful Bidder (or any assignee) certifies that once the prohibited entities list is posted on the OGS website, it will not utilize on the contract to be awarded pursuant to this RFP any subcontractor that is identified on the prohibited entities list. Additionally, the successful Bidder agrees that after the list is posted on the OGS website, should it seek to renew the Contract, it will be required to certify at the time the Contract is renewed or assigned that it or its assignee is not included on the prohibited entities list.

During the term of the Contract to be awarded pursuant this RFP, should PCAC receive information that the successful bidder is in violation of the above-referenced certification, SUNY will offer the successful bidder an opportunity to respond. If the successful bidder fails to demonstrate that it has ceased its engagement in the investment which is in violation of the Act within 90 days after the determination of such violation, then PCAC shall take such action as may be appropriate including, but not limited to, seeking compliance, recovering damages, or declaring the successful bidder to be in default.

PCAC reserves the right to reject any request for assignment for an entity that appears on the prohibited entities list prior to the award of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the prohibited entities list after contract award.

W. Additional Terms and/or Conditions:

1. The following items will be incorporated into, and made part of, the formal agreement: (1) PCAC's RFP; (2) the Successful Offerer's Proposal; (3) Exhibit A, Standard Contract Clauses; (4) Exhibit A-1, Affirmative Action Clauses.
2. In the event of any inconsistency in or conflict among the document elements of the agreement described above, such inconsistency or conflict shall be resolved by giving precedence to the document elements in the following order: (1) Exhibits A and A-1; (2) the Agreement; (3) this RFP; and (4) the Successful Offerer's Proposal.
3. Any terms that are attached or referenced with a submission shall not be considered part of the bid or proposal, but shall be deemed included for informational purposes only.
4. The resulting agreement shall be binding upon its execution by both parties and, if required by New York State law, upon the approval of the Attorney General and the Office of the State Comptroller.
5. The agreement may be revised at any time upon mutual consent of the parties in writing. Such written consent will not be effective until signed by both parties and, if required by New York State law, approved by the Attorney General and the Office of the State Comptroller.
6. The relationship of the Successful Offerer to PCAC shall be that of independent prime contractor.
7. Compliance with the post-employment restrictions of the Ethics in Government Act is required.
8. Proposed prices should reflect all discounts including educational discounts. Price reductions are encouraged and acceptable at any time during the contract period.

9. The submission of a Proposal constitutes a binding offer to perform and provide said services. Such binding offer shall be firm and not revocable for a period of 180 days after the deadline for Proposal submission and will continue thereafter until the Successful Offerer notifies PCAC otherwise, in writing. Such deadline may be further extended by mutual agreement.
10. In the event Successful Offerer uses partners, subcontracts or subcontractors, the Successful Offerer will remain responsible for compliance with all specifications and performance of all obligations under the contract resulting from this RFP. For the resulting agreement, the Successful Offerer will be the prime contractor.
11. PCAC will not be liable for any costs associated with the preparation, transmittal, or presentation of any Proposals or materials submitted in response to this RFP or the costs of any services performed prior to receiving approval of the agreement from New York State. All Proposals and materials submitted in conjunction with Proposals shall become the property of PCAC for use as deemed appropriate, respecting all copyrights.
12. PCAC will be the interpreter of all contract documents and make the final determination of the intent and meaning of all contract documents including the vendor's bid proposal. PCAC shall be the determinant and make the final determination.
13. This RFP and the resulting contract shall be governed by the Laws of the State of New York.
14. Public announcements or news releases regarding this RFP or any subsequent award of a contract must not be made by any Offerer without the prior written approval of PCAC.
15. The Successful Offerer(s) is responsible for compliance with all applicable rules and regulations pertaining to cities, towns, counties and State where the services are provided, and all other laws applicable to the performance of the resulting contract. The Successful Offerer shall provide all necessary safeguards for safety and protection as set forth by the United States Department of Labor, Occupational Safety and Health Administration.
16. Indemnification - The Successful Offerer shall hold harmless and indemnify Purchase College Advancement Corporation, Purchase College, the State University of New York and the State of New York, their officers and employees from and against any injury, damage, loss or liability to persons or property resulting from or arising out of (a) the agreement, and (b) the acts, omissions, liabilities, or obligations of the Successful Offerer, any affiliate, or any person or entity engaged by the Successful Offerer as an expert, consultant, independent contractor, subcontractor, employee or agent.
17. Liability - The Successful Offerer will be responsible for the work, direction and compensation of its employees, consultants, agents and contractors. Nothing in the resulting agreement or the performance thereof by the Successful Offerer will impose any liability or duty whatsoever on Purchase College Advancement Corporation, Purchase College and/or the State University of New York including, but not limited to, any liability for taxes, compensation, commissions, Workers' Compensation, disability benefits, Social Security, or other employee benefits for any person or entity.
18. Liability Insurance –Prior to the commencement of work, the Successful Offerer will provide, at its sole cost and expense, Certificates of Insurance which shall remain in force throughout the term of the agreement, or any extension thereof, from an insurance company authorized to do business in the State of New York with a combined liability insurance policy with limits no less than Three Million Dollars (\$3,000,000) per individual for bodily injury and no less than Five Million Dollars (\$5,000,000) for property damage. Such policies shall name PURCHASE COLLEGE ADVANCEMENT CORPORATION, and co-name PURCHASE COLLEGE, the STATE UNIVERSITY OF NEW YORK and the STATE OF NEW YORK as additional insured (in the case of fire insurance, as its insurable interest may appear). Such policy shall designate Purchase College, as the loss payee and shall contain a provision that Purchase College shall receive at least thirty (30) day's notice prior to material change, cancellation or expiration of any such policy. The certificates of such insurance should be delivered to: *Director of Purchasing & Accounts Payable, Purchase College, State University of New York, 735 Anderson Hill Road, Purchase, NY 10577-1400*. Contractor will be responsible to submit updated certificates throughout the duration of the contract term. When possible please send certificates electronically or via fax. Each Certificate must include the specific Contract number and the name of the Contract Officer. Contractor is required to obtain any permits, insurance, bonds, etc., normally required for his/her business and employees.

Each insurance carrier must be rated at least "A-"Class "VII" in the most recently published Best's Insurance Report. If during the term of the policy, a carrier's rating falls below ""A-" Class "VII", the insurance must be replaced no later than the renewal date of the policy with an insurer acceptable to The State University of New York and rated at least "A-" Class "VII" in the most recently published Best's Insurance Report. The Contractor shall require that any subcontractors hired, carry insurance with the same limits and provisions provided herein.

19. Workers Compensation Insurance & Disability Benefits Coverage - All employees in the hire of the Successful Bidder shall be adequately and properly covered by Workers' Compensation Insurance and Disability Benefits coverage in all work

concerned in and about the Purchase College premises. Such policies shall name the Purchase College and the State of New York as additional insured.

20. Any firm or individual that participated in the development or preparation of this RFP is not eligible for award of the resulting contract.

X. PCAC has the right to:

1. Reject any and all Proposals received in response to this RFP in part or entirely.
2. To terminate any resulting contract in the event it is found that the certification filed by the Contractor in accordance with New York State Finance Law § 139-j and 139-k was intentionally false or intentionally incomplete. Upon such finding, PCAC may exercise its termination right by providing written notification to the Contractor in accordance with the written notification terms of the contract.
3. Request certified audited financial statements for the past three (3) completed fiscal years and/or other appropriate supplementation including, but not limited to, interim financial statements and credit reports.
4. Request references and to contact any or all references.
5. Waive requirements or amend this RFP upon notification to all Offerers. Mandatory requirements may be eliminated if unmet by all Offerers.
6. Adjust or correct cost or cost figures with the concurrence of the Offerer if mathematical or typographical errors exist.
7. Negotiate with Offerers responding to this RFP within the requirements necessary to serve the best interests of PCAC.
8. PCAC reserves the right to change any dates specified for the review and selection process.
9. Begin contract negotiations with another Offerer in order to serve the best interests of PCAC, should PCAC be unsuccessful in negotiating a contract with the Successful Offerer within an acceptable time frame.
10. Request clarifications from Offerers for purposes of assuring a full understanding of responsiveness, and further to permit revisions from all Offerers determined to be susceptible to being selected for contract award, prior to award.
11. Termination without cause: Either party may terminate the resulting contract by giving thirty (30) days written notice to the other party.
12. Waive minor irregularities.
13. PCAC reserves the right to modify or amend the requirements of this RFP after its release. All vendors will receive written notification of any modifications to the requirements of this RFP. If any modifications make compliance with the original Procurement Timetable impractical, the College will adjust the timetable accordingly.
14. Vendors who submit a Proposal in response to the RFP may be required to give an oral presentation to representatives of PCAC and/or allow a site visit to the main or branch office. The site visit may include a demonstration of on-line inquiry access services. This shall provide an opportunity for the Vendor to clarify or elaborate on the Proposal, but shall in no way change the original Proposal. PCAC shall schedule the time and location.
15. The successful vendor will be notified by the PCAC by telephone and confirmed by letter.
16. By submitting a Proposal, the vendor agrees that she/he will not make any claims for or have any right to damages because of any misinterpretation or misunderstanding of the specifications or because of any misinformation or lack of information.
17. Vendors may be requested to provide evidence that the award of an Agreement will not result in a conflict of interest with regard either to other work performed by the vendor or to potential conflict of interest among vendor staff.
18. Omissions, inaccuracy or misstatements may be sufficient cause for rejection of the Proposal.

19. PCAC reserves the right to reject any or all portions of any offer, to negotiate terms and conditions consistent with the solicitation, and to make an award for any or all remaining portions.

20. Subcontractors

- Except for vendors designated by the College, the vendor must, in their Proposal response, indicate the name and address of all proposed subcontractors. This statement must contain a description of the portion of the work which the proposed subcontractors are to perform/provide and any information tending to prove that the proposed subcontractors have the necessary skill, experience and financial resources to provide the service in accordance with the RFP.
- The vendor shall have sole responsibility to the College for the acts or defaults of said subcontractors of such subcontractor's officers, agents and employees, each of whom shall for this purpose, be deemed to be the agent or employee of the vendor to the extent of its subcontract.
- The vendor shall execute with each of its subcontracts and shall require all subcontracts to execute a written agreement which shall bind the latter to the terms and provisions of this Request for Proposals insofar as such terms and provisions applicable to the work to be performed by such subcontractors.

PART II: DETAILED SPECIFICATIONS

Purchase College Advancement Corporation (PCAC), a New York State not-for-profit corporation, is soliciting proposals for a firm to perform legal services related to a proposed Senior Living Learning Center on the Purchase College, SUNY campus. Legal services will include advice and representation of the PCAC in matters pertaining to the development of the project, as further outlined in this Request for Proposals.

A. Proposed Project

The proposed project consists of the design, construction and operation of up to 385 units of senior housing, and related service and learning facilities on approximately 40.5 acres of land on the Purchase College campus, as authorized by the State Legislature with Bill #A00340A, effective August 18, 2011. A copy of the legislation is attached hereto as Attachment '3'. The authorization grants PCAC the right to lease the property from Purchase College for a period of forty years and to contract with appropriate parties to design, develop, construct, manage and operate the Senior Learning Center (SLC).

The project will further consist of all of those items of work necessary to effectuate the above, including planning and designing activities for the project, assistance in the solicitation of proposals from potential developers and/or operators, and the for the preparation and processing of various applications for land use and environmental approvals including the preparation and processing of Draft and Final Environmental Impact Statements in accordance with the requirements of the State Environmental Quality Review Act (SEQRA), as directed by the PCAC, understanding that other applications for approvals may be processed by a third party developer, yet to be identified. A preliminary concept plan of the proposed project is included herein as Attachment '4' for the purposes of aiding in the preparation of a response to this Request for Proposals. This plan demonstrates only one possible configuration of the project and is subject to change and/or refinement.

B. Scope of Services

1. The selected law firm will participate in its capacity as lawyers in each of the above activities.
2. In the event that PCAC needs legal representation in any judicial or administrative matter, the firm will provide that representation.

C. Contract Term

Contract will be for two (2) years. The contract may be extended to complete the project. The contract may be terminated at any time with thirty (30) days written notice.

D. Schedule for Legal Engagement

Anticipated Notice of AwardJanuary 31, 2013
Signing of ContractFebruary 1, 2013
Kick-off MeetingFebruary 1, 2013
Services as needed.....On-Going

E. Submission of Proposals

To be considered for this engagement, prospective firms shall submit a proposal that includes the following:

1. Attachment '1', Bid Proposer Information.
2. The firm's experience and expertise working with:
 - Local land use law;
 - Environmental law, including preparation of State Environmental Quality Review Draft and Final Environmental Impact Statements;
 - Project labor agreements;
 - Public works contracts;
 - NYS procurement;
 - Real estate development.
3. Specific examples of recent experience working on similar projects.
4. Description of prior experience working cooperatively with the State of New York, the County of Westchester and/or the Town/Village of Harrison.
5. Identification of the principals who will be involved in and responsible for the services provided; a description of each individual's experience with similar projects and a curriculum vitae for each.
6. Schedule of billing rates for each of the principals identified in 5. above as well as a schedule of hourly rates for all applicable staff (See Attachment '2', Fee Schedule), inclusive of all special allowances and discounts.
7. MBE-WBE-MWBE status, where
MBE = New York State certified Minority Business Enterprise;
WBE = New York State certified Woman Business Enterprise;
MWBE = New York State certified Minority+Woman Business Enterprise.

F. Deliverables

1. From time to time, the PCAC may ask the firm to render written legal opinions.
2. The firm may be required to complete certain applications and forms related to the development of the project.
3. The firm may be required to negotiate directly with state and local elected officials from the relevant jurisdictions.
4. The firm may be required to assist the PCAC with procurement of necessary goods and services pursuant to NYS Finance Law provisions.
5. Any other attorney work product related to the project.

G. Method of Award/Proposal Evaluation Criteria

Proposals will be evaluated by a committee of 3 to 5 individuals acting on behalf of the PCAC. The criteria used to evaluate the Proposals will be:

- 30 points Fee Schedule, i.e., billing rates of key personnel (See Attachment ‘2’)
- 15 points Recent experience in type of project
- 20 points Recent experience in jurisdictions
- 30 points Experience and qualifications of key/assigned personnel to this engagement
- 5 points MBE-WBE status

Each submitted proposal will be reviewed and scored.

It is the PCAC’s intention to award one contract based on best value to a qualified, responsible vendor earning the highest composite score.

H. Interviews

PCAC reserves the right to meet with the representative(s) of the three (3) firms earning the highest scores. The purpose of such a meeting is to provide PCAC with a clear understanding of the firms’ proposal.

I. Fee Criteria of Proposal Evaluation

The rates charged by the bid proposer firm must be completed in Attachment ‘2’, Fee Schedule. If a dollar range is indicated for a position title, the high end of the range will be the dollar value evaluated. The rates provided should include all available discounts. Points will be assigned for each position title, as indicated:

<u>Points</u>	<u>Position Title</u>
6.....	Senior Partner – of Counsel
8.....	Partner
7.....	Senior Associate - Counsel
6.....	Associate
3.....	Paralegal / Legal Assistant

If a firm does not use the position titles named, the bid proposer firm should use the closest position title to their own. During Proposal review, the Evaluation Committee will assign the points to the next highest title; e.g., assign the points to *Partner* if *Senior Associate – Counsel* is not used.

J. Fee Rates

All hourly rates will be binding for the term of the agreement. All rates shall include fixed overhead costs including, but not limited to, expenses for word processing, secretarial or clerical work, research costs (i.e., Lexis or Westlaw charges) or reference librarians.

K. Fee Rate Increases

Annual cost-of-living adjustment increases will be allowed, and will be limited to the consumer price index (CPI), using the CPI for urban wage earners in the northeast, currently accessible at

http://data.bls.gov/pdq/SurveyOutputServlet?data_tool=dropmap&series_id=CUURA101SA0.CUUSA101SA0

The law firm is required to submit a request for increase at least 90 calendar days prior to the anniversary date of the agreement.

The period of examination for determination of the adjustment is the previous 12-month period.

Example:

Contract start date: 02/01/2013

Contract anniversary date:..... 02/01/2014

Must submit request for CPI % increase by: 11/01/2013

CPI period to examine to determine adjustment amount: Sep 2012-Sep 2013

L. Staff Assignments

The law firm shall assign personnel to this contract that are qualified and experienced. In all situations, work should be assigned to the least costly qualified person in the firm available to handle the task. Whenever possible, associates and legal assistants shall be utilized to replace senior partners' time and reduce total billings to PCAC. However, it is recognized that utilization of a lawyer with expertise will eliminate the necessity of extensive research.

M. Changes in Staff

In the event law firm is forced to make a staff change of anyone assigned to the PCAC matter, law firm will not bill PCAC for any time expended by the new staff of law firm becoming acquainted with the matter.

N. Fax Charges and E-mail

Law firm is directed to use e-mail as the preferred mode of communication. It is preferred that any attachments to e-mail documents be formatted in the most recent version of Microsoft Office. PCAC agrees to pay actual telephone line charges for faxes sent. PCAC will not pay both phone line charges and a flat fee in connection with out-going faxes. PCAC will not pay for maintenance, paper or operator costs because such items should be included in the firm's cost of doing business. Law firm is directed not to duplicate costs by mailing a document that has been emailed unless specifically requested by the PCAC.

O. Computer Research

Law firm agrees that computer legal research tools such as Lexis-Nexis or Westlaw, shall be used judiciously to minimize costs to PCAC. Law firm acknowledges and agrees that it was selected because of its expertise in the subject area. Paralegal or attorney time spent performing computerized legal research shall be at the same rates as Law firm's hourly charges for professional services.

P. Next Day Mail Charges

PCAC agrees to pay for any documented next day mail service or delivery fees that are incurred by law firm provided such transmission of documents is necessary.

Q. Document Duplication fees

Law firm agrees that it will prudently direct the duplication of documents. PCAC authorizes Law firm to employ less expensive commercial copy vendors when practicable. PCAC agrees to reimburse special expenditures for such copying at the cost it was invoiced. Law firm is instructed to send only one set of documents to PCAC, as PCAC will make any additional copies.

R. Travel

PCAC will authorize required travel by law firm. PCAC will reimburse for actual, necessary and reasonable travel expenses that have been incurred. Reasonable travel expenses shall be defined as coach class airfare, reasonable taxi charges and other ground transportation expenses, and hotel accommodations in accordance with rates set forth in the New York State Schedule of Allowable Reimbursable Travel Expense. PCAC does not agree to accept charges incurred by law firm for meals, movies, personal telephone charges, entertainment or garment cleaning. Mileage will not be paid in excess of the amount allotted by the Internal Revenue Service for income tax purposes. In those situations where law firm is also attending meetings or working on a non-PCAC related matter, law firm shall prorate all travel charges and apportion equitably the costs of such travel and other incidental charges.

For a listing of the Oct 2012 - Sep 2013 lodging reimbursement rates, see <http://www.gsa.gov/portal/category/100120>. (Note: Use lodging rates only. As stated above, meals will not be reimbursed.)

S. Professional Services

Law firm must obtain permission from PCAC prior to retaining any Professional services that may be necessary to perform its duties under the terms of this agreement.

T. Telephone Charges

Law firm agrees not to bill PCAC for any local telephone calls and further agrees it will bill PCAC for any long distance calls at the rate law firm's firm has been billed.

U. Non Billable Charges

In addition to billing restrictions above, law firm agrees not to bill PCAC for the following:

- (1) any form of labeling;
- (2) apportioned rent or utility costs;
- (3) space for files;
- (4) consolidation of documents, i.e., binders;

- (5) first class postage; and
- (6) charges for office utilities, conference rooms, use of library facilities and meals.

V. Monthly Statements

Law firm agrees it will submit monthly billings. Each matter handled by law firm will be itemized and explained individually with the fees and disbursements for each type of activity contained in the bill:

- (1) A caption containing the matter name;
- (2) Each professional's name, billing rate and firm status e.g. (partner, associate or paralegal) who worked on the matter during the past calendar month, as well as each individual's total hours and total fees;
- (3) An explanation of who in law firm performed the service, including but not limited to the date and the amount of time expended, calculated to the nearest tenth of an hour. PCAC will not accept bills that only provide per person daily totals of time. All references in bills to meetings, telephone calls, internal discussions etc. shall specifically identify the subject matter of the meeting, etc;
- (4) Incidental Charges are to be listed separately from fees and each such charge shall be separately listed – e.g., long distance telephone charges and document copying charges – and described with reasonable specificity. The time expended by law firm in preparing the billing, reviewing or discussing billing related issues with PCAC may not be billed to PCAC.

W. Audit Procedures

PCAC and the Office of the State Comptroller retain the right to audit legal bills for a period of six (6) years, from the date of the last billing. PCAC reserves the right to examine all underlying billing documentation, including but not limited to original receipts and time records.

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, "contract") agree to be bound by the following clauses which are hereby made a part of the contract (the word "Contractor" herein refers to any party other than the State, whether a Contractor, licensor, licensee, lessor, lessee or any other party):

1. **EXECUTORY CLAUSE.** In accordance with Section 41 of the State Finance Law, the State shall have no liability under this contract to the Contractor or to anyone else beyond funds appropriated and available for this contract.

2. **PROHIBITION AGAINST ASSIGNMENT**

Except for the assignment of its right to receive payments subject to Article 5-A of the State Finance Law, the Contractor selected to perform the services herein are prohibited in accordance with Section 138 of the State Finance Law from assigning, transferring, conveying, subletting or otherwise disposing of its rights, title or interest in the contract without the prior written consent of SUNY and attempts to do so are null and void. Notwithstanding the foregoing, SUNY may, with the concurrence of the New York Office of State Comptroller, waive prior written consent of the assignment, transfer, conveyance, sublease or other disposition of a contract let pursuant to Article XI of the State Finance Law if the assignment, transfer, conveyance, sublease or other disposition is due to a reorganization, merger or consolidation of Contractor's its business entity or enterprise and Contractor so certifies to SUNY. SUNY retains the right, as provided in Section 138 of the State Finance Law, to accept or reject an assignment, transfer, conveyance, sublease or other disposition of the contract, and to require that any Contractor demonstrate its responsibility to do business with SUNY.

3. **COMPTROLLER'S APPROVAL.** (a) In accordance with Section 112 of the State Finance Law, Section 355 of New York State Education Law, and 8 NYCRR 316, Comptroller's approval is not required for the following contracts: (i) materials; (ii) equipment and supplies, including computer equipment; (iii) motor vehicles; (iv) construction; (v) construction-related services; (vi) printing; and (vii) goods for State University health care facilities, including contracts for goods made with joint or group purchasing arrangements.

(b) Comptroller's approval is required for the following contracts: (i) contracts for services not listed in Paragraph (3)(a) above made by a State University campus or health care facility certified by the Vice Chancellor and Chief Financial Officer, if the contract value exceeds \$250,000; (ii) contracts for services not listed in Paragraph (3)(a) above made by a State University campus not certified by the Vice Chancellor and Chief Financial Officer, if the contract value exceeds \$50,000; (iii) contracts for services not listed in Paragraph (3)(a) above made by health care facilities not certified by the Vice Chancellor and Chief Financial Officer, if the contract value exceeds \$75,000; (iv) contracts whereby the State University agrees to give something other than money, when the value or reasonably estimated value of such consideration exceeds \$10,000; (v) contracts for real property transactions if the contract value exceeds \$50,000; (vi) all other contracts not listed in Paragraph 3(a) above, if the contract value exceeds \$50,000, e.g. SUNY acquisition of a business and New York State Finance Article 11-B contracts and (vii) amendments for any amount to contracts not listed in Paragraph (3)(a) above, when as so amended, the contract exceeds the threshold amounts stated in Paragraph (b) herein;

(c) Any contract that requires Comptroller approval shall not be valid, effective or binding upon the State University until it has been approved by the Comptroller and filed in the Comptroller's office.

4. **WORKERS' COMPENSATION BENEFITS.** In accordance with Section 142 of the State Finance Law, this contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

5. **NON-DISCRIMINATION REQUIREMENTS.**

To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, sexual orientation, age, disability, genetic predisposition or carrier status, or marital status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation

6. **WAGE AND HOURS PROVISIONS.** If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by SUNY of any SUNY-approved sums due and owing for work done upon the project.

7. **NON-COLLUSIVE BIDDING CERTIFICATION.**

In accordance with Section 139-d of the State Finance Law, if this contract was awarded based on the submission of competitive bids, Contractor affirms, under penalty of perjury, and each person signing on behalf of Contractor, and in the case

of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further affirms that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered it to SUNY a non-collusive bidding certification on Contractor's behalf.

8. **INTERNATIONAL BOYCOTT PROHIBITION.**

In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 *et seq.*) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2 NYCRR 105.4).

9. **SET-OFF RIGHTS.** The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the State with regard to this contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State, its representatives, or the State Comptroller.

10. **RECORDS.** The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as SUNY and its representatives and entities involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. SUNY shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate SUNY official, in writing, that said Records should not be disclosed; and (ii) said

Records shall be sufficiently identified; and (iii) designation of said Records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, SUNY's or the State's right to discovery in any pending or future litigation.

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.

Identification Number(s). Every invoice or New York State Claim for Payment submitted to the State University of New York by a payee, for payment for the sale of goods or services or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property must include the payee's identification number. The number is any or all of the following: (i) the payee's Federal employer identification number, (ii) the payee's Federal social security number, and/or (iii) the payee's Vendor Identification Number assigned by the Statewide Financial System. Failure to include such number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or Claim for Payment, must give the reason or reasons why the payee does not have such number or numbers.

(b) Privacy Notification. (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State University of New York is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (2) The personal information is requested by the purchasing unit of the State University of New York contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in the Statewide Financial System by the Vendor Management Unit within the Bureau of State Expenditures, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.

(a) In accordance with Section 312 of the Executive Law and 5 NYCRR 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

(1) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, and will undertake or continue existing programs of affirmative action to ensure that minority group members and women

are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

(2) at SUNY's request, Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein; and

(3) Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

(b) Contractor will include the provisions of "1", "2" and "3", above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State. The State shall consider compliance by a Contractor or sub-contractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this section. SUNY shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, SUNY shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

13. **CONFLICTING TERMS.** In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof) and the terms of this Exhibit A, the terms of this Exhibit A shall control.

14. **GOVERNING LAW.** This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

15. **LATE PAYMENT.** Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Article 11-A of the State Finance Law to the extent required by law.

16. **NO ARBITRATION.** Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized) but must, instead, be heard in a court of competent jurisdiction of the State of New York.

17. **SERVICE OF PROCESS.** In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the State's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. Contractor will have thirty (30)

calendar days after service hereunder is complete in which to respond.

18. **PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS.** The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of State Finance Law §165 (Use of Tropical Hardwoods), which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the contractor to establish to meet with the approval of the State. In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in Section 165 of the State Finance Law. Any such use must meet with the approval of the State, otherwise, the bid may not be considered responsive. Under bidder certification, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

19. **MacBRIDE FAIR EMPLOYMENT PRINCIPLES.** In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby stipulates that Contractor and any individual or legal entity in which the Contractor holds a ten percent or greater ownership interest and any individual or legal entity that holds a ten percent or greater ownership interest in the Contractor either (a) have no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Section 165(5) of the State Finance Law), and shall permit independent monitoring of compliance with such principles.

20. **OMNIBUS PROCUREMENT ACT OF 1992.** It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

Information on the availability of New York State subcontractors and suppliers is available from:

NYS Department of Economic Development
Division for Small Business
30 South Pearl St., 7th Floor
Albany, NY 12245
Tel: 518-292-5220
Fax: 518-292-5884
<http://www.empire.state.ny.us>

A directory of certified minority and women-owned business enterprises is available from:

NYS Department of Economic Development
Division of Minority and Women's Business Development
30 South Pearl St., 7th Floor
Albany, NY 12245
Tel: 518-292-5250
Fax: 518-292-5803
<http://www.empire.state.ny.us>

The Omnibus Procurement Act of 1992 requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than \$1 million:

(a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority and women-owned business enterprises, on this project, and has retained the documentation of

these efforts to be provided upon request to SUNY;

(b) The Contractor has complied with the Federal Equal Employment Opportunity Act of 1972 (P.L. 92-261), as amended;

(c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Search Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The contractor agrees to document these efforts and to provide said documentation to the State upon request; and

(d) The Contractor acknowledges notice that SUNY may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with SUNY in these efforts.

21. RECIPROCITY AND SANCTIONS

PROVISIONS. Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act of 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively) require that they be denied contracts which they would otherwise obtain. Contact the NYS Department of Economic Development, Division for Small Business, 30 South Pearl Street, Albany, New York 12245, for

a current list of jurisdictions subject to this provision.

22. COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT. Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208).

23. COMPLIANCE WITH CONSULTANT DISCLOSURE LAW If this is a contract for consulting services, defined for purposes of this requirement to include analysis, evaluation, research, training, data processing, computer programming, engineering, environmental health and mental health services, accounting, auditing, paralegal, legal or similar services, then in accordance with Section 163(4-g) of the State Finance Law, the Contractor shall timely, accurately and properly comply with the requirement to submit an annual employment report for the contract to SUNY, the Department of Civil Service and the State Comptroller.

24. PURCHASES OF APPAREL AND SPORTS EQUIPMENT. In accordance with State Finance Law Section 165(7), SUNY may determine that a bidder on a contract for the purchase of apparel or sports equipment is not a responsible bidder as defined in State Finance Law Section 163 based on (a) the labor standards applicable to the manufacture of the apparel or sports equipment, including employee compensation, working conditions, employee rights to form unions and the use of child labor; or (b) bidder's failure to provide information sufficient

for SUNY to determine the labor conditions applicable to the manufacture of the apparel or sports equipment.

25. PROCUREMENT LOBBYING. To the extent this agreement is a "procurement contract" as defined by State Finance Law Sections 139-j and 139-k, by signing this agreement the contractor certifies and affirms that all disclosures made in accordance with State Finance Law Sections 139-j and 139-k are complete, true and accurate. In the event such certification is found to be intentionally false or intentionally incomplete, the State may terminate the agreement by providing written notification to the Contractor in accordance with the terms of the agreement.

26. CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN STATE CONTRACTORS, AFFILIATES AND SUBCONTRACTORS. To the extent this agreement is a contract as defined by Tax Law Section 5-a, if the Contractor fails to make the certification required by Tax Law Section 5-a or if during the term of the contract, the Department of Taxation and Finance or SUNY discovers that the certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in accordance with the terms of the agreement, if SUNY determines that such action is in the best interests of the State.

THE FOLLOWING PROVISIONS SHALL APPLY ONLY TO THOSE CONTRACTS TO WHICH A HOSPITAL OR OTHER HEALTH SERVICE FACILITY IS A PARTY

27. Notwithstanding any other provision in this contract, the hospital or other health service facility remains responsible for insuring that any service provided pursuant to this contract complies with all pertinent provisions of Federal, state and local statutes, rules and regulations. In the foregoing sentence, the word "service" shall be construed to refer to the health care service rendered by the hospital or other health service facility.

28. (a) In accordance with the 1980 Omnibus Reconciliation Act (Public Law 96-499), Contractor hereby agrees that until the expiration of four years after the furnishing of services under this agreement, Contractor shall make available upon written request to the Secretary of Health and Human Services, or upon request, to the Comptroller General of the United States or any of their duly authorized representatives, copies of this contract, books, documents and records of the Contractor that are necessary to certify the nature and extent of the costs hereunder.

(b) If Contractor carries out any of the duties of the contract hereunder, through a subcontract having a value or cost of \$10,000 or more over a twelve-month period, such subcontract shall contain a clause to the effect that, until the expiration of four years after the furnishing of such services pursuant to such subcontract, the subcontractor shall make available upon written request to the Secretary of Health and Human Services or upon request to the Comptroller General of the United States, or any of their duly authorized representatives, copies of the subcontract and books, documents and records of the subcontractor that are necessary to verify the nature and extent of the costs of such subcontract.

(c) The provisions of this section shall apply only to such contracts as are within the definition established by the Health Care Financing Administration, as may be amended or modified from time to time.

1. DEFINITIONS. The following terms shall be defined in accordance with Section 310 of the Executive Law:

STATE CONTRACT herein referred to as "State Contract", shall mean: (a) a written agreement or purchase order instrument, providing for a total expenditure in excess of twenty-five thousand dollars (\$25,000.00), whereby the State University of New York ("University") is committed to expend or does expend funds in return for labor, services including but not limited to legal, financial and other professional services, supplies, equipment, materials or a combination of the foregoing, to be performed for, or rendered or furnished to the University; (b) a written agreement in excess of one hundred thousand dollars (\$100,000.00) whereby the University is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; and (c) a written agreement in excess of one hundred thousand dollars (\$100,000.00) whereby the University as an owner of a state assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project.

SUBCONTRACT herein referred to as "Subcontract", shall mean any agreement providing for a total expenditure in excess of \$25,000 for construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon between a Contractor and any individual, partnership, corporation, or not-for-profit corporation, in which a portion of a Contractor's obligation under a State Contract is undertaken or assumed, but shall not include any construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon for the beneficial use of Contractor.

WOMEN-OWNED BUSINESS ENTERPRISE herein referred to as "WBE", shall mean a business enterprise, including a sole proprietorship, partnership or corporation that is: (a) at least fifty-one percent (51%) owned by one or more United States citizens or permanent resident aliens who are women; (b) an enterprise in which the ownership interest of such women is real, substantial and continuing; (c) an enterprise in which such women ownership has and exercises the authority to control independently the day-to-day business decisions of the enterprise; (d) an enterprise authorized to do business in this state and independently owned and operated; (e) an enterprise owned by an individual or individuals, whose ownership, control and operation are relied upon for certification, with a personal net worth that does not exceed three million five hundred thousand dollars (\$3,500,000), as adjusted annually on the first of January for inflation

according to the consumer price index of the previous year; and (f) an enterprise that is a small business pursuant to subdivision twenty of this section.

A firm owned by a minority group member who is also a woman may be certified as a minority-owned business enterprise, a women-owned business enterprise, or both, and may be counted towards either a minority-owned business enterprise goal or a women-owned business enterprise goal, in regard to any Contract or any goal, set by an agency or authority, but such participation may not be counted towards both such goals. Such an enterprise's participation in a Contract may not be divided between the minority-owned business enterprise goal and the women-owned business enterprise goal.

MINORITY-OWNED BUSINESS ENTERPRISE herein referred to as "MBE", shall mean a business enterprise, including a sole proprietorship, partnership or corporation that is: (a) at least fifty-one percent (51%) owned by one or more minority group members; (b) an enterprise in which such minority ownership is real, substantial and continuing; (c) an enterprise in which such minority ownership has and exercises the authority to control independently the day-to-day business decisions of the enterprise; (d) an enterprise authorized to do business in this state and independently owned and operated; (e) an enterprise owned by an individual or individuals, whose ownership, control and operation are relied upon for certification, with a personal net worth that does not exceed three million five hundred thousand dollars (\$3,500,000.00), as adjusted annually on the first of January for inflation according to the consumer price index of the previous year; and (f) an enterprise that is a small business pursuant to subdivision twenty of this section.

MINORITY GROUP MEMBER shall mean a United States citizen or permanent resident alien who is and can demonstrate membership in one of the following groups: (a) Black persons having origins in any of the Black African racial groups; (b) Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American of either Indian or Hispanic origin, regardless of race; (c) Native American or Alaskan native persons having origins in any of the original peoples of North America. (d) Asian and Pacific Islander persons having origins in any of the Far East countries, South East Asia, the Indian Subcontinent or Pacific Islands.

CERTIFIED ENTERPRISE OR BUSINESS shall mean a business verified as a minority or women-owned business enterprise pursuant to section 314 of the Executive Law. A business enterprise which has been approved by the New York Division of Minority & Women Business Development ("DMWBD") for minority or women-owned enterprise status subsequent to verification that the business enterprise is owned, operated, and controlled by minority group members or

women, and that also meets the financial requirements set forth in the regulations.

2. TERMS. The parties to the attached State Contract agree to be bound by the following provisions which are made a part hereof (the word "Contractor" herein refers to any party other than the University:

1(a) Contractor and its Subcontractors shall undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. For these purposes, affirmative action shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.

(b) Prior to the award of a State Contract, the Contractor shall submit an equal employment opportunity (EEO) policy statement to the University within the time frame established by the University.

(c) As part of the Contractor's EEO policy statement, the Contractor, as a precondition to entering into a valid and binding State Contract, shall agree to the following in the performance of the State Contract: (i) The Contractor will not discriminate against any employee or applicant for employment, will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State Contracts; (ii) The Contractor shall state in all solicitations or advertisements for employees that, in the performance of the State Contract, all qualified applicants will be afforded equal employment opportunities without discrimination; (iii) At the request of the University the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative will not discriminate, and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein.

(d) Except for construction contracts, prior to an award of a State Contract, the Contractor shall submit to the contracting agency a staffing plan of the anticipated work force to be utilized on the State Contract or, where required, information on the Contractor's total work force, including apprentices, broken down by specified ethnic background, gender, and Federal occupational categories or other appropriate categories specified by the contracting agency. The form of the staffing plan shall be supplied by the contracting agency. If Contractor fails to provide a staffing plan, or in the alternative, a description of its entire work force, the University may reject Contractor's

bid, unless Contractor either commits to provide such information at a later date or provides a reasonable justification in writing for its failure to provide the same.

(e) After an award of a State Contract, the Contractor shall submit to the University a workforce utilization report, in a form and manner required by the agency, of the work force actually utilized on the State Contract, broken down by specified ethnic background, gender, and Federal occupational categories or other appropriate categories specified by the University.

(f) The Contractor shall include the provisions of this section in every Subcontract in such a manner that the requirements of the provisions will be binding upon each Subcontractor as to work in connection with the State Contract, including the requirement that Subcontractors shall undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and, when requested, provide to the Contractor information on the ethnic background, gender, and Federal occupational categories of the employees to be utilized on the State Contract.

(g) To ensure compliance with the requirements of this paragraph, the University shall inquire of a Contractor whether the work force to be utilized in the performance of the State Contract can be separated out from the Contractor's and/or Subcontractors' total work force and where the work of the State Contract is to be performed. For Contractors who are unable to separate the portion of their work force which will be utilized for the performance of this State Contract, Contractor shall provide reports describing its entire work force by the specified ethnic background, gender, and Federal Occupational Categories, or other appropriate categories which the agency may specify.

(h) The University may require the Contractor and any Subcontractor to submit compliance reports, pursuant to the regulations relating to their operations and implementation of their affirmative action or equal employment opportunity program in effect as of the date the State Contract is executed.

(i) If a Contractor or Subcontractor does not have an existing affirmative action program, the University may provide to the Contractor or Subcontractor a model plan of an affirmative action program. Upon request, the Director of DMWBD shall provide a contracting agency with a model plan of an affirmative action program.

(j) Upon request, DMWBD shall provide the University with information on specific recruitment sources for minority group members and woman, and contracting agencies shall make such information available to Contractors

2. Contractor must provide the names, addresses and federal identification numbers of certified minority- and women-owned business enterprises which the Contractor intends to use to perform the State Contract and a description of the Contract scope of work which the Contractor intends to structure to increase the participation by Certified minority- and/or women-owned business enterprises on the State Contract, and the estimated or, if

known, actual dollar amounts to be paid to and performance dates of each component of a State Contract which the Contractor intends to be performed by a certified minority- or woman-owned business enterprise. In the event the Contractor responding to University solicitation is joint venture, teaming agreement, or other similar arrangement that includes a minority- and women owned business enterprise, the Contractor must submit for review and approval: i. the name, address, telephone number and federal identification of each partner or party to the agreement; ii. the federal identification number of the joint venture or entity established to respond to the solicitation, if applicable; iii. A copy of the joint venture, teaming or other similar arrangement which describes the percentage of interest owned by each party to the agreement and the value added by each party; iv. A copy of the mentor-protégé agreement between the parties, if applicable, and if not described in the joint venture, teaming agreement, or other similar arrangement.

3. PARTICIPATION BY MINORITY GROUP MEMBERS AND WOMEN. The University shall determine whether Contractor has made conscientious and active efforts to employ and utilize minority group members and women to perform this State Contract based upon an analysis of the following factors:

(a) Whether Contractor established and maintained a current list of recruitment sources for minority group members and women, and whether Contractor provided written notification to such recruitment sources that contractor had employment opportunities at the time such opportunities became available.

(b) Whether Contractor sent letters to recruiting sources, labor unions, or authorized representatives of workers with which contractor has a collective bargaining or other agreement or understanding requesting assistance in locating minority group members and women for employment.

(c) Whether Contractor disseminated its EEO policy by including it in any advertising in the news media, and in particular, in minority and women news media.

(d) Whether Contractor has attempted to provide information concerning its EEO policy to Subcontractors with which it does business or had anticipated doing business.

(e) Whether internal procedures exist for, at a minimum, annual dissemination of the EEO policy to employees, specifically to employees having any responsibility for hiring, assignment, layoff, termination, or other employment decisions. Such dissemination may occur through distribution of employee policy manuals and handbooks, annual reports, staff meetings and public postings.

(f) Whether Contractor encourages and utilizes minority group members and women employees to assist in recruiting other employees.

(g) Whether Contractor has apprentice training programs approved by the N.Y.S. Department of Labor which provides for training and hiring of minority group members and women.

(h) Whether the terms of this section have been incorporated into each Subcontract which is entered into by the Contractor.

4. PARTICIPATION BY MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES. Based upon an analysis of the following factors, the University shall determine whether Contractor has made good faith efforts to provide for meaningful participation by minority-owned and women-owned business enterprises which have been certified by DMWBD:

(a) Whether Contractor has actively solicited bids for Subcontracts from qualified M/WBEs, including those firms listed on the Directory of Certified Minority and Women-Owned Business Enterprises, and has documented its good faith efforts towards meeting minority and women owned business enterprise utilization plans by providing, copies of solicitations, copies of any advertisements for participation by certified minority- and women-owned business enterprises timely published in appropriate general circulation, trade and minority- or women-oriented publications, together with the listing(s) and date(s) of the publications of such advertisements; dates of attendance at any pre-bid, pre-award, or other meetings, if any, scheduled by the University, with certified minority- and women-owned business enterprises, and the reasons why any such firm was not selected to participate on the project.

(b) Whether Contractor has attempted to make project plans and specifications available to firms who are not members of associations with plan rooms and reduce fees for firms who are disadvantaged.

(c) Whether Contractor has utilized the services of organizations which provide technical assistance in connection with M/WBE participation.

(d) Whether Contractor has structured its Subcontracts so that opportunities exist to complete smaller portions of work.

(e) Whether Contractor has encouraged the formation of joint ventures, partnerships, or other similar arrangements among Subcontractors.

(f) Whether Contractor has requested the services of the Department of Economic Development (DED) to assist Subcontractors' efforts to satisfy bonding requirement.

(g) Whether Contractor has made progress payments promptly to its Subcontractors.

(h) Whether the terms of this section have been incorporated into each Subcontract which is entered into by the Contractor. It shall be the responsibility of Contractor to ensure compliance by every Subcontractor with these provisions.

5. GOALS. (a) GOALS FOR MINORITY AND WOMEN WORK FORCE PARTICIPATION.

(i) The University shall include relevant work force availability data, which is provided by the DMWBD, in all documents which solicit bids for State Contracts and shall make efforts to assist Contractors in utilizing such data to determine expected levels of participation for minority group members and women on State Contracts.

(ii) Contractor shall exert good faith efforts to achieve such goals for minority and women's participation. To successfully achieve such goals, the employment of

minority group members and women by Contractor must be substantially uniform during the entire term of this State Contract. In addition, Contractor should not participate in the transfer of employees from one employer or project to another for the sole purpose of achieving goals for minority and women's participation.

(b) **GOALS FOR MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES PARTICIPATION.** For all State Contracts in excess of \$25,000.00 whereby the University is committed to expend or does expend funds in return for labor, services including but not limited to legal, financial and other professional services, supplies, equipment, materials or an combination of the foregoing or all State Contracts in excess of \$100,000.00 whereby the University is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon, Contractor shall exert good faith efforts to achieve a participation goal of **fourteen percent (14%)** for Certified Minority-Owned Business Enterprises and **twelve percent (12%)** for Certified Women-Owned Business Enterprises.

6. ENFORCEMENT. The University will be responsible for enforcement of each Contractor's compliance with these provisions. Contractor, and each Subcontractor, shall permit the University access to its books, records and accounts for the purpose of investigating and determining whether Contractor or Subcontractor is in compliance with the requirements of Article 15-A of the Executive Law. If the University determines that a Contractor or Subcontractor may not be in compliance with these provisions, the University may make every reasonable effort to resolve the issue and assist the Contractor or Subcontractor in its efforts to comply with these provisions. If the University is unable to resolve the issue of noncompliance, the University may file a complaint with the DMWBD.

7. DAMAGES FOR NON COMPLIANCE.

Where the University determines that Contractor is not in compliance with the requirements of the Contract and Contractor refuses to comply with such requirements, or if Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals, Contractor shall be obligated to pay to liquidated damages to the

University. Such liquidated damages shall be calculated as an amount equaling the difference between:

- a. All sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and
- b. All sums actually paid to MWBEs for work performed or materials supplied under the Contract.

In the event a determination has been made which requires the payment of liquidated damages and such identified sums have not been withheld by the University, Contractor shall pay such liquidated damages to the University within sixty (60) days after such damages are assessed, unless prior to the expiration of such sixtieth day, the Contractor has filed a complaint with the Director of the Division of Minority and Woman Business Development pursuant to Subdivision 8 of Section 313 of the Executive Law in which event the liquidated damages shall be payable if Director renders a decision in favor of the University.

Attachment '1'
Bidder Proposer Information

Required Submission Form

YOU ARE INVITED TO SUBMIT A PROPOSAL TO PCAC/PURCHASE COLLEGE, STATE UNIVERSITY OF NEW YORK FOR RFP SU-120312. BID PROPOSERS MUST SUBMIT THE FOLLOWING:

1. a) A completed Bid Proposer Submission Form (this page);
b) State Finance Law §§ 139-j and 139-k Form B;
c) State Finance Law §§ 139-j and 139-k and Form C;
d) Form A (New York State Consultant services, Contractor's Planned Employment).
2. Information as requested in Part II: Detailed Specifications.
3. Your firm's Equal Employment Opportunity Policy Statement, which conforms to the provisions of Exhibit A-1.

IF YOU ARE NOT SUBMITTING A PROPOSAL, PCAC/PURCHASE COLLEGE REQUESTS THE FOLLOWING:

1. Respond "No Proposal will be submitted" and state your reason(s).
2. Return only this page to the Issuing Office address on Page 1.

BIDDERS PLEASE RESPOND TO THE FOLLOWING INQUIRIES AND/OR CERTIFICATIONS:

1. Is the price quoted the same as or lower than that quoted other corporations, institutions or governmental agencies for similar services and/or like equipment or supplies?

YES: _____ NO: _____ If no, explain. _____

2. Does your firm agree that all presentations and materials will be free from racial, religious, or sexual bias?

YES: _____ NO: _____

3. Are you a New York State (NYS) resident business? YES: _____ NO: _____

4. Total number of people employed by firm: _____

5. Total number of people employed by firm in NYS: _____

6. Is your firm a NYS Minority-owned Business? YES: _____ NO: _____
NYS Certified? YES: _____ NO: _____

7. Is your firm a NYS Women-owned Business? YES: _____ NO: _____
NYS Certified? YES: _____ NO: _____

8. Please indicate if you or any officer of your organization, or any party owning or controlling more than 10 percent of your stock if you are a corporation, or any member if you are a firm or association, is an officer or employee of the State of New York or of a public benefit corporation of the State of New York. YES: _____ NO: _____

9. In accordance with State Finance Law §§ 139-j and 139-k, please certify that all information provided to Purchase College with respect to State Finance Law §§ 139-j and 139-k is complete, true and accurate.

FIRM'S NYS STATE FINANCIAL SYSTEM NUMBER (SFS ID): _____

FIRM'S TAX IDENTIFICATION NUMBER (TIN): _____

FIRM NAME: _____

ADDRESS: _____

TELEPHONE NUMBER: (_____) _____ FAX NUMBER: (_____) _____

E-MAIL ADDRESS: _____

FIRM REPRESENTATIVE - NAME / TITLE (printed) _____

FIRM REPRESENTATIVE SIGNATURE _____ DATE _____

**Attachment ‘2’
Fee Schedule**
(up to 30 points of total score)

<u>Points</u>	<u>Position Title</u>	<u>Hourly Rate</u>
6	Senior Partner – of Counsel	_____
8	Partner	_____
7	Senior Associate - Counsel	_____
6	Associate	_____
3	Paralegal / Legal Assistant	_____

Notes:

If a range is indicated for a position title, the high end of the range will be the value evaluated.

The rates provided must include all available discounts.

If a firm does not use the position titles named, the firm should use the closest position title to their own. If not done by the bid proposer firm, then, during Proposal review, the Evaluation Committee will assign the points to the next highest title; e.g., assign the points to *Partner* if *Senior Associate - Counsel* is not used.

FIRM REPRESENTATIVE SIGNATURE _____ DATE _____

FIRM REPRESENTATIVE - NAME / TITLE (printed) _____

FIRM NAME: _____

Attachment '3'
PCAC Enabling Legislation



E. Spano S. 1846

Bill No.: A00340

Summary Actions Votes Memo Text

A00340 Summary:

BILL NO A00340A
 SAME AS Same as S 1846-A
 SPONSOR Paulin (MS)
 COSPNSR Spano, Lupardo, Castelli
 MLTSPNSR Boyland

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Authorizes the lease of lands located at the state university of New York at Purchase for a senior learning community.

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A00340 Text:

STATE OF NEW YORK

340--A

2011-2012 Regular Sessions

IN ASSEMBLY

(PREFILED)

January 5, 2011

Introduced by M. of A. PAULIN, SPANO, LUPARDO, CASTELLI -- read once and referred to the Committee on Higher Education -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to authorize the lease of lands located at the state university of New York at Purchase

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Legislative findings. The legislature finds that the
 2 provision of a senior learning community upon the grounds of the state
 3 university of New York at Purchase is appropriate to further the objec-
 4 tives and purposes of the state university of New York. The legislature
 5 further finds that granting the trustees of the state university of New
 6 York the authority and power to lease and otherwise contract to make
 7 available grounds and facilities of the campus of the state university
 8 of New York at Purchase will ensure the availability of such senior
 9 learning community, and also promote the effective use of such grounds

10 and facilities.

11 S 2. The trustees of the state university of New York are hereby
 12 authorized to lease without any public bidding a portion of the lands of
 13 the state university of New York at Purchase generally described in this
 14 act to the Purchase college advancement corporation, a not-for-profit
 15 corporation, upon such terms and conditions as the trustees deem advis-
 16 able, for an initial term not to exceed forty years or for such time as
 17 may be necessary to complete repayment of any debt related to the
 18 projects described in this act, whichever is shorter. In the event that
 19 the real property which is the subject of such lease or contract shall
 20 cease to be used for the purposes described in this act, said lease
 21 shall immediately terminate and the real property and any improvements
 22 thereon shall revert to the state university of New York. Any contract

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets
 [] is old law to be omitted.

LBD02543-04-1

A. 340--A

2

1 or lease entered into pursuant to this act shall provide that the real
 2 property which is the subject of such lease or contract and any improve-
 3 ments thereon shall revert to the state university of New York upon the
 4 expiration of such lease. The description of the parcels to be leased
 5 pursuant to such section are not meant to be legal descriptions, but are
 6 intended only to identify the parcels and improvements to be leased for
 7 purposes consistent with the mission of the state university of New York
 8 at Purchase.

9 S 3. For the purposes of this act: (a) "project" shall mean work at
 10 the property authorized by this act to be leased to the Purchase college
 11 advancement corporation as described in section fourteen of this act
 12 that involves the design, construction, reconstruction, demolition,
 13 excavating, rehabilitation, repair, renovation, alteration or improve-
 14 ment of a senior learning community.

15 (b) "project labor agreement" shall mean a pre-hire collective
 16 bargaining agreement between a contractor and a labor organization,
 17 establishing the labor organization as the collective bargaining repre-
 18 sentative for all persons who will perform work on the project, and
 19 which provides that only contractors and subcontractors who sign a pre-
 20 negotiated agreement with the labor organization can perform project
 21 work.

22 S 4. Notwithstanding the provisions of any general, special, or local
 23 law or judicial decision to the contrary:

24 (a) The Purchase college advancement corporation may require a
 25 contractor awarded a contract, subcontract, lease, grant, bond, covenant
 26 or other agreement for a project to enter into a project labor agreement
 27 during and for the work involved with such project when such requirement
 28 is part of the Purchase college advancement corporation's request for
 29 proposals for the project and when the Purchase college advancement
 30 corporation determines that the record supporting the decision to enter
 31 into such an agreement establishes that the interests underlying the
 32 competitive bidding laws are best met by requiring a project labor
 33 agreement including: obtaining the best work at the lowest possible
 34 price; preventing favoritism, fraud and corruption; the impact of delay;
 35 the possibility of cost savings; and any local history of labor unrest.

36 (b) If the Purchase college advancement corporation does not require a
 37 project labor agreement, then any contractor, subcontractor, lease,
 38 grant, bond, covenant or other agreements for a project shall be awarded
 39 pursuant to section 135 of the state finance law.

40 (c) Any contract to which the Purchase college advancement corporation
 41 is a party, and any contract entered into by a third party acting in
 42 place of, on behalf of and for the benefit of the Purchase college
 43 advancement corporation pursuant to any lease, permit or other agreement
 44 between such third party and the Purchase college advancement corpo-
 45 ration, for a project deemed a public works project for the purposes of
 46 article 8 of the labor law, and shall be subject to all of the
 47 provisions of article 8 of the labor law, including the enforcement of

48 prevailing wage requirements by the fiscal officer as defined in para-
49 graph e of subdivision 5 of section 220 of the labor law to the same
50 extent as a contract of the state.

51 (d) Every contract entered into by the Purchase college advancement
52 corporation for a project shall contain a provision that the contractor
53 shall furnish a labor and material bond guaranteeing prompt payment of
54 moneys that are due to all persons furnishing labor and materials pursu-
55 ant to the requirements of any contracts for a project undertaken pursu-
56 ant to this section and a performance bond for the faithful performance
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1 of the project, which shall conform to the provisions of section 103-f
2 of the general municipal law, and that a copy of such performance and
3 payment bonds shall be kept by the Purchase college advancement corpo-
4 ration and shall be open to public inspection.

5 (e) For the purposes of article 15-A of the executive law, any indi-
6 vidual, public corporation or authority, private corporation, limited
7 liability company or partnership or other entity entering into a
8 contract, subcontract, lease, grant, bond, covenant or other agreement
9 for a project authorized pursuant to this section shall be deemed a
10 state agency as that term is defined in such article and such contracts
11 shall be deemed state contracts within the meaning of that term as set
12 forth in such article.

13 (f) Whenever the Purchase college advancement corporation enters into
14 a contract, subcontract, lease, grant, bond, covenant or other agreement
15 for a project undertaken pursuant to this act, the Purchase college
16 advancement corporation shall consider the financial and organizational
17 capacity of contractors and subcontractors in relation to the magnitude
18 of work they may perform, the record of performance of contractors and
19 subcontractors on previous work, the record of contractors and subcon-
20 tractors in complying with existing labor standards and maintaining
21 harmonious labor relations, and the commitment of contractors to work
22 with minority and women owned business enterprises pursuant to article
23 15-A of the executive law through joint ventures or subcontractor
24 relationships.

25 § 5. The Purchase college advancement corporation shall require that
26 whenever work is performed under this section, the contractors and
27 subcontractors shall have apprenticeship programs appropriate for the
28 type and scope of work to be performed, that have been registered with
29 and approved by the commissioner of labor pursuant to article 23 of the
30 labor law. Additionally, it must be demonstrated that the apprenticeship
31 program has made significant efforts to attract and retain minority
32 apprentices, as determined by affirmative action goals established for
33 such programs by the department of labor.

34 § 6. Whenever the Purchase college advancement corporation enters into
35 a contract under which employees are employed to perform building
36 service work, as that term is defined in section 230 of the labor law,
37 such work shall be subject to article 9 of the labor law to the same
38 extent as building services work performed pursuant to a contract with a
39 public agency.

40 § 7. Whenever employees perform work at the senior learning community
41 other than work performed under sections four and six of this act, such
42 employees shall be paid by their employer no less than the median hourly
43 wage for "all occupations" in the metropolitan statistical area closest
44 to the project location, published by the United States bureau of labor
45 statistics, for the duration of the lease term. All of the provisions
46 of article 9 of the labor law shall apply. Employers shall be subject to
47 the requirements of contractors under article 9 of the labor law.

48 § 8. All developers must have entered into an agreement with the labor
49 organization or organizations that is/are actively engaged in represent-
50 ing and attempting to represent food and beverage, housekeeping, or
51 other service employees in the state university of New York at Purchase
52 area that is valid and enforceable under 29 U.S.C. section 185(a) and
53 that prohibits any strikes, picketing or other economic interference
54 with such food and beverage, housekeeping, or other service operations
55 and ensures that any such operations that are conducted by contractors,

56 subcontractors, licensees, assignees, tenants or subtenants, shall be
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1 done under contracts enforceable under 29 U.S.C. section 185(a) contain-
2 ing the same provisions as specified above.

3 § 9. Notwithstanding any other provision of this act, an employer and
4 employee organization of the senior learning community may enter into an
5 agreement which shall: (1) confer jurisdiction of the New York state
6 employment relations board; (2) provide for participation in an agree-
7 ment for the designation of collective bargaining under subdivision 1 of
8 section 705 of the labor law, commonly known as card check; and (3)
9 impose no strike provisions as set forth in subdivision two of this
10 section. Upon execution of such an agreement by both parties containing
11 all of the provisions set forth in this subdivision, the agreement shall
12 be binding and enforceable against both parties.

13 § 10. Nothing in this act shall be deemed to waive or impair any
14 rights or benefits of employees of the state university of New York that
15 otherwise would be available to them pursuant to the terms of agreements
16 between the certified representatives of such employees and the state of
17 New York pursuant to article 14 of the civil service law; all work
18 performed on such property that would ordinarily be performed by employ-
19 ees subject to article 14 of the civil service law shall continue to be
20 performed by such employees.

21 § 11. Without limiting the determination of such terms and conditions
22 by said trustees, such terms and conditions may provide for leasing,
23 construction, reconstruction, rehabilitation, improvement, operation and
24 management of and provision of services and assistance and granting of
25 licenses, easements and other arrangements with regard to such grounds
26 and facilities by the Purchase college advancement corporation and
27 parties contracting with the Purchase college advancement corporation
28 and, in connection with such activities, the obtaining of financing,
29 whether public or private or secured (including but not limited to,
30 secured by leasehold mortgages and assignments of rents and leases), by
31 the Purchase college advancement corporation and parties contracting
32 with the Purchase college advancement corporation, for the purposes of
33 completing the projects described in this act.

34 Parcel C shall be leased for the development of not more than 385
35 units of a senior learning community.

36 § 12. Any contracts entered into pursuant to this act between the
37 Purchase college advancement corporation and parties contracting with
38 the Purchase college advancement corporation shall be awarded by a
39 competitive process.

40 § 13. (a) Any contracts or leases entered into by the state university
41 of New York or the Purchase college advancement corporation pursuant to
42 this act shall be subject to approval of the attorney general as to form
43 as well as by the director of the budget and the state comptroller. Any
44 and all proceeds relating to the leases authorized by this act shall be
45 allocated by the board of trustees for Purchase college, state universi-
46 ty of New York, in the following manner: seventy-five percent to the
47 student financial aid for students who are eligible to receive a tuition
48 assistance award or supplemental tuition assistance pursuant to section
49 667 or 667-a of the education law and twenty-five percent to support
50 additional full-time faculty positions.

51 (b) The trustees of the state university of New York shall, on or
52 before July first of each year that a lease of lands as authorized by
53 this act remains in effect, report to the governor, the temporary presi-
54 dent of the senate, the speaker of the assembly, the director of the
55 division of the budget, the senate finance committee, the assembly ways
56 and means committee and the higher education committees of the legisla-
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1 ture the following information: (i) all proceeds derived from any lease
2 authorized by this act with a description of how such proceeds have been
3 allocated that year under subdivision (a) of this section; (ii) the
4 amount of funds spent at the state university of New York at Purchase
5 for additional full-time faculty positions and the number of additional

6 faculty positions associated with such amount; and (iii) the amount of
 7 funds spent at the state university of New York at Purchase for student
 8 scholarships. The total number of students receiving such scholarships
 9 and the number of students receiving such scholarships within the
 10 following income, as defined in section 663 of the education law, cate-
 11 gories: (A) 0-20,000 dollars; (B) 20,001-40,000 dollars; (C)
 12 40,001-60,000 dollars; and (D) 60,001-80,000 dollars.

13 S 14. The property authorized by this act to be leased to the Purchase
 14 college advancement corporation is generally described as a parcel of
 15 real property with improvements thereon, consisting of approximately
 16 40.5 acres, situated on the campus of the state university of New York
 17 at Purchase. The description in this section of the land to be leased is
 18 not a legal description, but is intended only to identify the premises
 19 to be leased for purposes consistent with the mission of the state
 20 university of New York at Purchase:

21 Parcel C

22 ALL that plot, piece or parcel of land situate and being in the Town of
 23 Harrison, County of Westchester and State of New York, bounded and
 24 described as follows:

25 BEGINNING at a point at the southeasterly corner of the herein described
 26 Lease Parcel C, said point being located, N 80 51' 39" W 163.33 feet, N
 27 81 12' 39" W 4.91 feet, N 02 00' 00" W 407.31 feet and N 00 19' 17" E
 28 62.93 feet from the point of beginning of Parcel #1 as shown on a map
 29 entitled, "Department of Education, State University of New York, State
 30 University College at Westchester, Map #1, Parcels 1, 2 and 3", dated
 31 and filed in the office of the Department of Public Works, May 27, 1966;
 32 thence through Parcel #1 along the northerly and easterly side of West
 33 Road, N 79 50' 00" W 285.54 feet, northwesterly on a curve to the right
 34 of radius 743.00 feet, an arc length of 988.36 feet, having a chord
 35 bearing N 41 43' 30" W 917.09 feet, N 03 37' 00" W 178.77 feet, N 06
 36 55' 00" E 1326.17 feet and northwesterly on a curve to the left of radi-
 37 us 592.00 feet, an arc length of 172.61 feet, having a chord bearing N
 38 01 26' 11" W 172.00 feet to a point; thence leaving the easterly side
 39 of West Road and continuing through Parcel #1, N 77 18' 00" E 130.00
 40 feet, N 82 12' 00" E 140.00 feet, S 09 47' 00" E 364.83 feet, S 69
 41 00' 00" E 463.42 feet, S 00 02' 00" E 369.54 feet, S 27 40' 00" W
 42 194.81 feet, S 79 51' 00" E 154.52 feet, S 10 39' 00" W 325.93 feet, S
 43 03 48' 00" E 310.96 feet, S 04 45' 00" W 271.62 feet, S 01 38' 00" E
 44 142.45 feet and S 03 04' 00" W 311.20 feet to the point or place of
 45 beginning.

46 CONTAINING 40.05 ACRES OF LAND

47 S 15. The state university of New York shall not lease lands described
 48 in this act unless a contract is executed by the Purchase college
 49 advancement corporation or lessee for a project pursuant to this act
 50 within three years of the effective date of this act.

51 S 16. Any lease or other agreement executed pursuant to this act shall
 52 include an indemnity provision whereby the lessee or sublessee promises
 53 to indemnify, hold harmless, and defend the lessor against all claims,
 54 suits, actions, and liability to all persons on the leased premises,
 55 including tenant, tenant's agents, contractors, subcontractors, employ-
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1 ees, customers, guests, licensees, invitees, and members of the public,
 2 for damage to any such person's property, whether real or personal, or
 3 for personal injuries arising out of tenant's use or occupation of the
 4 demised premises.

5 S 17. Insofar as the provisions of this act are inconsistent with the
 6 provisions of any law, general, special or local, the provisions of this
 7 act shall be controlling; provided, however, that all leases, contracts,
 8 financing, granting of licenses, easements, and other arrangements with
 9 regard to a project pursuant to this act shall be subject to the
 10 provisions of article 8 of the environmental conservation law.

11 S 18. The state university trustees are hereby authorized and directed
 12 to designate and maintain a minimum of 80 acres of real property located
 13 within the boundaries of the campus of the state university of New York

August 18
2011

Attachment '4'
Concept Plan for Senior Community

(See separate document.)