

<b>Procurement and Contracting Policy</b>	
<b>Policy number: 100-05</b>	
<b>Effective date: November 1, 2017</b>	<b>Required date of review: November 1, 2019</b>
<b>Responsible department: Supply Chain Services</b>	<b>Responsible department: Office of Legal Affairs</b>

**OPERATING PROCEDURE 100-05**  
**PROCUREMENT AND CONTRACTING POLICY**

This operating procedure replaces the version dated September 24, 2013, and repeals or modifies the following operating procedures in accordance with the chart below:

OP	Enacted Date	Title	Status
OP 10-2	July 1984	Operations of the Message Center	Repealed
OP 10-3	November 1979	Telephone Service	Repealed
OP 10-13	April 1984	Forms Management and Graphics	Repealed
OP 10-15	July 1984	Coordination of Purchase Documents	Repealed
OP 10-16	August 2008	Concession operations	Repealed
OP 10-17	July 1984	Control and repair of office equipment	Repealed
OP 20-14	January 1988	Engagement of Independent Practitioners	Repealed
OP 20-16	June 2000	Recruitment for vacant positions through posting, advertisement, and recruitment agencies	Repealed
OP 20-56	June 2005	Background of Volunteers and other Non-employees	Clarified to reflect that OP 20-56 does not apply to Vendors.
OP 40-3	November 1971	Telephone Calls	Repealed
OP 40-5	August 2005	Payment and Accounting for All Consultants (Individuals and Business Firms)	Repealed
OP 40-6	April 2001	Grants, Trust, Donations	Made subject to OP 100-5
OP 40-10	February 1972	Meal coupons	Repealed
OP 40-30	April 2006	Miscellaneous Purchase Requests	Repealed
OP 40-45	June 2006	Instant Check Mechanism	Repealed

OP 100-6	May 2007	3 <sup>rd</sup> Party Use of Space	<i>No change</i>
OP 100-7	July 2001	Purchase Change Order Procedures	Repealed
OP 110-3	July 2001	Disposition of Purchase Order Set	Repealed
OP 110-5	November 1988	Food supplies requisitioning, Purchasing, Inspection and Vouchering	Repealed
OP 110-7	July 2001	Purchase Change Order Procedures	Repealed
OP 110-8	November 1988	Product or Service complaints	Repealed
OP 110-10	July 2003	Surplus Property	Repealed
OP 110-11	September 1980	Inspection	Repealed
OP 110-12	August 1988	Silver Recovery	Repealed
OP 110-13	June 1973	Earning Cash Discounts	Repealed
OP 110-15	August 1988	Imprest Fund Purchase Order Numbers	Repealed
OP 110-16	May 1974	Return Goods Advise	Repealed
OP 110-18	November 1988	Microfilming of X-rays	Repealed
OP 110-19	November 1988	Microfilming of Medical Records	Repealed
OP 110-25	July 1996	Vendor Sales to Patients	Sections 5, 6, and 9.a. and 9.b. repealed
OP 110-26	October 1998	Contract Authorization and Procedures for the Retention of Physicians and Community Health Centers for MetroPlus Health Plan	Repealed
OP 120-7	September 1995	Guidelines for use of non-emergency patient transportation services	Repealed
OP 140-1	October 1972	Requisitioning Drugs and Pharmaceuticals	Repealed
OP 140-3	January 1974	Controlled Substances – Requisitioning, Storing, Prescribing, Dispensing,	Repealed

		Administering, and Maintaining of Appropriate Records Pertaining Thereto	
OP 140-6	September 1974	Requisitioning of Drugs and Pharmaceuticals for Ward, Clinic, Emergency Room and all other Medication Areas	Repealed
OP 200-1	November 2006	Procurement of construction services	Repealed
OP 200-4	April 1979	Capital facilities work request	Repealed
OP 230-1	December 1973	Purchase of radiology equipment	Repealed

### **POLICY STATEMENT**

The underlying purposes of this operating procedure are to: (i) provide Supply Chain Services with the authority and flexibility to timely meet NYC Health + Hospitals' procurement needs under a Cost Quality Outcome model that promotes standardization and thereby helps NYC Health + Hospitals' achieve its mission of delivering high quality and affordable healthcare to all New Yorkers, (ii) realize the benefits of NYC Health + Hospitals' enabling act which provides NYC Health + Hospitals with "legal, financial and managerial flexibility," and (iii) protect against corruption, self-dealing, fraud, and abuse. This operating procedure shall be interpreted and implemented to further such purposes.

### **SCOPE AND EFFECT**

This operating procedure applies to any and all procurement within NYC Health + Hospitals regardless of the source of funding. Supply Chain Services shall be the NYC Health + Hospitals' division with the sole authority and responsibility for procurement and Materials Management.

## DEFINITIONS

**Affiliation Agreement:** An agreement for the provision of clinical services with another clinical entity.

**Auction or Reverse Auction:** A formal, structured method of Procurement that occurs in a time-bound environment where the highest price offered (auction), or lowest price offered (reverse auction) by a Responsible, Responsive Vendor is awarded the contract.

**Bid:** A structured, formal method of Procurement designed for choosing the lowest responsible, responsive Vendor.

**Construction Services:** Procurements subject to New York State General Municipal Law 5-a.

**Contract Review Committee or CRC:** A committee established by the President to review certain Procurement transactions as indicated in the Procurement Table.

**Contract Value:** The dollar value of the contract over its entire initial term and any renewal terms.

**Deviation:** A deviation from this operating procedure as authorized by the President.

**Diversity Vendor:** A company that is generally recognized in the field of diversity contracting as diverse. Diversity may include, for example, an MWBE certification by New York State, or New York City, or by a third-party, such as WBENC.

**Due Diligence:** Due diligence is given its common meaning: reasonable efforts taken to investigate, research and analyze a proposed transaction.

**Finance or Office of Finance:** The division within the NYC Health + Hospitals, headed by the Senior Vice President of Finance, responsible for the financial management of the System.

**Goods:** Goods include tangible items, such as commodities (e.g. gloves, paper, furniture, pharmaceuticals, computers), equipment (e.g. x-rays, generators), and intangible items where most of the cost is not the result of a service (e.g. stock software would be considered a Good whereas a custom developed interface would be considered a Service).

**Group Purchasing Organization or GPO:** A membership organization that offers to its members contracts for their use to obtain Goods or Services from Vendors procured by the GPO using the aggregated purchasing power of such members to obtain favorable terms.

**Materials Management:** The planning and logistics of the cycle of Goods used by NYC Health + Hospitals, including ordering, delivering, sequestering, returning, inventory, standardization, distribution and disposal.

**Negotiated Acquisition or NA:** A method of Procurement where only a limited number of potential candidate Vendors are available to meet the System’s need and such Vendors can be reasonably identified without advertising.

**NYC Health + Hospitals or the System:** New York City Health and Hospitals Corporation and its subsidiaries as consistent with the articles of incorporation and bylaws of such subsidiaries.

**Office of Legal Affairs or OLA:** The division within NYC Health + Hospitals, headed by the General Counsel, responsible for providing legal services to the System and for managing the services of outside legal counsel.

**Preferred Source:** As set forth by NYS Finance Law section 162: “Procurement from these providers shall be exempted from the competitive procurement provisions of section one hundred sixty-three of this article and other competitive procurement statutes. Such exemption shall apply to commodities produced, manufactured or assembled, including those repackaged to meet the form, function and utility required by state agencies, in New York State and, where so designated, services provided by those sources in accordance with this section.”

**President:** The president of NYC Health + Hospitals.

**Procurement:** The process by which the System obtains Goods or Services for NYC Health + Hospitals, including the identification of Vendors, determination of responsibility and negotiation of terms whether effected by Purchase Order or contract.

**Procurement Method:** The method for undertaking a Procurement.

**Procurement Table:** The table contained in this operating procedure that sets forth minimum requirements for procuring Goods or Services. A Procurement generally falls into the Goods category when the majority of the cost of the Procurement consists of the cost of the Goods. A Procurement typically falls into the Services category when the majority of the cost of the Procurement consists of the cost of the Services. OLA shall resolve any uncertainty.

**Purchase Order:** A legal, binding document, issued to a Vendor specifying commercial terms such as item description, scope of services, quantity, price, delivery date, shipping and payment terms for the purchase of Goods or Services.

**Request for Proposals or RFP:** A structured, formal method of Procurement designed for choosing the Vendor with the best proposal.

**Required Approval:** An approval required before execution of a contract or issuance of a Purchase Order is permitted as set forth in the Procurement Table.

**Requirements Pool:** A set of vendors previously procured and available under contracts on an as-needed basis to provide certain Goods or Services described in such procurement.

**Responsibility Determination:** An exercise to determine whether a Vendor is Responsible.

**Responsible:** That quality in a Vendor of having the capability in all respects to perform in full the Procurement requirements, and the business integrity and reliability that will assure good faith performance.

**Responsive:** That quality in a proposal made in response to a Procurement of conforming to the specific terms set forth in the Procurement.

**Senior Business Owner or SBO:** An NYC Health + Hospitals employee, or when appropriate affiliate employee, who is a director or higher title, or a clinician and i) is responsible for requesting contracts, or ii) will be the principal contract user or the head of a unit that will be the contract user, or iii) will be primarily responsible for the administration of such contract.

**Services:** Actions provided by a Vendor for the benefit of the System, including Affiliation Agreements and Construction Services, and other services such as software support, equipment maintenance, professional services (e.g. legal), non-professional services (e.g. cleaning), consultations, and the like.

**Sole Source:** A Vendor which is the only viable candidate for providing a certain Good or Service.

**Supply Chain Manual:** A written manual prepared jointly by OLA and SCS to provide rules, consistent with this operating procedure, governing Procurement subject to amendment from time to time by OLA and SCS.

**Supply Chain Services or SCS:** The NYC Health + Hospitals division that is solely responsible for Procurement services and Materials Management under this operating procedure.

**Third-Party Contract or TPC:** A pre-existing contract between a Vendor and a governmental entity or offered by a Group Purchasing Organization.

**Vendor:** An individual or company that provides, is available to provide or proposes to provide, Goods or Services to the System.

**Work Order:** An agreement between the System and a Vendor made pursuant to an existing contract which provides the terms for the Vendor to perform specific work thereunder, often used with requirements contracts.



## Article I. Generally

**1. Authority to Contract.** The solicitation, Procurement and contracting for Goods or Services shall reside with Supply Chain Services irrespective of the source of funding. No other persons or departments within NYC Health + Hospitals are authorized to perform any Procurement or solicitation or enter into any contract for Goods or Services. Notwithstanding the foregoing, the President may solicit and execute contracts or may direct others to do so when it is in the best interests of the System and as is otherwise consistent with this operating procedure.

**2. Procurement Table.** The Procurement Table sets forth minimum requirements for the procurement of Goods or Services. Procurements shall meet such requirements absent a Deviation or Minor Rules Violation Waiver.

**3. Contract Value.** To determine the dollar value of a contract for purposes of applying the rules of this operating procedure, the dollar value of the contract over its entire initial term and any renewal terms shall be taken into account. Multiple Purchase Orders issued to a single Vendor for similar products shall be aggregated. When particular Goods or Services are repeatedly obtained from the same Vendor, one should project the need for such Goods or Services to arrive at an estimated Contract Value.

**4. Segmentation Prohibited.** Two or more contracts may not be awarded to the same Vendor for the same or related projects for the purpose of avoiding Required Approvals.

**5. Zero Dollar Contracts.** This operating procedure shall apply to any NYC Health + Hospitals' Procurement even if NYC Health + Hospitals is not required by such Procurement to spend any money. If the proposed Procurement provides revenue to the System or will entitle the Vendor to receive a commission (or other similar arrangement), the amount of revenue, or the amount of commission, shall be used to determine the Contract Value and the applicable Required Approvals.

**6. Grant Funded Procurement.** Where NYC Health + Hospitals receives a grant requiring the funds to be used to engage a named Vendor, or one of several pre-qualified Vendors, no Procurement process or approvals shall be required to justify the selection of such Vendor. Such Vendor shall, however, be subject to all other elements of this operating procedure.

**7. Procurement Methods.** Generally, NYC Health + Hospitals uses the following Procurement methods: Auction/Reverse Auction, Bid, Negotiated Acquisition, Request for Proposals, Sole Source, and Third-Party Contract. Such methods are not exclusive or mutually exclusive. Any Procurement Method may be used or any of the listed methods combined as long as it is consistent with this operating procedure. The manner of conducting each Procurement Method shall be as set forth in the Supply Chain Manual.

**8. Contract Term.** A contract may be for any term suitable to meet the goals of the contract, except as may be limited by the Supply Chain Manual.

**Article II. Procurement Table**

<b>Goods</b>			
<b>Contract Value</b>	<b>Procurement Method</b>	<b>Required Approval</b>	<b>Responsibility Determination</b>
Less than \$1 million	Any	VP SCS, OLA	Per Supply Chain Manual
\$1 million or more	Any	VP SCS, SBO, OLA	Vendex
<b>Services</b>			
<b>Contract Value</b>	<b>Procurement Method</b>	<b>Required Approval</b>	<b>Responsibility Determination</b>
Less than \$1 million	Any	VP SCS, OLA	Per Supply Chain Manual
\$1 million to \$5 million	Auction, Bid, Preferred Source	VP SCS, SBO, OLA	Vendex
	TPC, RFP, NA, Sole Source, or other method	VP SCS, SBO, OLA, CRC	
\$5 million or more	Any	VP SCS, SBO, OLA, CRC, Finance, Board	Vendex

### **Article III. Supply Chain Services Authority and Responsibility**

- 1. Procurement Services.** NYC Health + Hospitals employees and units with a procurement need shall consult with SCS whether to procure a Vendor to meet such need. SCS shall evaluate the need, and determine whether there needs to be a Procurement and if so how best to meet the procurement need consistent with this operating procedure.
- 2. Contract Cataloguing.** SCS shall have the have the exclusive responsibility and authority to organize and store all of NYC Health + Hospitals' contracts and related materials and to establish procedures and methods to do so.
- 3. Materials Management.** SCS shall have the exclusive responsibility and authority for the personnel, systems and processes related to Materials Management.
- 4. Requisitioning and Purchase Orders.** SCS shall have the exclusive responsibility and authority for all personnel, systems and processes related to receiving and approving requisitions and Purchase Orders.
- 5. Reporting.** SCS shall provide standard and ad hoc reports to the CRC and the Board pertaining to its functions as requested by such bodies.

#### **Article IV. Office of Legal Affairs Authority and Responsibility**

- 1. Form of Contracts.** OLA shall ensure that the form of all contracts under this operating procedure are in the best interests of NYC Health + Hospitals and are consistent with applicable laws and regulations. OLA shall also prepare and promulgate standard legal forms.
- 2. Responsibility Determinations.** OLA shall determine whether Vendors are deemed Responsible.
- 3. Interpret Procedure.** OLA shall have the exclusive authority and responsibility to interpret this operating procedure.
- 4. Minor Rules Violation Waiver.** When there has been a departure in a Procurement from the rules set forth herein or those within the Supply Chain Manual and such departure will not likely result in material harm to NYC Health + Hospitals or potential Vendors and any such immaterial harm is outweighed by the burden of repairing such departure or the benefit of proceeding with the Procurement, the Office of Legal Affairs may approve such solicitation on such basis by issuing a Minor Rules Violation Waiver Memorandum detailing why the departure will not likely result in such harm and why it is in the System's interest to proceed.

## **Article V. Contract Review Committee Authority and Responsibility**

- 1. Scope of Review.** The Contract Review Committee shall review all Procurements where required in the Procurement Table to ensure such Procurements are consistent with this operating procedure.
- 2. Effect of Review.** Should the CRC determine that a reviewed Procurement is not consistent with this operating procedure then such Procurement shall not proceed until it receives the approval of the CRC.
- 3. Composition of CRC.** The composition of the CRC shall be as specified by the President, or in the absence of such specification as set forth in the Supply Chain Manual, provided that it shall include one voting member appointed by the Chairperson of the Board.
- 4. Procedures.** The CRC shall adopt written procedures for its operations which shall be subject to approval and modification by Supply Chain Services and the Office of Legal Affairs.

## **Article VI. Construction**

**1. Generally.** Procurements for Goods and Services related to construction shall follow the rules set forth herein except where such Procurements are subject to New York State General Municipal Law 5-a, in which case such Procurements shall follow this operating procedure to the extent not inconsistent with New York State General Municipal Law 5-a. Such procurements shall obtain the Required Approvals and Responsibility Determinations as set forth in the Procurement Table and the Supply Chain Manual.

**2. Panel of Contractor Responsibility (“POCR”).** The POCR shall have the sole authority to address issues that arise during the procurement and management of construction contracts. The POCR shall consist of the following persons or their designees: the General Counsel, Vice President for OFD, Vice President for Supply Chain Services, and Senior Vice President for Finance.

## Article VII. Specific Contracts and Contract Mechanisms

**1. Physician Preference Items.** Though similar products may be offered at a lower cost, if a Good or Service improves clinical outcomes, or if there is sufficient other cost-benefit analysis supporting the choice of such Good or Service, such more expensive product may be procured where there is a written clinician's reasonable justification.

**2. Contract Renewals.** An expiring contract may be renewed rather than competitively procured where (1) a persuasive written justification (such as the need to maintain continuity of care, avoid the disruption of a change of Vendor, honor an original equipment manufacturer service requirement, satisfaction with the incumbent Vendor's performance, et cetera), (2) cost-benefit analysis; and (3) pricing analysis show that the price is fair and reasonable under the circumstances, and together establish that renewal is in the System's best interest.

Required Approvals must be obtained as if the contract were being entered into for the first time.

**3. Contract Extensions.** An expiring contract may be extended but in no event for more than one year. If the contract did not require Board or CRC approval because its total cost did not reach the applicable approval threshold, then no extension may be made without Board or CRC approval if the extension would bring the Contract Value over such threshold.

**4. Contract Expansion.** Contracts may be expanded in scope if the expanded scope is substantially related to the original scope and if separately procuring the new work would not serve the System's best interests. Any Contract Expansion must include a written cost-benefit analysis supporting the expansion and obtain any additional Required Approvals that might be required due to an increase in Contract Value.

**5. Work Order Continuation.** A work order issued under an existing contract may be continued through completion regardless of whether the contract has expired or been terminated. The SBO shall obtain OLA's advice as to whether the contract should be extended to cover the remainder of the work. A work order continuing work beyond the expiration of the underlying contract shall not be issued, however, when it could have been reasonably foreseen at the commencement of the work that a substantial part of the work under the work order would not be completed prior to expiration of the contract.

**6. Subscriptions and Memberships.** The System may, without a competitive process, subscribe to publications, be they electronic or in paper form, join organizations and pay the associated subscription or membership fees if the Senior Business Owner determines that the publication or membership is necessary or desirable for the operation of his/her department and in the best interests of the System.



**7. Recruiting and locum tenens.** Agreements for locum tenens and agreements with recruiting or placement firms for senior executive or hard to fill positions do not require a competitive Procurement.

**8. Use of Requirements Pools.** When multiple contracts have been awarded for the same or similar Goods or Service on a requirements basis, the use of one Vendor over another shall be at the discretion of the System in the exercise of good business judgment with a view to minimizing administrative burdens unless the Procurement, contract or Supply Chain Manual specifies otherwise.

**9. Deviations.** The President shall have the authority to authorize any deviation from this operating procedure if the President determines that doing so is in the best interests of the System. Where it is not impractical, the proposed deviation shall be reviewed and approved by OLA and have the advice of SCS. The Senior Business Owner shall submit to the President a written request setting forth the justification for such deviation. Deviations shall be made in a fair and impartial manner. The President shall report any deviations to the Board at its next meeting if the deviation pertains to a matter that would otherwise have been brought to the Board under this operating procedure.

**10. Diverse Contracting.** Contracts with Diversity Vendors where the Contract Value is less than \$1,000,000 do not require competitive Procurement. Diversity certification may be used as a quantitative scoring factor in any Procurement. Further, any Procurement may be limited to a pool of only Diversity Vendors upon the approval of the Vice President of SCS.

### **Article VIII. Procurement Review Board**

- 1. Generally.** A Procurement Review Board (the “PRB”) is hereby established and shall have the responsibility and authority to address complaints of Vendors relating to Procurement where a Vendor has been denied a contract award. The PRB shall not hear contract disputes.
- 2. Composition.** The PRB shall be comprised of the following persons or their designees: the General Counsel, the Senior Vice President for Finance, and the Vice President of SCS.
- 3. Procedures.** The PRB shall establish such procedures as it determines are appropriate to the circumstance. The PRB may hear written argument or may, at its option, proceed based only on the basis of written submissions. The PRB shall issue a written decision.

**Article IX. Supply Chain Manual**

The Office of Legal Affairs and Supply Chain Services shall issue a Supply Chain Manual promulgating rules and forms consistent with this operating procedure. The Supply Chain Manual may set forth rules that are more restrictive than those set forth herein.

### **Article X. Audits**

Based on the System's Office of Internal Audits' Risk Assessment and Audit Plan this operating procedure, the Supply Chain Manual and performance thereunder will be reviewed as part of regular audits.

## **XI. Legal Status**

This operating procedure is not intended to, and shall not, create any rights in favor of any party or give rise to any cause of action, claim, et cetera, including any action or claim based on a deviation made by NYC Health + Hospitals from this operating procedure, whether or not authorized by the President.

# **SUPPLY CHAIN MANUAL**

## DEFINITIONS

**Affiliation Agreement:** An agreement for the provision of clinical services with another clinical entity.

**Auction or Reverse Auction:** A formal, structured method of Procurement that occurs in a time-bound environment where the highest price offered (auction), or lowest price offered (reverse auction) by a Responsible, Responsive Vendor is awarded the contract.

**Bid:** A structured, formal method of Procurement designed for choosing the lowest responsible, responsive Vendor.

**Construction Services:** Procurements subject to New York State General Municipal Law 5-a.

**Contract Review Committee or CRC:** A committee established by the President to review certain Procurement transactions as indicated in the Procurement Table.

**Contract Value:** The dollar value of the contract over its entire initial term and any renewal terms.

**Deviation:** A deviation from this operating procedure as authorized by the President.

**Diversity Vendor:** A company that is generally recognized in the field of diversity contracting as diverse. Diversity may include, for example, an MWBE certification by New York State, or New York City, or by a third-party, such as WBENC.

**Due Diligence:** Due diligence is given its common meaning: reasonable efforts taken to investigate, research and analyze a proposed transaction.

**Finance or Office of Finance:** The division within the NYC Health + Hospitals, headed by the Senior Vice President of Finance, responsible for the financial management of the System.

**Goods:** Goods include tangible items, such as commodities (e.g. gloves, paper, furniture, pharmaceuticals, computers), equipment (e.g. x-rays, generators), and intangible items where most of the cost is not the result of a service (e.g. stock software would be considered a Good whereas a custom developed interface would be considered a Service).

**Group Purchasing Organization or GPO:** A membership organization that offers to its members contracts for their use to obtain Goods or Services from Vendors procured by the GPO using the aggregated purchasing power of such members to obtain favorable terms.

**Materials Management:** The planning and logistics of the cycle of Goods used by NYC Health + Hospitals, including ordering, delivering, sequestering, returning, inventory, standardization, distribution and disposal.

**Negotiated Acquisition or NA:** A method of Procurement where only a limited number of potential candidate Vendors are available to meet the System's need and such Vendors can be reasonably identified without advertising.

**NYC Health + Hospitals or the System:** New York City Health and Hospitals Corporation and its subsidiaries as consistent with the articles of incorporation and bylaws of such subsidiaries.

**Office of Legal Affairs or OLA:** The division within NYC Health + Hospitals, headed by the General Counsel, responsible for providing legal services to the System and for managing the services of outside legal counsel.

**Preferred Source:** As set forth by NYS Finance Law section 162: "Procurement from these providers shall be exempted from the competitive procurement provisions of section one hundred sixty-three of this article and other competitive procurement statutes. Such exemption shall apply to commodities produced, manufactured or assembled, including those repackaged to meet the form, function and utility required by state agencies, in New York State and, where so designated, services provided by those sources in accordance with this section."

**President:** The president of NYC Health + Hospitals.

**Procurement:** The process by which the System obtains Goods or Services for NYC Health + Hospitals, including the identification of Vendors, determination of responsibility and negotiation of terms whether effected by Purchase Order or contract.

**Procurement Method:** The method for undertaking a Procurement.

**Procurement Table:** The table contained in this operating procedure that sets forth minimum requirements for procuring Goods or Services. A Procurement generally falls into the Goods category when the majority of the cost of the Procurement consists of the cost of the Goods. A Procurement typically falls into the Services category when the majority of the cost of the Procurement consists of the cost of the Services. OLA shall resolve any uncertainty.

**Purchase Order:** A legal, binding document, issued to a Vendor specifying commercial terms such as item description, scope of services, quantity, price, delivery date, shipping and payment terms for the purchase of Goods or Services.

**Request for Proposals or RFP:** A structured, formal method of Procurement involving the System's written solicitation, responsive written proposals and the System's selection of a Vendor based on such proposals and other supplemental information or presentations requested of the Vendors by the System.



**Required Approval:** An approval required before execution of a contract or issuance of a Purchase Order is permitted as set forth in the Procurement Table.

**Requirements Pool:** A set of Vendors previously procured and available under contracts on an as-needed basis to provide certain Goods or Services described in such procurement.

**Responsibility Determination:** An exercise to determine whether a Vendor is Responsible.

**Responsible:** That quality in a Vendor of having the capability to perform the Procurement requirements, and the business integrity and reliability that will assure good faith performance.

**Responsive:** That quality in a proposal made in response to a Procurement of conforming to the specific terms set forth in the Procurement.

**Senior Business Owner or SBO:** An NYC Health + Hospitals employee, or when appropriate affiliate employee, who is a director or higher title, or a clinician and i) is responsible for requesting contracts, or ii) will be the principal contract user or the head of a unit that will be the contract user, or iii) will be primarily responsible for the administration of such contract.

**Services:** Actions provided by a Vendor for the benefit of the System, including Affiliation Agreements and Construction Services, and other services such as software support, equipment maintenance, professional services (e.g. legal), non-professional services (e.g. cleaning), consultations, and the like.

**Sole Source:** A Vendor which is the only viable candidate for providing a certain Good or Service.

**Supply Chain Manual:** This written manual prepared and jointly approved by OLA and SCS to provide rules, consistent with this operating procedure, governing Procurement subject to amendment from time to time by OLA and SCS.

**Supply Chain Services or SCS:** The NYC Health + Hospitals division that is solely responsible for Procurement services and materials management under this operating procedure.

**Third-Party Contract or TPC:** A pre-existing contract between a Vendor and a governmental entity or offered by a Group Purchasing Organization.

**Vendor:** An individual or company that provides, is available to provide or proposes to provide, Goods or Services to the System.

**Work Order:** An agreement between the System and a Vendor made pursuant to an existing contract which provides the terms for the Vendor to perform specific work thereunder, often used with requirements contracts.

## Article I. Generally

**1. Supply Chain Manual.** This Manual is promulgated under the authority of Operating Procedure 100-05 by SCS and OLA. Any substantive change to this Manual must be made in writing and executed by the head of each such office.

This Manual and its Attachments are intended to be used by SCS and OLA personnel to guide and assist with their Procurement work so that Procurements will meet the requirements and goals of OP 100-05. It is further intended that this Manual and its Attachments will provide clarity for auditors and other governmental representatives as to how the System conducts its Procurements.

**2. Attachments.** The attachments hereto (“Attachments”) may be amended collaboratively by SCS and OLA without a formal sign-off provided they do not materially deviate from this Manual.

**3. Due Diligence.** Every Procurement requires Due Diligence and documentation of such efforts.

A Due Diligence analysis should generally, but not always, include: an analysis of the need, the market, how the contract fits with other System goals, the Procurement strategy, the quality of the Goods or Service, and the price.

The amount of Due Diligence required for a transaction depends on the circumstances. For example, many TPCs have already had most of the required due diligence performed. Thus the activation of the highest tier of a GPO contract may be all the Due Diligence that would be required under the circumstances. On the other hand, an enterprise-wide, multi-year Goods contract with service level agreements and several value-adds may require an RFP. Included among the ways of performing Due Diligence on pricing are comparing the price offered to list prices, comparing the price to that paid previously by the System and comparing the tiered pricing of a GPO agreement.

Whether the Due Diligence requirement has been satisfied shall be determined by the entity that gives the Required Approvals.

**4. Contract Control Sheet.** Each contract and material contract modification shall be accompanied by a completed Contract Control Sheet, set forth as an Attachment hereto.

**5. Contract purchasing.** Purchases made off of existing contracts shall require no further Due Diligence to be performed, or Vendor Responsibility Determination.

**6. Micro-purchasing.** Micro-purchases are low dollar value purchases that may be made without any competitive Procurement as follows.

*a. Contracts for Micro-purchases.* Contracts for Goods or Services of \$100,000 or less shall require an abridged form of Due Diligence, analyzing only the key elements of the matter to ensure reasonableness.

*b. Purchase Orders for Micro-purchases.* Purchase Orders for Goods or Services of \$50,000 or less shall require an abridged form of Due Diligence circumscribed to ensure only that there is no fraud, waste or abuse in the transaction.

**Article II. Procurement Table**

<b>Goods</b>			
<b>Contract Value</b>	<b>Procurement Method</b>	<b>Required Approval</b>	<b>Responsibility Determination</b>
Less than \$1 million	Any	VP SCS, OLA	Per Supply Chain Manual
\$1 million or more	Any	VP SCS, SBO, OLA	Vendex
<b>Services</b>			
<b>Contract Value</b>	<b>Procurement Method</b>	<b>Required Approval</b>	<b>Responsibility Determination</b>
Less than \$1 million	Any	VP SCS, OLA	Per Supply Chain Manual
\$1 million to \$5 million	Auction, Bid, Preferred Source	VP SCS, SBO, OLA	Vendex
	TPC, RFP, NA, Sole Source, or other method	VP SCS, SBO, OLA, CRC	
\$5 million or more	Any	VP SCS, SBO, OLA, CRC, Finance, Board	Vendex

### **Article III. Supply Chain Services**

**1. Procurement Services.** SCS shall manage and control all Procurement for NYC Health + Hospitals in consultation with the requesting department or SBO. SCS responsibilities include preparing and publishing Procurements, communicating with Vendors, establishing and guiding review committees, contemporaneously documenting relevant aspects of each Procurement, preparing contracts and Vendor forms, recording and filing of contracts and related documents, and managing the relevant procurement systems (e.g., PeopleSoft).

**2. Contract Cataloguing.** Supply Chain Services shall have the responsibility and authority to establish procedures and methods to organize and store all of NYC Health + Hospitals' contracts (including non-procurement contracts) and related documents consistent with applicable operating procedures laws and regulations.

Any contract entered into across the System, including those for procurement, consultant services, construction, grants, affiliations, real property, concessions, and any other contract shall be provided to SCS with all pertinent detail concerning each contract, including business owner, contact information for the third-party, effective dates, and a description of the contract.

Supply Chain Services shall store all contracts in a searchable database that is routinely backed up.

**3. Materials Management.** Materials Management shall be organized through the implementation and training of PeopleSoft ERP.

**4. Requisitions and Purchase Orders.** Requisitions and Purchase Orders shall be organized through the implementation and training of PeopleSoft ERP.

**5. Reporting.** SCS shall provide the following reports to the Board:

a. Monthly reports to the Board of all new contracts setting forth a description of the contract, the value of the contract over its term, and the contract SBO.

b. Quarterly reports of spend by Vendor, or as feasible given the state of the ERP, by contract.

c. Any other reports as requested by the Board.

**6. Contract Numbering.** Only after the contract and Contract Control Sheet are signed by the Vice President of SCS shall a contract number be assigned and the contract then loaded into the contract database.

**7. Contracting Process, Generally.** When a contract is ready to be entered into, the person responsible for the Procurement shall coordinate with OLA on the final form of the contract. Upon approval of OLA, the person responsible for the Procurement shall complete the Contract Control Sheet for SBO, OLA, and VP of SCS review.

**8. Procurement Methods.** The Procurement Method for a given Procurement shall be chosen to meet the circumstances and goals of the Procurement. Any Procurement Method, or combination of Procurement Methods, may be used for any Procurement as long as supported by Due Diligence. The generally accepted practice for each Procurement Method is set forth in the Attachments. A material departure from such methods requires a Minor Rules Violation Waiver. The Procurement Methods set forth in the Attachments are not exclusive.

**9. Budget Approval.** Budget approval must be obtained and documented in writing before commencing any Procurement services as required by the VP of SCS.

**10. Solicitation Confidentiality.** Between publication of a Procurement (by any Procurement Method) and award of contract no persons shall communicate with potential bidders or proposers regarding the Procurement other than the designated SCS staff member without the approval of OLA.

**11. Third-Party Contracts.** When using a TPC, the System does not require and shall not seek the consent of the third-party and need not use any of the third-party's procurement methods. Instead, the System shall conform the TPC Procurement to Operating Procedure 100-05.

For example, a Procurement for Goods based off of a New York State Office of General Services ("OGS") contract need not be procured by using the OGS bidding processes, but instead using the Due Diligence required by this Manual, and obtaining the Required Approvals.

## Article IV. Office of Legal Affairs

**1. Form of Contracts.** OLA is responsible for ensuring that the form of all contracts meets the legal obligations of NYC Health + Hospitals.

**2. Vendor Responsibility Determinations.** OLA is responsible for determining whether a Vendor is Responsible and the management of such process, including New York City's PASSport/Vendex process. Each new contract shall require a Vendor Responsibility Determination.

a. **Validity Period.** A determination of responsibility for Vendors with a Contract Value of less than \$1 million shall be valid for three years. A determination of responsibility for Vendors with a Contract Value of \$1 million or more shall generally follow the validity requirements of PASSport. The forgoing is subject to the requirements of Operating Procedure 100-5 and this Manual with respect to Procurements requiring the approval of the Board of Directors.

b. **Workflow.** For each new contract the Originating Person, Contract Manager, or SBO, shall email the following to [Vendex@nychhc.org](mailto:Vendex@nychhc.org): the Vendor's legal name, tax ID, and contact information. OLA shall then assist with the Vendor Responsibility Determination.

c. **Responsibility Determination Elements.** If a Vendor has performed unsatisfactorily on a prior contract the Vendor shall be presumed non-responsible unless the unsatisfactory performance was beyond the Vendor's control or the Vendor has taken satisfactory corrective action. Past performance can be researched using the System's ECMS tool, or PASSport.

OLA shall research the Vendor using the following resources.

1. US OIG: <https://exclusions.oig.hhs.gov/default.aspx>
2. US SAM list: <http://bit.ly/2luFNmw>
3. US OFAC: <https://sanctionssearch.ofac.treas.gov>
4. NYS Dept of Labor: <https://dbr.labor.state.ny.us/EDList/searchPage.do>
5. NYS OGS: <https://www.ogs.ny.gov/NREntities.asp>
6. NYS OMIG: <https://omig.ny.gov/search-exclusions>
7. Google: <https://www.google.com>
8. Google News: <https://news.google.com>
9. ECMS: <http://ecms.nychhc.org>

10. PASSport: <https://a858-login2.nyc.gov/>

d. PASSport/Vendex. Resolution of the Vendex process can cause harmful delays in contracting. Therefore, in the discretion of OLA, the Vendex process may occur concurrent to the execution of the contract as long as the Vendor acts in good faith to fulfill the Vendex obligations.

e. Non-responsibility determinations. If a Vendor that would otherwise have been awarded a contract is determined to be non-responsible a letter shall be sent to the Vendor stating as much and the reasons therefor. A copy of such letter shall be attached to the Contract Control Sheet if a contract will be awarded to another Vendor as a result of the Procurement.

**3. Interpretation.** OLA shall interpret Operating Procedure 100-05, this Manual and its Attachments.

**4. Minor Rules Violation Waiver.** The person responsible for the Procurement shall submit to OLA a memo setting forth why any departure from the Procurement Method or from OP 100-05 or the Supply Chain Manual will not likely result in material harm to NYC Health + Hospitals or potential Vendors and that any potential harm is outweighed by the burden of repairing a departure in the manner of Procurement, or the benefit of proceeding with the Procurement. OLA shall review and reject or issue a Minor Rules Violation Waiver.

**5. Business Associate Agreements (“BAA”).** OLA is responsible for ensuring that all contracts are reviewed for whether a BAA is required. If one is required, the Office of Legal Affairs shall negotiate and approve the final form of such BAA. Each Contract Control Sheet shall indicate whether a BAA is required and be accompanied by a BAA decision tree.

**6. Vendor Diversity and EEO.** OLA is responsible for reviewing all contracts to evaluate whether the contract should be included in the diversity program or exempted, and whether such contracts meet the EEO requirements of NYC Health + Hospitals.

**7. Insurance.** OLA in partnership with the SBO is responsible for ensuring which contracts require insurance and that those which do are in form and limits acceptable to NYC Health + Hospitals.



## Article V. Contract Review Committee

**1. Scope of Review.** The CRC shall be responsible for reviewing Procurements and contracts for compliance with OP 100-05 prior to being approved when required to do so in the Procurement Table.

**2. Effect of Review.** Any Procurement or contract required to be presented to the CRC that is not approved by a majority of a quorum of CRC members shall not proceed to Procurement or contract execution.

**3. Composition.** The CRC shall be comprised as the President shall direct in writing, or, in the absence of contrary direction, of the following individuals or their designees:

The President or designee;

The Chairperson of the Board or designee;

Senior Vice President, Finance;

Senior Vice President, Chief Information Officer;

Senior Vice President, Acute Care Operations;

Senior Vice President, Post-acute Care Operations;

Senior Vice President, Medical and Professional Affairs;

Vice President, Supply Chain Services;

Senior Vice President, Office of Legal Affairs, or designee, acting as chairperson.

**4. Procedures.** The forms and processes for applications for the CRC shall be made an Attachment hereto. The CRC shall meet at least twice monthly unless it has no matters to consider. The CRC may adopt guidelines that subject different kinds of proposed contracts or Procurements to different CRC review procedures. For example contracts that merely renew previous contracts may be reviewed by the CRC under different procedures than apply to other proposed contracts.

## Article VI. Construction

**1. Generally.** Procurements for Goods and Services related to construction shall follow the rules set forth herein except where such Procurements are subject to New York State General Municipal Law 5-a, in which case such Procurements shall follow this operating procedure to the extent not inconsistent with New York State General Municipal Law 5-a. Such procurements shall obtain the Required Approvals and Responsibility Determinations as set forth in the Procurement Table and the Supply Chain Manual.

**2. Panel of Contractor Responsibility (“POCR”).** The POCR shall have the sole authority to address issues that arise during the procurement and management of construction contracts. The POCR shall consist of the following persons or their designees: the General Counsel, Vice President for OFD, Vice President for Supply Chain Services, and Senior Vice President for Finance.

## **VII. Special Rules for Certain Procurements**

**1. Physician Preference Items.** Though similar products may be offered at a lower cost, if a Good or Service improves clinical outcomes, or if there is sufficient other cost-benefit analysis supporting the choice of such Good or Service (such as training, education and experience with the Good or Service), such more expensive or alternative product, Physician Preference Item (“PPI”), may be procured without competition where there is a written clinician’s reasonable justification.

**2. Contract Renewals.** An expiring contract may be renewed rather than competitively procured where (1) a persuasive written justification (such as the need to maintain continuity of care, avoid the disruption of a change of Vendor, honor an original equipment manufacturer service requirement, satisfaction with the incumbent Vendor’s performance, et cetera), (2) cost-benefit analysis; and (3) pricing analysis show that the price is fair and reasonable under the circumstances, and together establish that renewal is in the System’s best interest.

**3. Contract Extensions.** An expiring contract may be extended but in no event for more than one year and must obtain any additional Required Approvals triggered by an increase in Contract Value.

**4. Contract Expansion.** Contracts may be expanded in scope if the expanded scope is substantially related to the original scope and if separately procuring the new work would not serve the System’s best interests.

The person responsible for the proposed Contract Expansion shall draft a memo for review and consideration of OLA including a cost-benefit analysis supporting the expansion, explaining how the new work relates to the original agreement, and why procuring the new work would not be in the System’s best interest. Any additional Required Approvals that might be required due to an increase in Contract Value must also be obtained.

**5. Work Order Continuation.** A work order issued under an existing contract may be continued through completion regardless of whether the contract has expired or been terminated if it is in the best interest of the System to do so. The SBO shall obtain OLA’s advice as to whether the contract should be extended to cover the remainder of the work. A work order continuing work beyond the expiration of the underlying contract shall not be issued, however, when it could have been reasonably foreseen at the commencement of the work that a substantial part of the work under the work order would not be completed prior to expiration of the contract.

Work Order Continuations require the approval of VP of SCS. The responsible staff member shall prepare a memo explaining the facts and circumstances that led to the need for a Work Order Continuation, and why a new Procurement is impracticable.

**6. Subscriptions and Memberships.** The System may, without a competitive process, subscribe to publications, be they electronic or in paper form, join organizations and pay the associated subscription or membership fees if the SBO determines that the publication or membership is necessary or desirable for the operation of his/her department and in the best interests of the System.

If the subscription or membership fee will over a three-year period equal or exceed \$5 million the prior approval of CRC and the Board of Directors is required.

**7. Recruiting and locum tenens.** Agreements for locum tenens and agreements with recruiting or placement firms for senior executive or hard to fill positions do not require a competitive Procurement. The fee for such services shall generally be one-third or less of the employee's first year salary and contingent based, except for senior executive positions.

**8. Use of Requirements Pools.** When multiple contracts have been awarded for the same or similar Goods or Services on a requirements basis, the use of one Vendor over another shall be justified by the SBO with any legal business reason with a view to minimizing administrative burdens unless the Procurement, contract or Supply Chain Manual specifies otherwise. Acceptable business reasons include, but are not limited to: that the selected Vendor was chosen on a rotation basis; that the selected Vendor has a needed expertise the other requirements Vendors lack for the particular work order; that the selected Vendor was ready quicker than the other Vendors in the requirements pool for a time-sensitive project; that the business unit has previously used the selected Vendor and was particularly well pleased with its previous work; that the selected Vendor is located close to the work site whereas the others in the requirements pool are not; that the selected Vendor was the highest rated based on an informal RFP among the Vendors in the requirements pool; and that the selected Vendor has greater capacity to perform the proposed work than the others in the requirements pool. The business reason for the selection of the selected Vendor shall be set forth in a contemporaneously prepared memorandum.

**9. Deviations.** The President shall have the authority to authorize any deviation from Operating Procedure 100-05 if the President determines that doing so is in the best interests of the System.

All Deviations shall be issued in writing stating the reasons therefor. Where it is not impractical, the proposed deviation shall be reviewed and approved by OLA and have the advice of SCS.

The SBO shall submit to the President a written request setting forth the justification for such deviation. Deviations shall be made in a fair and impartial manner. The President shall report any deviations to the Board at its next meeting if the deviation pertains to a matter that would otherwise have been brought to the Board under Operating Procedure 100-05.

**10. Diverse Contracting.** Contracts with Diversity Vendors where the Contract Value is less than \$1,000,000 do not require competitive Procurement. Diversity certification may be used as a quantitative scoring factor in any Procurement. Further, any Procurement may be limited to a pool of only Diversity Vendors upon the approval of the Vice President of SCS.

### **VIII. Procurement Review Board**

- 1. Generally.** A Procurement Review Board (the “PRB”) shall have the responsibility and authority to address complaints of Vendors relating to Procurement where a Vendor has been denied a contract award. The PRB shall not hear contract disputes.
- 2. Composition.** The PRB shall be comprised of the following persons or their designees: the General Counsel, the Senior Vice President for Finance, and the Vice President of SCS.
- 3. Procedures.** The PRB shall establish such procedures as it determines are appropriate to the circumstance. The PRB, at its option, may proceed based solely on written submissions, or oral arguments. The PRB shall issue a written decision.

## **IX. Supply Chain Manual**

This Supply Chain Manual is promulgated by OLA and SCS in conformance with OP 100-05. Any inconsistencies shall be resolved by OLA and, if material, shall result in an amendment to this Manual.

**X. Audits**

- 1. Monthly.** On a monthly basis SCS shall compile and provide to Internal Audits a list of all contracts between \$100,000.00 and \$1,000,000.00 that were procured using means other than bid or RFP.
- 2. Semi-annual.** As otherwise consistent with its Risk Assessment and Audit Plan, Internal Audits shall perform semi-annual audits of SCS, and SCS and OLA shall assist with any such audit.

**Signed and agreed:**

By: Paul A. Albertson

Paul A. Albertson

Vice President

Date: 12/13/17

By: Salvatore J. Russo

Salvatore J. Russo

Sr. Vice President and General Counsel

Date: December 13, 2017