



The State University  
of New York

# Office for Capital Facilities Guidance Document

CLC-3

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## **Construction Authority**

A summary of the State University of New  
York's authority to design and construct.

## Contents

- Authority to Design & Construct
- Funding Sources and Building Permits
- Wick's Law (NYS Finance Law §135)
- Design
- Resources

### **Authority to Design & Construct**

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. For a list of relevant sections of law, see the resources section on the last page of this document.

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.

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.

**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. 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.

## Authorized Entities

### 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 Capital Project Fund (i.e. 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 on page 3 of this document.

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 perform construction or hold contracts for construction on SUNY State-owned property, except where permitted by special legislation. This means that Auxiliary Service Corporations, College/University Foundations, and private entities are not permitted to enter into construction contracts for work on state-owned University property.** For requirements surrounding design contracts, please see pages 5 and 6 of this document.

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 Capital Projects Fund (i.e. 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 on page 3 of this document.

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. 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).

**5. Department of Environmental Conservation (DEC)**

SUNY may elect to have DEC let and manage contracts for the design, construction and/or rehabilitation of University facilities.

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

**6. 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).

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.

**Funding Sources**

There are a variety of funding sources that can be used for construction projects; those funding sources are summarized below.

Item #	Funding Source	Contracting Entity				
		Campus	SUCF	DASNY	OGS	NYPA
1	SUCF Capital	D	D	D	D	D
2	SUCF Capital Programs Fund (i.e. 384)	D	D			
3	Campus Operating Funds	D	T		D	D
4	Income Fund Reimbursable (IFR; includes HIFR and General IFR)	D	T	D	D	D
5	Dormitory Income Fund Reimbursable (DIFR)	D	T	D	D	D
6	Dormitory Res Hall Revenue Bonds	D	T	D		
7	Research Foundation	D	T		D	D
8	Foundation	D	T		D	D
9	Auxiliary Services Corporation	D	T		D	D
10	Alumni Association	D	T		D	D
11	NYPA Programs	D	T			D
12	Other Grants	D	T		D	D

**D** – Direct: Funding from these sources can be used directly by the contracting agency.

**T** – Transfer: Funding from these sources can be transferred to the Fund's Capital Projects Fund (i.e. 384) account allowing the projects to be executed with capital appropriation as Construction Fund managed or Campus Let (campus managed) projects. The primary advantages to transferring other funding to the Capital Projects Fund are the ability to have the Fund manage the project; or for Campus Let contracts, the ability to apply to the Fund for a waiver from Wick’s Law requirements.

**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 not 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's Capital Projects Fund (i.e. 384) account. This action enables the contract to be a Campus Let. In this instance the campus may apply for a Wick's Waiver through the Construction Fund.

### **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.

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.

### **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 (as defined on pages 2 and 3 of this document), a separate contractual relationship must be established between the Authorized Entity 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. Such contractual relationship may be achieved by contract, or in limited cases by assignment.

**Prior to the release of an RFQ by the third-party entity, the Campus must consult with Campus Counsel** in order to determine how the contractual arrangement will be structured. Potential options for establishing this contractual relationship may be:

- separate contract;
- in limited cases, assignment; or
- another method approved by Campus Counsel.

The procurement and resultant contractual arrangement will be subject to all applicable NYS laws, rules and regulations, including procurement requirements. Campuses will be required to either seek a single source exemption, or competitively procure the services under Procedure 7555.

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

### **Resources**

- Memo to Presidents, "Construction Authority on State-Operated Campuses", dated April 3, 2019
- SUNY Procedures [7553](#), [7554](#), and [7555](#)
- [SUCF Campus Administered Procedures](#)
- [Laws of New York](#)
  - State Finance Law §8, §135, §136-a, §139, §160 and §163
  - Education Law §355, §376
  - Economic Development Law §142
  - Labor Law §220
  - Executive Law §15-A
  - and other NYS Laws as applicable