

NOTICE OF PROPOSED REPEAL OF REGULATIONS

Date: May 13, 2024

REGULATION TITLE:	REGULATION NO.:
Construction; Acquisition of Professional and Design/Build Services	3.070
Construction; Acquisition of Construction Management Services	3.071
Construction; Construction Contract Bidding and Award (Contractor)	3.072
Construction; Bid Protests (Contractor Only)	3.073
Construction; Procedures for Payment under Unbonded Construction Projects	3.075
Construction; Procedures to Contract for Construction Service	3.076

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 The relevant content of the repealed regulations will be incorporated into Regulation 3.074 and related policies that can be found at 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

COMMENTS CONCERNING THE PROPOSED REPEAL OF THESE REGULATIONS 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 REPEAL OF THESE REGULATIONS 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 REPEAL OF THESE REGULATIONS: David Kratzer, Senior Vice President – Construction, Facilities and Auxiliary

THE FULL TEXT OF THE REGULATIONS TO BE REPEALED ARE ATTACHED TO THIS NOTICE.

~~REGULATIONS OF THE
UNIVERSITY OF FLORIDA~~

~~3.070 Construction; Acquisition of Professional and Design/Build Services.~~

~~(1) Professional Services.~~

~~(a) Professional Qualifications Statement. The University uses a standard professional qualifications statement, Professional Qualifications Supplement Form PQS-AE-001, Revised June 26, 2002, incorporated herein by reference, when acquiring professional services, including professional services procured under continuing contracts, which must be competitively procured in accordance with Section 287.055, Florida Statutes. The Professional Qualifications Supplement Form can be obtained from the Office of Facilities Planning and Construction, 232 Stadium, University of Florida. If there are special requirements for a project, the University will evaluate additional criteria to determine whether the applicants possess the expertise and experience necessary to perform the services being procured.~~

~~(b) Compensation. The compensation paid for professional services shall be fair, competitive and reasonable. To determine a fair, competitive and reasonable compensation, compensation shall be negotiated based on the University's approved fee schedule, if appropriate for the type of professional services being procured, the level of complexity and the scope of the services required, and the type of the project.~~

~~(c) For purposes of this rule and all other University construction rules, professional services and continuing contracts shall have the meanings set forth in Section 287.055(2), Florida Statutes.~~

~~(2) Design/Build Services.~~

~~———— (a) ——— Selection Process. Design-build services which must be competitively procured in accordance with Section 287.055, Florida Statutes, shall be acquired through a competitive proposal selection process or through a qualifications-based selection process.~~

~~———— 1. ——— When using a qualifications-based selection process, the University shall use a standard professional qualifications statement, Professional Qualification Supplement Form PQS-AE-001, Revised June 26, 2002, incorporated herein by reference. The standard professional qualifications statement can be obtained from the Office of Facilities Planning and Construction, 232 Stadium, University of Florida.~~

~~———— 2. ——— When using a proposal-based selection process, the University shall request formal design-build proposals and conduct interviews with no fewer than three (3) and no more than six (6) applicants. Applicants may submit their design-build proposals in such a way as to maintain their anonymity.~~

~~———— Specific Authority: 1001.74(4) FS.~~

~~———— Law Implemented: 287.055, 1001.74(28), 1001.75(5), 1013.45 FS.~~

~~———— History: New 6-3-03, Formerly 6C1-3.070, Amended 7-10-23 (technical changes only).~~

~~REGULATIONS OF THE
UNIVERSITY OF FLORIDA~~

~~3.071 Construction; Acquisition of Construction Management Services~~

~~(1) — Professional Qualifications Statement. The University uses a standard-qualifications statement, Construction Manager Qualifications Supplement Form QS-CM-001, Revised June 26, 2002, incorporated herein by reference, when acquiring construction management services, including construction management services procured under continuing contracts, which must be competitively procured in accordance with Section 287.055, Florida Statutes. The Construction Manager Qualifications Supplement form can be obtained from the Office of Facilities Planning and Construction, 232 Stadium, University of Florida. If there are special requirements for a project, the University will evaluate additional criteria to determine whether the applicants possess the expertise and experience necessary to perform the services being procured.~~

~~(2) — Compensation. The compensation paid shall be fair, competitive and reasonable, to provide for profit, overhead, and direct management costs plus actual costs, not to exceed a guaranteed maximum price, as applicable, depending on the nature and extent of the construction management services being provided.~~

~~Specific Authority 1001.74(4) FS.~~

~~Law Implemented 287.055, 1001.74(28), 1001.75(5), 1013.45 FS.~~

~~History: New 6-3-03. Formerly 6C1-3.071, Amended 7-10-23 (technical changes only)~~

~~REGULATIONS OF THE
UNIVERSITY OF FLORIDA~~

~~3.072 Construction; Construction Contract Bidding and Award (Contractor)~~

~~(1) — In order to be eligible to submit a bid proposal, a firm must, at the time of the University's receipt of bids:~~

~~(a) — Hold the required applicable state contractor license in good standing when the project falls within the provisions of Chapter 489, Fla. Stat.;~~

~~(b) — If a corporation, limited liability company, partnership or other legal entity, be legally constituted and in good standing in the State of Florida or, if not domiciled in Florida, hold a current and active foreign qualification authorization to do business in the State of Florida;~~

~~(c) — Not be disqualified at the time of bid submittal through the disqualification procedures described in Regulation 3.074;~~

~~(d) — Meet any special prequalification requirements set forth in the bid documents;~~

~~(e) — Not have been convicted of a public entity crime within thirty six (36) months prior to the date for receipt of bids; and~~

~~(2) — Prequalification.~~

~~(a) — On construction projects with special requirements, the University will require that a firm meet special prequalification requirements or conditions in the bid documents.~~

~~(b) — On construction projects that require a contractor with specific expertise and experience, a firm must also meet any additional prequalification criteria required by the University relating to such matters as demonstrated performance of similar work of similar~~

~~size and complexity, experience and qualifications of proposed staff and the possession or availability of facilities or equipment needed in the performance of the work.~~

~~(c) — The deadline for the submittal of prequalification data shall be the same as the deadline for the submission of bids, unless the University determines it is necessary for such prequalification data to be submitted on a date earlier than the deadline for submission of bids. In those instances, bids will only be accepted from those potential bidders who have prequalified in accordance with this section and the terms of the bidding documents.~~

~~(3) — Within seven (7) calendar days following the bid opening date, the lowest responsible and responsive bidder, as determined by the University, must also provide:~~

~~(a) — proof of satisfaction with the foregoing requirements;~~

~~(b) — a letter of intent from a surety company that meets the standards set forth in the project specifications; and~~

~~(c) — proof of insurance which equals or exceeds the insurance required for the project. In the event the lowest responsible and responsive bidder is unable to provide any of the above documentation, such bidder shall be declared unqualified and the bid shall be awarded to the next lowest responsible and responsive bidder.~~

~~(4) — Except for informalities which under the law the President of the University is allowed to waive, a bid that is incomplete or not in conformance with the requirements of the bid documents shall be determined to be non-responsive and shall be rejected. The bid shall be awarded to the firm determined to be responsible and qualified in accordance with the bid documents and which submits the lowest priced proposal for the work.~~

~~(5) — If it is in the best interest of the University, all bids may be rejected and the~~

~~project may be bid again.~~

~~(6) In documented cases of emergency, the requirements of this regulation can be waived and the President or President's designee can permit negotiation with a qualified firm.~~

~~(7) When it is determined to be in the best interest of the University to reduce the price of the lowest responsible and responsive bidder to provide for an award within or closer to the construction budget, the President or designee shall negotiate the construction contract, including the specifications, with that bidder. Negotiations may be terminated and all bids may be rejected at any point in the negotiation process. The award of a negotiated contract will be made by the President.~~

~~(8) During the procurement process, the University shall also follow, when applicable, the provisions contained in Regulation 3.020.~~

~~Authority: BOG Regulations 1.001.~~

~~History: New 6-3-03, Amended 7-19-05, 3-23-18 (technical changes only).~~

~~REGULATIONS OF THE
UNIVERSITY OF FLORIDA~~

~~3.073 Construction; Bid Protests (Contractor Only)~~

~~(1) — A contractor filing a protest pursuant to Section 120.57(3)(b), Florida Statutes, shall post a bond in an amount equal to:~~

~~(a) — Twenty five thousand dollars (\$25,000.00) or two percent (2%) of the lowest accepted bid, whichever is greater, for projects valued over \$500,000.00.~~

~~(b) — Five percent (5%) of the lowest accepted bid for all other projects.~~

~~(2) — The bond shall be conditioned upon payment of all costs and fees that may be adjudged against the protestor in the administrative hearing. The bond must be filed no later than the time of filing of the formal protest. Failure of the protesting contractor to file the required bond within the time set forth herein shall result in an automatic dismissal of the protest.~~

~~Authority: BOG Regulation 1.001.~~

~~History: New 6-3-03. Formerly 6C1-3.073; Amended 3-23-18 (technical changes only).~~

~~REGULATIONS OF THE
UNIVERSITY OF FLORIDA~~

~~3.075 Construction; Procedures for Payment under Unbonded Construction Projects.~~

~~(1) On all construction projects where a performance and payment bond is not required to be provided, the following procedures shall be followed to ensure that laborers, materialmen and subcontractors performing work on University projects receive the payments due to them from the contractor:~~

~~(a) The contractor, before beginning work or within two workdays thereafter, shall post in a conspicuous place on the project site the following notice:~~

~~“Notice is hereby made to all those concerned and affected that
_____(Contractor’s Name) is performing
_____(Project Name), _____(Project
Number) at _____(Location). All parties
furnishing labor and/or materials to said project are to provide such
writing by certified mail to the University within twenty days of
first providing such labor and/or materials. Send notices to
_____(Address of Facilities
Office).”~~

~~(b) Parties furnishing labor and/or materials on University projects should provide written notice of the same to the University by certified mail within twenty (20) days of first providing such labor and/or materials. Notice should be sent to the facilities office whose address is provided in the project site notice.~~

~~(c) — In each pay request submitted by the contractor to the University, the contractor shall certify that all items and amounts shown on the face of the pay request are correct and that all just and lawful bills against contractor and his subcontractors for labor, materials, and equipment employed in the performance of the work have been paid in full in accordance with their terms and conditions.~~

~~(d) — Throughout the project, the University will retain an amount equal to ten percent (10%) of the amount of each pay request submitted by the contractor and approved by the University. In the event of payment default by the contractor, such retainage shall be utilized to pay claims as described in subsection (2) hereof.~~

~~(e) — The University will not pay the retainage to the contractor until all of the following, in addition to any other requirements of the contract, have occurred:~~

~~1. — the project architect/engineer or other person designated by the University for that purpose has issued a written certificate that the project has been constructed in accordance with the approved plans, specifications and approved change orders;~~

~~2. — the University has accepted the project; and~~

~~3. — the contractor has supplied the University with written, signed and sealed statements that identify the project name and number and that state no claims against the contractor (final release of lien) from all laborers, materialmen and subcontractors, as defined in Section 713.01, Fla. Stat., who have provided written notice to the University that they have provided labor or materials on the project or have notified the University of nonpayment by the contractor.~~

~~(2) — In case of default in payment by the contractor, the laborer, materialmen and subcontractors, as defined in Section 713.01, Fla. Stat. making claims for unpaid bills, will be~~

~~paid from the ten percent (10%) retainage on a pro rata basis. To determine a claimant's pro rata share, the sum of all claims made will be divided into each individual claim thereby deriving a percentage value for each claim. Then, the total retainage for the project will be multiplied by the claim's percentage value and the resulting quotient shall be the pro rata share of the retainage to be paid to a claimant, not to exceed the amount of the claim.~~

~~(3) — Failure to file written notice with the University in the manner provided in paragraph (1)(b) or in the event of a payment default by the contractor no later than thirty (30) days after substantial completion of the project shall constitute a waiver of any rights in the ten percent (10%) retainage.~~

~~(4) — The University shall not be liable to any laborer, materialman or subcontractor for any amounts greater than the pro rata share as determined under subsection (2).~~

~~(5) — All contractors shall pay the undisputed amounts owed for labor and/or materials to all laborers, materialmen and subcontractors within the time provided in Section 255.071, Fla. Stat.~~

~~(6) — For purposes of this rule, "contractor" shall have the same meaning as ascribed thereto in Section 713.01, Fla. Stat.~~

~~Authority: BOG Regulation 1.001.~~

~~History: New 12-31-03; Formerly 6C1-3.075; Amended 3-23-18 (technical changes only).~~

~~REGULATIONS OF THE
UNIVERSITY OF FLORIDA~~

~~3.076 Construction; Procedures to Contract for Construction Service.~~

~~(1) The University may employ, without limitation, the following procedures when contracting for construction services:~~

~~(a) Competitive bids;~~

~~(b) Best Value bids;~~

~~(c) Design build;~~

~~(d) Construction management;~~

~~(e) Program management; and~~

~~(f) Day labor contracts not exceeding \$200,000.~~

~~(2) For purposes hereof, "best value" means awarding the bid to the firm determined to possess the best combination of price and qualifications. The quotient obtained by dividing each firm's bid amount by the score it receives from an evaluation committee for its qualifications represents the best combination of price and qualifications, with the project being awarded to the firm with the lowest score.~~

~~Authority: BOG Regulation 1.001.~~

~~History: New 7-19-05, Formerly 6C1-3.076, Amended 03-23-18.~~