Office for Capital Facilities
Guidance Document

CLC-3
Updated: April 2013
Issued: January 2012

Construction Authority
A summary of the State University of New York’s authority to design and construct.
Authority to Design & Construct

New York State Education Law (§355 and §376) establishes the authority for design, construction and rehabilitation of State University of New York (“SUNY”) facilities. This authority rests with the State University of New York (SUNY), the State University Construction Fund (“Fund”), the Dormitory Authority (“DASNY”) of the State of New York or other entities authorized to do construction for New York State agencies such as New York Power Authority (NYPA) and Office of General Services (OGS). Auxiliary corporations, foundations or other SUNY related entities do not have the statutory authority to let contracts for construction or rehabilitation of SUNY owned buildings, facilities, or property, including temporary structures located on University land (“SUNY property”), unless done so pursuant to a ground lease authorized by specific legislation (see #6 for Projects Managed by Related SUNY Entities).

In accordance with the law and SUNY policies and procedures the following are acceptable methods for accomplishing design, construction and/or rehabilitation of SUNY property.

1. **State University Construction Fund Design/Construction Contracts**
   The Fund has authority to let and manage contracts for design, construction and/or rehabilitation of University facilities. This method can be employed for projects funded through direct state capital appropriation to the Fund, or by the transfer of funds from other sources, including SUNY, to the Fund’s 384 Account. Such sources may include but are not limited to, Income Fund Reimbursable funds (IFR), Research Foundation, Foundation, Auxiliary Services Corporation, and Alumni Association funds. Applicable funding sources are summarized in Figure 1.

   For these contracts the Fund is the authority having jurisdiction and will issue building permits and code compliance certificates (certificates of occupancy).

2. **Campus Administered (Campus Let and Campus Funded) Construction and Design Contracts**
   SUNY has the authority to enter into design, construct and/or rehabilitation contracts for academic, residential and other facilities on University property. The campus President and by delegation, the campus Facilities Office, or equivalent, has sole authority for initiating campus administered design and construction contracts. No other entity has the statutory authority to enter into a contract for the design, construction or rehabilitation of University property. Auxiliary Service Corporations, College/University Foundations, and private entities are not permitted to enter into construction contracts for work on University property unless done so pursuant to a ground lease authorized by specific legislation (see #6 for Projects Managed by Related SUNY Entities).

   Under a Campus Administered contract, the Campus is responsible for the coordination and supervision of the project. Guidelines for Campus Administered contracts are established...
within SUNY Procedure Items #7554 ‘Construction Contracting’ and #7555 ‘Construction Related Consultant Contracting Procedures’.

Contracts can be funded through direct state appropriation to the Fund, or by the transfer of funds from other sources to the Fund’s 384 Account (“Campus Let”). Such other sources may include but are not limited to, Income Fund Reimbursable funds (“IFR”), Research Foundation, Foundation, Auxiliary Services Corporation, and Alumni Association funds. Contracts may also be funded through direct state appropriation to SUNY (“Campus Funded”) from any of the aforementioned SUNY sources. Applicable funding sources are summarized in Figure 1.

The Campus Administered Contract Procedures issued by the Fund are applicable to Campus Let contracts. A copy is available on the Office for Capital Facilities website.

Campuses have authority to design, construct and/or rehabilitate residential facilities funded through bonding by DASNY as Campus Let Contracts, pursuant to the July 20, 2007 Campus Let Agreement between SUNY, DASNY and the Fund.

For these contracts the Campus is the authority having jurisdiction and will issue building permits and code compliance certificates (certificates of occupancy).

3. Dormitory Authority of the State of New York (DASNY) Contracts
   The Dormitory Authority has authority to design and construction and/or rehabilitate residential facilities, parking structures, and by agreement with the Fund educational facilities. This method can be employed for projects funded through direct state appropriation to the Fund or to SUNY and designated for the Residence Hall Program.

   For these contracts DASNY is the authority having jurisdiction and will issue building permits and code compliance certificates (certificates of occupancy).

4. Office of General Services (OGS) Contracts
   SUNY may elect to have the Office of General Services let and manage contracts for the design, construction and/or rehabilitation of University facilities.

   For these contracts OGS is the authority having jurisdiction and will issue building permits and code compliance certificates (certificates of occupancy).

5. New York Power Authority (NYPA) Contracts
   SUNY may elect to have the New York Power Authority let and manage contracts for the design, construction and/or rehabilitation University facilities. Under this method projects are associated with energy conservation, improvement, or sustainability.

   For these contracts NYPA is the authority having jurisdiction and will issue building permits and code compliance certificates (certificates of occupancy).

6. Projects managed by related SUNY entities
   The construction and management of facilities may in certain cases be done by a SUNY affiliated organization. Such construction may only be done if authorized by specific
legislation. This legislation must allow SUNY to give a ground lease to the entity and permit that entity to construct on that land. Legislation is in place to allow for SUNY to lease land to a campus alumni association for the purpose of constructing residential facilities. For these contracts the campus is the authority having jurisdiction and will issue building permits and code compliance certificates (certificates of occupancy).

Regardless of the letting agency and/or source of funds all plans for new or modified space on campus shall be reviewed and approved by the campus Facility Office, or equivalent. The Facilities Office is responsible for the coordination of construction projects throughout campus.

The law allows for facilities to be constructed by “any state agency authorized to perform such work”. Those agencies generally utilized have been addressed within this guidance document. In the event a campus desires to use an agency not included here please contact the Office for Capital Facilities.

**Funding Matrix - Figure 1**
The entities authorized to issue contracts are listed below under the “Contracting Entity” column. There are a variety of funding sources that can be used for construction projects as shown in the “Funding Source” column. Campuses may fund projects issued by the various contracting entities in accordance with the appropriate sources designated below. In the event a campus wishes to use an alternative funding source please contact the Office for Capital Facilities for guidance.

<table>
<thead>
<tr>
<th>Item #</th>
<th>Funding Source</th>
<th>SUCF</th>
<th>Campus</th>
<th>DASNY</th>
<th>OGS</th>
<th>NYP A</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>SUCF Capital</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
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<tr>
<td>2</td>
<td>SUCF 384 Capital</td>
<td>X</td>
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<td></td>
<td></td>
<td></td>
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<tr>
<td>3</td>
<td>SUCF Emergency Capital</td>
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<td></td>
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<td>4</td>
<td>Campus Operating Funds</td>
<td>*</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>Income Fund Reimbursable (IFR; includes HIFR and General IFR)</td>
<td>*</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
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<tr>
<td>6</td>
<td>Dormitory Income Fund Reimbursable (DIFR)</td>
<td>*</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
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<tr>
<td>7</td>
<td>Dormitory Res Hall Revenue Bonds</td>
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<td>8</td>
<td>Research Foundation</td>
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<td>X</td>
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<tr>
<td>9</td>
<td>Foundation</td>
<td>*</td>
<td>X</td>
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<tr>
<td>10</td>
<td>Auxiliary Services Corporation</td>
<td>*</td>
<td>X</td>
<td>X</td>
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<tr>
<td>11</td>
<td>Alumni Association</td>
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<tr>
<td>12</td>
<td>NYP A Grants</td>
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<tr>
<td>13</td>
<td>Other Grants</td>
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<td>X</td>
<td>X</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

* Funding from these sources can be transferred to the Fund’s 384 account allowing the projects to be executed with capital appropriation as Campus Let or Fund managed projects.
Wick’s Law (NYS Finance Law §135)
Wick’s Law requires separate specifications and bids for each of the following subdivisions of the work when a contract is above the applicable threshold listed below.
- General Contracting
- Plumbing: plumbing and gas fitting
- Mechanical: steam heating, hot water heating, ventilating and air conditioning apparatus
- Electrical: electric wiring and standard illuminating fixtures

Applicable Thresholds
- >$3M in Bronx, Kings, NY, Queens, and Richmond counties
- >$1.5M in Nassau, Suffolk, and Westchester counties
- >$0.5M in all other counties within the state

The Fund is authorized to grant its Wick’s Law exemption to SUNY for Campus Let projects. A Wick’s Law Waiver Request must be submitted to the Fund if a campus desires to use this exemption on projects over the applicable thresholds. A copy of the waiver request form can be found in the Fund’s Campus Administered Procedures. If appropriate, the Fund will issue a Wick’s Waiver letter to the campus official who requested the waiver. The waiver must be received by the Campus before the project is advertised for bidding. A copy of the letter must be retained by the campus in the project procurement file to support post audit by the Office of the State Comptroller. Campus Let Contracts under the applicable thresholds are considered exempt, and no waiver is required.

Campus Funded Contracts are not eligible for a Wick’s exemption, only those contracts funded with capital appropriation are eligible for exemption. Campus Funded Contracts over the applicable thresholds require separate specifications for the four subdivisions of work. Campus Funded Contracts under the applicable thresholds require that bidders submit with their bid a separate sealed list that names each subcontractor. After the low bid is announced the sealed list of subcontractors for the low bid are opened. The sealed lists of subcontractors submitted by all other bidders are returned to the bidders unopened. Campus Let Contracts under the applicable thresholds are considered exempt and a separate sealed list that names each subcontractor is not required.

The campus has the ability to request the transfer of campus funds to the Construction Fund as ‘384 appropriation’. This action converts the project from Campus Funded to Campus Let. In this instance the campus may apply for a Wick’s Waiver through the Construction Fund.

Please note that in accordance with New York State Labor Law §222 the above requirements can in rare instances be waived by using a Project Labor Agreement. A Project Labor Agreement, also known as a Community Workforce Agreement, is a pre-hire collective bargaining agreement with one or more labor organizations that establishes the terms and conditions of employment for a specific construction project.

Outside Agency Approval
Effective until June 30, 2016 the requirement for contract pre-award audit by the Office of State Comptroller (OSC) and Attorney General has been removed by legislation. Campuses are required to maintain procurement records in accordance with SUNY Policy and Procedures and to supply such procurement records to OSC for post audit if requested.
Resources
SUCF Campus Administered Procedures
NYS Education Law §355
NYS Education Law §376
NYS Finance Law §135
NYS Labor Law §222