

NOTICE OF PROPOSED REGULATION AMENDMENT

Date: November 3, 2023

REGULATION TITLE:

REGULATION NO.:

Procurement

3.020

SUMMARY: This proposed regulation amendment implements the recent update to BOG Regulation 18.001 related to the increase in the competitive solicitation threshold for UF's purchase of commodities or contractual services.

AUTHORITY: BOG Regulations 1.001 and 18.001

COMMENTS CONCERNING THE PROPOSED REGULATION AMENDMENT SHOULD BE SUBMITTED WITHIN 14 DAYS OF THE DATE OF THIS NOTICE TO THE CONTACT PERSON IDENTIFIED BELOW. The comments must identify the regulation you are commenting on.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED REGULATION AMENDMENT IS: Courtney Brown, Legal Assistant II, 123 Tigert Hall, Post Office Box 113125, University of Florida, Gainesville, Florida 32611, 352-392-1358 office, 352-392-4387 facsimile, regulations@ufl.edu.

NAME OF PERSON WHO APPROVED THE PROPOSED REGULATION AMENDMENT: Taylor Jantz, Interim Senior Vice President and Chief Financial Officer

THE FULL TEXT OF THE PROPOSED REGULATION AMENDMENT IS ATTACHED TO THIS NOTICE.

REGULATIONS OF THE
UNIVERSITY OF FLORIDA

3.020 Procurement.

(1) Statement of Intent. It is the intent of the University to acquire quality goods and services within reasonable or required time frames, while promoting fair and open competition in the public procurement process. Responsible purchasing officials shall be protected from improper pressures of external political or business interests. The process shall reduce the appearance and opportunity for favoritism, ensure that contracts are awarded equitably and economically, and establish effective management oversight in the acquisition of commodities and contractual services, in order to preserve the integrity of public purchasing and contracting. The opportunity to bid on University contracts is a privilege, not a right.

(2) Definitions.

(a) Artistic Services -- Services provided by an individual or group of individuals who profess and practice a skill in the area of music, dance, drama, folk art, creative writing, painting, sculpture, photography, graphic arts, web design, craft arts, industrial design, costume design, fashion design, motion pictures, television, radio or tape and sound recording or in any other related field.

(b) Commodity -- Any of the various supplies, materials, goods, merchandise, food, equipment or other personal property, including a mobile home, trailer or other portable structure, which are purchased, leased, lease-purchased or otherwise contracted for by the University. "Commodity" also includes interest on deferred-payment contracts entered into by the University for the purchase of other commodities.

(c) Competitive Bid/Proposal -- The response submitted to an Invitation to Bid,

Invitation to Negotiate, or a Request for Proposal by responsive and qualified bidders or offerors.

(d) Competitive Negotiation -- The establishment of a contract through deliberation, discussion or conference on the specifications, terms and conditions of a proposed agreement.

(e) Competitive Solicitation -- An Invitation to Bid, Request for Proposal or Invitation to Negotiate to competitively select a contractor.

(f) Contractor/Vendor -- A person or firm who contracts to sell commodities or contractual services to the University.

(g) Contractual Service -- The rendering by a contractor of its time and effort rather than the furnishing of specific commodities. The term applies only to those services rendered by individuals and firms who are independent contractors. "Contractual service" does not include labor or materials or selection of professional services for the construction, renovation, repair or demolition of facilities.

(h) Extension -- An increase in the time allowed for the contract period.

(i) Independent Contractor -- A person or firm who provides a service to the University, but does not have any employment or other relationship or connection with that University, except as provided in Section 112.313, Fla. Stat.

(j) Invitation to Bid -- A written solicitation for competitive bids with the title, date, and hour of the public bid opening designated and the commodity, group of commodities or services defined, for which bids are sought.

(k) Invitation to Negotiate -- An invitation extended to prospective contractors by the University, whether by advertisement, written solicitation, electronic media or any other form of communication, to define the specifications, terms and conditions of a contract for commodities

or contractual services. Cost may or may not be a consideration in the initial stages of negotiating.

(l) President -- The chief executive officer of the University, responsible for its operation and administration.

(m) Public Entity Crime -- A violation of any state or federal law by a person in the transaction of business with any public entity of any state or with the United States government involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy or material misrepresentation.

(n) Purchase -- An acquisition of commodities services obtained by purchase order or contract whether by rent, lease, installment- or lease-purchase, outright purchase, or license.

(o) Purchases for Resale -- The purchase of commodities or contractual services acquired for the purpose of selling them for the benefit of the University.

(p) Renewal -- Contracting with the same contractor for an additional period of time after the initial contract term, provided the original terms of the agreement specify an option to renew.

(q) Request for Proposal -- A written solicitation for competitive proposals for commodities or contractual services with the title, date, and hour of the public opening designated. The request for proposal may be used when the scope of work is not clearly defined.

(r) Responsive and Qualified Bidder or Offeror -- A contractor/vendor who has submitted a bid or proposal that conforms in all material respects to a competitive solicitation.

(s) Term Contract -- An indefinite-quantity contract for the purchase of commodities or contractual services during a prescribed period of time.

(3) The University Board of Trustees has authority to establish a system of

coordinated procurement policies, procedures, and practices to be used in acquiring commodities and contractual services required by the University. Procurement Services has the duty to:

(a) Canvass sources of supply and contracting for the purchase or lease of all commodities and contractual services for the University, in any manner, including purchase by installment- or lease-purchase contracts. Installment- or lease-purchase contracts may provide for the payment of interest on unpaid portions of the purchase price.

(b) Remove any contractor from the University's competitive vendor list that fails to fulfill any of its duties specified in a contract with the University and to reinstate any such contractor when satisfied that further instances of default will not occur.

(c) Plan and coordinate purchases in volume and negotiate and execute agreements and contracts for commodities and contractual services under which the University may make purchases.

(d) Develop an Annual Certification List to serve as a waiver of the competitive solicitation requirement for commodities/services that are frequently purchased and are available from a single source.

(e) Evaluate, approve, and utilize contracts that are entered into after a public and open competitive solicitation by any State of Florida agency or department, the Federal Government, other states, political subdivisions, cooperatives or consortia, or any independent college or university for the procurement of commodities and contractual services, when it is determined to be cost-effective and in the best interest of the University to make purchases under contracts let by such other entities.

(f) Award contracts for commodities and contractual services to multiple suppliers, if it is determined to be in the best interest of the University. Such awards may be on a university,

regional or State University System-wide basis and the contracts may be for multiple years.

(g) Reject or cancel any or all competitive solicitations when determined to be in the best interest of the University.

(4) Competitive Solicitations Required.

(a) Unless otherwise provided herein, All contracts for the purchase of commodities or contractual services ~~exceeding~~ in excess of the dollar amount established by Florida Board of Governors Regulation 18.001(2) (“Bid Threshold”), \$75,000 shall be awarded pursuant to a competitive solicitation process, unless otherwise authorized herein.

(b) When only one (1) response is received to a competitive solicitation for commodities or contractual services exceeding ~~\$75,000~~ the Bid Threshold, the University may review the solicitation to determine if a second call for a competitive solicitation is in the best interest of the University. If it is determined that a second call would not serve a useful purpose, the University may proceed with the acquisition.

(c) When a University awards a contract to purchase personal property by competitive solicitation, a preference shall be provided to vendors with a principal place of business in Florida in accordance with Florida Board of Governors Regulation 18.001(3). When multiple responses that are equal in all respects are received to a competitive solicitation, including after all applicable preferences have been applied, Procurement Services will determine the contract award using the toss of a coin.

(d) The purchase of commodities and contractual services shall not be divided to avoid the requirement of competitive solicitation.

(e) Advertisement. All competitive solicitations shall be advertised on the website of Procurement Services. The Procurement Director, or a designee, shall determine if any additional advertising or the direct solicitation of relevant vendors should be used based on the

nature and quantity of the commodities, contractual services and the availability and extent of competitive solicitation lists.

(f) In the case of extension errors, the unit price will prevail.

(g) Withdrawal. A vendor may withdraw his or her bid or proposal in writing if done within seventy-two (72) hours of the bid or proposal opening if the bid or proposal is clearly erroneous and it is withdrawn prior to final award or the purchase order being issued.

(5) Purchase of Commodities or Contractual Services.

(a) Purchase of Private Attorney Services. Written approval from the Attorney General is not required for private attorney services acquired by the University.

(b) Purchase of Insurance. The University has the authority to purchase insurance as deemed necessary and appropriate for the operation and educational mission of the University.

Examples of insurance coverage that may be acquired by the University include:

1. Physical damage on vehicles and boats;
2. Inland marine on property owned, leased, or loaned to or by the University;
3. Building and property damage;
4. Equipment losses due to theft;
5. Equipment subject to transportation;
6. Loss of rental income;
7. Commercial general liability insurance for scientific equipment;
8. Excess general liability coverage;
9. Camps insurance.

(c) Purchases from small and disadvantaged business enterprises. The University is an equal opportunity institution and encourages procurement contracting with small and

disadvantaged businesses which includes minority business enterprises.

(d) Purchases from Contractors Convicted of Public Entity Crimes. The University shall not accept a competitive solicitation from, or purchase commodities or contractual services from, a person or affiliate who has been convicted of a public entity crime and has been placed on the State of Florida's convicted vendor list for a period of thirty-six (36) months from the date of being added to the convicted vendor list. No federal funds may be used to pay any party who is listed on the federal excluded parties list system.

(e) Purchasing actions that are not subject to the competitive solicitation process include:

1. Emergency Purchases. When the President or President's designee determines in writing, that a delay due to the competitive solicitation process is an immediate danger to the public health or safety or the welfare of the University, including tangible and/or intangible assets; or would otherwise cause significant injury or harm not in the best interest of the University, the University may proceed with the procurement of commodities or contractual services without a competitive solicitation. The emergency purchase shall be limited to the purchase of only the type of items and quantities or for a time period sufficient to meet the immediate danger and shall not be used to meet long-term requirements.

2. Sole Source Purchases. Commodities or contractual services available from a single source may be exempted from the competitive solicitation process. The sole source document shall be publicly posted by Procurement Services for three (3) days.

3. Purchases from Contracts and Negotiated Annual Price Agreements established by the State, other governmental entities, other universities in the State University System, or independent colleges and universities are not subject to further competitive solicitation.

4. Construction Direct Purchase Program. Commodities to be incorporated into any public work (as that term is defined in Fla. Admin. Code R. 12A-1.094) which are procured by the University in accordance with the requirements of the University's direct purchase program are not subject to any further competitive solicitation.

(f) Commodities and contractual services that are not subject to the competitive solicitation process include:

1. Artistic services;
2. Academic reviews;
3. Lectures;
4. Auditing services;
5. Legal services, including attorney, paralegal, expert witness, appraisal, arbitrator or mediator services;
6. Health services involving examination, diagnosis, treatment, prevention, medical consultation or administration. Prescriptive assistive devices for medical, developmental or vocational rehabilitation including, but not limited to prosthetics, orthotics, wheelchairs, and other related equipment and supplies provided they are purchased on the basis of an established fee schedule or by a method that ensures the best price, taking into consideration the needs of the client.
7. Services provided to persons with mental or physical disabilities by not-for-profit corporations organized under the provisions of s. 501(c)(3) of the Internal Revenue Code or services governed by the provisions of the Office of Management and Budget Circular A-122.
8. Medicaid services delivered to an eligible Medicaid recipient by a health care provider who has not previously applied for and received a Medicaid provider number from the

Department of Children and Family Services. This exception will be valid for a period not to exceed ninety (90) days after the date of delivery to the Medicaid recipient and shall not be renewed;

9. Family placement services;
10. Training and education services;
11. Advertising, except for media placement services
12. Services or commodities provided by governmental agencies, another university in the State University System, direct support organizations of the University, political subdivisions or other independent colleges and universities;
13. Programs, conferences, workshops, continuing education events or other University programs that are offered to the general public for which fees are collected to pay all expenses associated with the program or event;
14. Purchases from firms or individuals that are prescribed by state or federal law or specified by a granting agency;
15. Regulated utilities and government-franchised services;
16. Regulated public communications, except long-distance telecommunication services or facilities;
17. Purchases from the Annual Certification List developed by the University;
18. Purchases for resale;
19. Accounting services;
20. Contracts or services provided by not-for-profit support and affiliate organizations of the University, including Shands Teaching Hospitals and Clinics, Inc., direct support organizations, health support organizations and faculty practice plans;

21. Implementation/programming/training services available from owner of copyrighted software or its contracted vendor; and

22. Purchases of materials, supplies, equipment, or services for instructional or sponsored research purposes when a director of sponsored research or designee certifies that, in a particular instance, it is necessary for the efficient or expeditious prosecution of a research project in accordance with sponsored research procedures or to attain the instructional objective.

(g) Vendors Excluded from Competition.

1. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, invitations for bids and/or requests for proposals shall be excluded from competing for such procurements.

2. All persons taking part in the development or selection of criteria for evaluation, the evaluation process, and the contract award process in any purchase shall follow all relevant portions of the State of Florida Code of Ethics for Public Employees, Chapter 112, Part 3, Fla. Stat., and the University's regulation on outside activities, University of Florida Regulation 1.011.

(h) A notice of decision or intended decision concerning a solicitation, contract award, or sole source purchase shall be electronically posted.

(6) Bonds.

(a) Payment and Performance Bonds. The University may require any contractor contracting with the University to provide commodities, services or commodities which include installation, to furnish a payment and performance bond, with good and sufficient securities, to the University prior to the issuance of the contract when the total contract amount is greater than

\$200,000. The bond must be in an amount equal to 100% of the response submitted to the competitive solicitation.

(b) Solicitation Protest Bond. Any entity that files an action protesting a decision or intended decision pertaining to a solicitation, shall at the time of filing of the formal protest, post with the University, a bond payable to the University in an amount equal to the lesser of: (1) ten percent (10%) of the estimated value of the protestor's bid or proposal; (2) ten percent (10%) of the estimated expenditure during the contract term; or (3) \$10,000. The bond shall be conditioned upon the payment of all costs which may be adjudged against the entity filing the protest action. In lieu of a bond, the University may accept a cashier's check or money order in the amount of the bond. Failure of the protesting contractor to file the required bond, cashier's check or money order at the time of filing the formal protest shall result in the denial of the protest.

(7) Contracts.

(a) Contracts for commodities or contractual services or licenses shall consist of a purchase order or bilateral agreement signed by the President or designee prior to or within thirty (30) days of the goods or services being rendered by the contractor.

(b) If a contract for the purchase of services or tangible personal property requires funds appropriated by the state and is for a period in excess of one (1) fiscal year, the contract shall include the following statement: "The State of Florida and the University's performance and obligation to pay under this contract is contingent upon an annual appropriation by the Legislature."

(c) If a commodity or contractual service is purchased as a result of a competitive solicitation, the contract may be extended, without an additional competitive solicitation, for up

to twelve (12) months or until completion of the competitive solicitation and award or protest, whichever is longer.

(d) A contract may contain provisions for renewal. If the commodity or contractual service is purchased as a result of a competitive solicitation, and the contract contains a provision allowing for a renewal, the contract may be renewed, without an additional competitive solicitation, for a period that may not exceed five (5) years or twice the term of the original contract, whichever is longer. This provision is not intended to apply retroactively; existing contracts entered into prior to January 1, 2017, including any specified renewal period(s) may continue in accordance with the existing contract terms. The cost of any contemplated renewal must be included in the initial competitive solicitation. All contract renewals are subject to sufficient annual appropriations.

(e) The President shall have the authority to enter into deferred payment agreements utilizing the State of Florida Controller's Consolidated Equipment Financing Program. No agreement shall establish a debt of the State or shall be applied to the faith and credit of the State; nor shall any agreement be a liability or obligation of the State except from appropriated funds.

(f) In order to promote cost-effective procurement of commodities and contractual services, the University may enter into contracts that limit the liability of a vendor consistent with Section 672.719, Fla. Stat.

(g) The total value of the contract shall be the purchase price for the initial term plus all renewal costs.

(8) Standard of Conduct. It shall be a breach of ethical standards for any employee of the University to accept, solicit, or agree to accept a gratuity of any kind, form or type in

connection with any contract for commodities or services. It shall also be a breach of ethical standards for any potential contractor to offer an employee of the University a gratuity of any kind, form or type to influence the development of a contract or potential contract for commodities or services.

(9) Purchase of Motor Vehicles.

(a) The term “motor vehicle” includes any automobile, truck, watercraft or other vehicle designed primarily for transporting persons, and construction vehicles or farm equipment.

(b) The University has authority to:

1. Establish standard classes of motor vehicles to be leased, purchased or used by University personnel;

2. Obtain the most effective and efficient use of motor vehicles for state purposes;

3. Establish and operate facilities for the acquisition, disposal, operation, maintenance, repair, storage, control and regulation of University-owned motor vehicles. Acquisition may be by purchase, lease, installment-purchase, loan or by any other legal means and may include a trade-in. All motor vehicles purchased or leased shall be of a class that will safely transport University personnel and adequately meet the requirements of the University;

4. Contract for specialized maintenance services.

(c) Motor vehicles owned, leased or operated by the University shall be available for official University business only.

Authority: BOG Regulation 1.001; BOG Regulation 18.001

History: New 1-8-80, Amended 3-26-80, 8-6-81, 2-11-82, Formerly 6C1-3.20, Amended 5-18-92, 7-11-94, 4-30-95, 5-23-96, 6-28-98, 4-30-00, 7-25-02, 2-5-03, 3-30-07 (technical changes only), 06-13-08, Formerly 6C1-3.020, Amended 4-3-15 (technical changes only),

Amended 3-17-17.