

NOTICE OF PROPOSED REGULATION AMENDMENT

Date: May 13, 2024

REGULATION TITLE:

REGULATION NO.:

Construction; Evaluations of Professional Services Providers,
Design-Builders, Construction Managers and Contractors;
Disqualification Procedure 3.074

SUMMARY: The Florida Legislature directed the BOG to adopt regulations to govern construction activities and related contracting procedures. To comply with those new BOG regulations, the University proposes to amend Regulation 3.074 and repeal Regulations 3.070, 3.071, 3.072, 3.073, 3.075 and 3.076. The relevant content of the repealed regulations will be incorporated into Regulation 3.074 and related policies that can be found at <https://policy.ufl.edu/>.

AUTHORITY: BOG Regulation 1.001, 14.008 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 on which you are commenting.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED REGULATION AMENDMENT IS: Stephanie Fisher, Executive 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: David Kratzer, Senior Vice President – Construction, Facilities and Auxiliary

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

REGULATIONS OF THE
UNIVERSITY OF FLORIDA

3.074 Construction; Evaluations of Professional Services Providers ~~(including Architects and Engineers)~~, Design ~~/~~ Builders, Construction Managers and Contractors; Disqualification Procedure.

~~(1) — For purposes of this regulation, major project means a project the construction cost of which is in excess of Two Million and No/100 Dollars \$2,000,000.00, and minor project means a project the construction cost of which is Two Million and No/100 \$2,000,000.00 or less.~~

(1) Definitions.

(a) Construction Services – Contractual services provided in connection with a pre-construction, maintenance, repair, alteration, remodeling, renovation, construction, or demolition project.

(b) Contract – A Project Contract or a Continuing Contract.

(c) Continuing Contract – A contract with a Vendor to provide Professional Services or Construction Services as and when requested by the University for one or more projects that may arise during the term of the contract.

(d) Evaluator – The President or President’s designee conducting an evaluation under this Regulation.

(e) Professional Services – Architectural, engineering, surveying, commissioning agent, or other professional services provided in connection with a planning, design, or construction project.

(f) Project Contract – A contract with a Vendor to provide Professional Services or

Construction Services for the project(s) described therein.

(g) Vendor – A contractor, an engineer, architect, surveyor, or other professional services provider, a design-builder, or a construction manager who provides, as applicable, Professional Services or Construction Services to the University.

~~(2) Professional service providers under contract for a major project or a minor project which is not under a continuing contract~~Commencing two (2) months after the effective date of a Project Contract, the Vendor will be evaluated by the University Evaluator on a project-by-project basis as follows:

(a) once per calendar year, ~~in September~~on a staggered schedule established by the Evaluator, during the Project Contract term;

(b) upon completion of a project; and

(c) at any time, the University determines there has been a material change in the quality of the ~~firm's~~Vendor's performance occurring during the Project Contract term.

~~(3) Professional service providers under continuing contracts with the University~~Commencing two (2) months after the effective date of a Continuing Contract, the Vendor will be evaluated by the University Evaluator on all projects performed during the Continuing Contract term ~~as follows:– These evaluations will occur:~~

(a) once per calendar year, ~~in September~~on a staggered schedule established by the Evaluator, during the Continuing Contract term;~~–and~~

(b) upon completion of a project valued at more than Two Million and 00/100 Dollars (\$2,000,000); and

(c) at any time, the University determines there has been a material change in the quality of the Vendor's performance during the Continuing Contract term.

~~(4) — In conducting evaluations under subsection (2) and (3) of this Regulation, the University Evaluator will utilize the online Architect/Engineer Evaluation Form which can be obtained from the Facilities Planning and Construction website at www.facilities.ufl.edu. If, when procuring professional services, the University, in accordance with University of Florida Regulation 3.070, considered any additional criteria not set forth in the University's standard form professional qualifications statement, the University shall also evaluate the professional service provider's performance in those areas. evaluation system maintained by the University, as modified from time to time, and will consider any additional performance criteria that the Evaluator deems applicable to type of Vendor or project. In evaluating a Vendor, the Evaluator will consider such factors as present and historical quality of performance, adherence to project timeline and budget, and relationships with consultants, laborers, subcontractors, and suppliers (if any). Where appropriate, the Evaluator will permit a Vendor who is being evaluated to submit written documentation directly related to the Vendor's performance of the applicable Professional Services or Construction Services. The University may, but need not, convene a disqualification committee to evaluate Vendor performance.~~

~~(4) — Construction managers under contract for a major project or a minor project which is not a continuing contract will be evaluated by the University on the schedule set forth in subsection (2) above for evaluating firms and individuals providing professional services on major projects and minor projects which are not continuing contracts. Construction managers under continuing contracts will be evaluated by the University on the schedule set forth in subsection (2) above for evaluating firms and individuals providing professional services under continuing contracts. In conducting evaluations of construction managers, the University will utilize the online Construction Manager Evaluation Form which can be obtained from the~~

Facilities Planning and Construction website at www.facilities.ufl.edu.

~~————(5)—— Design/Builders under contract for a major project or a minor project which is not a continuing contract will be evaluated by the University on the schedule set forth in subsection (2) above for evaluating firms and individuals providing professional services on major projects and minor projects which are not continuing contracts. Design/Builders under continuing contracts will be evaluated by the University on the schedule set forth in subsection (3) above for evaluating firms and individuals providing professional services under continuing contracts. In conducting evaluations of design/builders, the University will utilize the applicable portions of the evaluation forms used in evaluating providers of professional services and in evaluating construction managers.~~

~~————(6)—— Contractors under contract with the University to provide either major or minor projects will be evaluated by the University on the schedule set forth in subsection (2) above for evaluating firms and individuals providing professional services under contract for major projects or minor projects which are not under continuing contracts. In conducting evaluations of general contractors, the University will consider all known instances of poor or inadequate performance, deficient management resulting in project delay, poor quality workmanship, and late payments to laborers, subcontractors and suppliers with whom the contractor has a direct contract and where there is no bona fide contract dispute between the contractor and such laborers, subcontractors and suppliers.~~

~~————(7)—— In order to be evaluated, a firm must have been under contract for at least two (2) months at the time of the evaluation.~~

~~(8)(5) Firms Vendors will be provided with a copy of each completed evaluation form and may appeal the evaluation in accordance with Chapter 120, Fla. StatFlorida Statutes. If a~~

Vendor does not timely appeal an evaluation, the evaluation will be final.

(9)(6) The University may utilize the information gathered in its evaluation(s) to evaluate a ~~firm's~~ Vendor's qualifications to provide Professional Services or Construction Services on future University ~~construction~~ projects and to decide whether a ~~firm~~ Vendor should be disqualified from providing Professional Services or Construction Services at the University in the future.

(10)(7) If the University determines, whether through the evaluation process or otherwise, that any ~~of the firms or individuals providing professional services, construction managers or contractors that it has engaged to perform professional or construction services are~~ Vendor is not providing satisfactory Professional Services or Construction Services to the University, the ~~President or President's designee~~ Evaluator will carefully review all facts and circumstances surrounding ~~such the~~ unsatisfactory Professional Services or Construction Services and determine whether there is sufficient cause to warrant disqualification from participation on future University projects. Without limitation of the foregoing, legal action between the University and the ~~firm or individual providing professional services, the construction manager or the contractor relating to services or work performed by the firm or individual providing professional services, construction manager or the contractor which~~ Vendor that has commenced or is imminent shall constitute automatic grounds to entitle the ~~Evaluator~~ President to disqualify the ~~Vendor~~ firm from ~~performing providing~~ future Professional Services or Construction Services ~~at to~~ the University or to temporarily suspend the ~~Vendor's~~ firm or individual's right to ~~perform provide~~ future Professional Services or Construction Services ~~to at~~ the University. The disqualification shall continue until the University is satisfied that the Professional Services or Construction Services of such ~~firm or individual providing professional services, the~~

~~construction manager or the contractor~~Vendor will be, at least, satisfactory to the University. The ~~President or designee~~Evaluator shall so notify the ~~firm or individual providing professional services, the construction manager or the contractor~~Vendor of the disqualification. The notice shall set forth specifically the grounds for disqualification and the right of the disqualified ~~firm or individual providing professional services, construction manager or contractor~~Vendor to request a hearing in accordance with Chapter 120, ~~Fla. Stats.,~~ Florida Statutes. If a Vendor does not timely request a hearing, the disqualification will be final.

Authority: BOG Regulation 1.001, 14.008 and 18.001.

History: New 6-3-03, Formerly 6C1-3.074, Amended 6-8-12, _____.