



The State University
of New York

Office for Capital Facilities

State University Plaza
Albany, New York 12246

www.suny.edu

MEMORANDUM

TO: Presidents - State-Operated Campuses

FROM: Robert M. Haelen, Senior Vice Chancellor for Capital Facilities

DATE: April 3, 2019

SUBJECT: Construction Authority on State-Operated Campuses

This memorandum is a reminder to the State-Operated Campuses and Statutory Colleges of the legal manner by which design, construction, rehabilitation, and repair of University facilities may be accomplished on campus property. Design, construction, care, custody, control, and management of SUNY facilities is governed by numerous New York State Laws including Education Law, State Finance Law, Labor Law, and Economic Development Law, as well as regulations issued by the Department of State.

SUNY campuses consist almost exclusively of state-owned property and facilities. Within those state-owned facilities, activities related to design or construction must comply with all applicable laws and regulations including, but not limited to, NYS building codes, NYS insurance requirements, the State Environmental Quality Review Act, Department of Labor prevailing wage requirements, the State Historic Preservation Act, and the Department of Environmental Conservation Storm Water Pollution Prevention Plan, where applicable.

Construction Authority

Legal authority for the design and construction of new facilities and the rehabilitation/renovations of existing facilities on SUNY state-owned property and facilities is given only to the following entities:

- State University Campuses (campus Facilities Management Office);
- State University Construction Fund;
- Dormitory Authority of the State of New York;
- New York Power Authority;
- Department of Environmental Conservation; or
- NYS Office of General Services.

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No other entity has the statutory authority to perform construction or hold contracts for construction on SUNY State-owned property, except where permitted by special legislation.

Campuses shall not permit any other entity to engage in construction activity on a SUNY state-owned property or facility, nor hold the contract for construction on a SUNY state-owned property or facility unless otherwise permitted by law, such as a legislatively authorized ground lease or through Start-Up NY.¹ Property owned by NYS and leased to an outside entity pursuant to legislation may have special requirements that require review by SUNY Counsel.

Auxiliary Service Corporations (ASC), College/University Foundations, Research Foundations, other campus staff outside of the Facilities Management Office, and any other unnamed entity **shall not** engage in any construction activities on state-owned property or facilities, nor may they hold contracts for construction on, or in, any state-owned property or facilities.

Design

In order to construct a project, the entity above letting the construction contract will also need to have a contract with an Architectural or Engineering firm (A/E) who provides an Architect or Professional Engineer licensed to practice in New York State to serve as the architect or engineer of record and provide for the design of the project (stamped plans and specifications). The services under both the design and construction contracts are highly interdependent and must be contractually linked. The contract with the A/E firm must provide for traditional construction administration services and recognize the professional obligation of the consultant for design errors, omissions or claims that may arise during or after construction. Additionally, the contract must include provisions to have the design documents and construction redlined (aka as-built) drawings provided to the campus (owned) for their unrestricted use following construction completion.

While not frequently done, the entities authorized to perform construction above can self-perform the design of the project provided one of their employees is a New York State licensed Architect or Professional Engineer who can stamp the plans. The person stamping the plans cannot be the same person who will issue the building permit and certificate of occupancy.

¹ A notable legislative exception exists for certified Start-Up NY companies which may contract for construction within the premises authorized by the approved campus Start-Up NY plan and completed lease agreement. The Start-Up NY entity must comply with NYS building codes and obtain proper permits from the Authority having jurisdiction (generally the campus Facilities Management office).

Projects may also have the need for contracts for construction management or commissioning services. These contracts need to be held by the entity above holding the design and construction contract.

When the entities listed above contract for, or provide any of the construction related professional services, the entity must:

- Coordinate with the Facilities Management Office of the campus; and
- Ensure the design complies with Construction Fund Design Program Directives.²

Design Authority by Affiliates and Other Entities

For SUNY state-owned property or facilities, it is permissible for the Auxiliary Service Corporation, Foundations, Research Foundations or a third-party entity providing similar services, to procure pre-construction design services for the rehabilitation of dining services, bookstores, or other third party vendor space(s) for which a revocable permit or lease with at least two years of remaining term exists.

In the event pre-construction architectural and/or engineering (A/E) design services are procured by the ASC or other appropriate third party as described above, prior to bidding construction by an authorized entity, a separate contractual relationship must be established between the authorized entity (the State) and the A/E firm of record to establish professional responsibilities and obligations associated with the plans and specifications, and to provide construction phase services.

According to the model agreement for ASCs and the model agreement for Foundations, the requirements of Executive Law §15-A for Minority and Women-Owned Business Enterprises apply to contracts for pre-construction design services. The design must also comply with all NYS building codes and the construction must be properly permitted by the Authority having jurisdiction.

Equipment

Equipment, used in dining hall kitchens and laboratories, may be installed by qualified installers into a facility that has already been constructed per the direction in this memorandum and all controlling procedures and statutes. Installation of equipment is typically not considered construction.

² *Certain exceptions apply to hospital projects.*

Non-State Owned Property

Property that is wholly owned by entities other than the State of New York, such as Foundation owned property, is not restricted by these limitations, but must still comply with all NYS building codes and be properly permitted by the authorities having jurisdiction. The SUNY Board of Trustees has required both Executive Law §15-A for Minority and Women-Owned Business Enterprises and prevailing wage rates to be followed on projects performed by such owners in the space leased to, or otherwise occupied by SUNY.

Procurement Requirements

Lastly, as a reminder, SUNY may only use the *design-bid-build* method of design and construction. SUNY does not have authority to use the *design-build* method, nor the *construction manager at risk* method, except through DASNY.

SUNY must award design services, which must be provided by a New York State licensed architect or engineer, to the most qualified firm following the Request for Qualifications (RFQ) process. Cost is not a factor in the selection. Construction Manager Services must also follow a RFQ process, but must be based upon best value, hence cost is a factor in the selection.

SUNY may not procure construction through a Request for Proposal (RFP) process, but rather must follow a formal bid process through an Invitation for Bidders (IFB) format, with the contract award going to the lowest responsible bidder.

Details on appropriate design and construction procedures are delineated in SUNY Procedures 7554 Construction Contracting and 7555 Construction Related Consultant Contracting. Additionally, the Office of Capital Facilities (OCF) Guidance Documents provide information and examples to help campus staff navigate the often complex Policies and Procedures, including the attached [Guidance Document, CLC-3 Construction Authority](#), which may also be found on the OCF website.

Attachment

cc: Campus Business Officers
Facilities Managers

Distribution to be handled at each Campus
Foundation Office
Auxiliary Service Corporation
Research Foundation Office