

NOTICE OF PROPOSED REGULATION AMENDMENT

Date: April 18, 2008

REGULATION TITLE:
Purchasing

REGULATION NO.:
6C1-3.020

SUMMARY: The changes allow the Director of Purchasing or designee to determine the method of public notice to be used in each case of a competitive solicitation. The changes clarify that printing is not subject to Chapter 283, Fla. Stat. The purchase of instructional materials may be excluded from the competitive solicitation process. The solicitation protest bond requirements have been removed, and provisions concerning vendors excluded from competition clarified.

AUTHORITY: BOG Resolution dated January 7, 2003.

COMMENTS CONCERNING THE PROPOSED REGULATION 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 IS: Rebecca J. Holt, Administrative Assistant, 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: Ed Poppell, Vice President for Business Affairs.

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

REGULATIONS OF
UNIVERSITY OF FLORIDA

6C1-3.020 Purchasing.

(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. ~~Printing of publications shall be considered a “commodity” when let upon contract in accordance with Section 283.33, Florida Statutes. Software to be used pursuant to license agreements shall be considered a “commodity.”~~

(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 s. 112.313, F.S.

(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) Minority Business Enterprise – A business concern as defined in s. 288.703(2), F.S.
- (m) President -- The chief executive officer of the University, responsible for its operation and administration.
- (n) 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.
- (o) Purchase -- An acquisition of commodities services obtained by purchase order or contract whether by rent, lease, installment- or lease-purchase, outright purchase, or license.
- (p) Purchases for Resale -- The purchase of commodities or contractual services acquired for the purpose of selling them for the benefit of the University.
- (q) 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.
- (r) 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.
- (s) 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.
- (t) 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. The Purchasing Department 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 respond to three (3) or more invitations or 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. A "No Bid" is a response.

(c) Plan and coordinating purchases in volume and negotiating and executing 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 and approve contracts let by the Federal Government, other states, political subdivisions, or any independent college or university or educational cooperative or educational consortium of 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) Elect as an alternative to any provision in s. 120.57 (3)(c), F.S., to proceed with a bid solicitation or contract award process when it is set forth, in writing, that the particular facts and circumstances which demonstrate that the delay due to staying the solicitation or contract award process would be detrimental to the interests of the University. After the award of contract resulting from a competitive solicitation in which a timely protest was received and in which the University did

not prevail, the contract will be canceled and re-awarded to the prevailing party unless the final order or settlement between the parties provides otherwise.

(g) 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 multiple state university-wide basis and the contracts may be for multiple years.

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

(4) Competitive Solicitations Required.

(a) All contracts for the purchase of commodities or contractual services exceeding \$~~75,000~~50,000 shall be awarded pursuant to a competitive solicitation, unless otherwise authorized herein.

(b) When only one response is received to a competitive solicitation for commodities or contractual services exceeding \$~~75,000~~50,000, the University will review the solicitation response and circumstances surrounding 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 will proceed with the acquisition.

(c) When multiple responses that are equal in all respects are received to a competitive solicitation, the University will give preference to responses that include commodities manufactured in the state, Florida businesses, businesses with a drug-free workplace program, or foreign manufacturers located in the state to determine the contract award, or, if these conditions do not exist or are the equivalent between two or more responses, will use toss of the coin.

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

(e) The intended award shall be publicly posted by the Purchasing Office which issues the Invitation to Bid, Request for Proposal or Invitation to Negotiate for 72 hours which is interpreted as three working days excepting Saturdays, Sundays, or State holidays.

(f) Advertisement ~~– Public Notice.~~ The Director of Purchasing, or a designee, shall determine the method of public notice to be used in each case of a competitive solicitation based on the nature and quantity of the commodities, contractual services and the availability and extent of competitive solicitation lists. ~~Invitations to Bid, Requests for Proposals, and Invitations to Negotiate for commodities expected to be in excess of \$150,000 and for contractual services expected to be in excess of \$50,000 shall be advertised in the Florida Administrative Weekly or Florida Communities Network. The Director of Purchasing shall waive the advertisement requirement when the number of potential bidders or proposers is limited and can otherwise be solicited, when the availability of funding so requires, or where delivery is urgent.~~

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

(h) 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) Purchase of Printing. Printing is not subject to~~shall be purchased in accordance with~~

Chapter 283, F.S.

(d) Purchases from Small and Disadvantaged~~Minority~~ Business Enterprises. The University is an equal opportunity institution and encourages procurement contracting with small and disadvantaged business which includes m~~Minority b~~Business e~~E~~nterprises.

(e) 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 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.

(f) 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 condition exists that threatens the health or safety of person(s) or animal(s) or the preservation or protection of property or the continuance of a vital University function, the University will proceed with an emergency purchase 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 threat and shall not be used to meet long-term requirements.

2. Sole Source Purchases. Commodities or contractual services available from a single source shall be exempted from the competitive solicitation process. The sole source document shall be publicly posted by the Purchasing Office for three working days.

3. Purchases from competitively bid Contracts and Negotiated Annual Price Agreements established by the State, other governmental entities, other public or private educational institutions, and educational cooperatives and educational consortiums 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.

(g) 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, and wheelchairs, provided

the devices 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 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;

12. Services or commodities provided by governmental agencies, another university in the state of Florida or other independent colleges and universities;

13. Programs or continuing education events that are offered to the general public for which fees have been 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. Extension of an existing contract;

18. Renewal of an existing contract if the terms of the contract specify renewal option(s);

19. Purchases from the Annual Certification List developed by the University;

20. Purchases for resale;
21. Accountant Services;
22. 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;
23. Implementation/programming/training services available from owner of copyrighted software or its contracted vendor; and
24. 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.

(h) Vendors Excluded from Competition~~Participants in Contract Awards Not Subject to Competitive Solicitations.~~

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.~~No person or firm who receives a contract to perform a feasibility study for potential implementation of a subsequent contract, participates in the drafting of a competitive solicitation, or develops a program for future implementation shall be eligible to contract with the University dealing with the specific subject matter.~~

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, Florida Statutes, and the University's regulation on outside activities, Regulation 6C1-1.011.

(6) Bonds.

(a) Payment and Performance Bonds. The University shall require any contractor contracting with the University to provide commodities 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 and the University is uncertain about the contractor's ability to perform.

~~(b) Solicitation Protest Bond. Any contractor that files an action pursuant to s. 120.57(3)(b), F.S., 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: 10% of the estimated value of the protestor's bid or proposal; 10% of the estimated expenditure during the contract term; \$10,000; or whichever is less. The bond shall be conditioned upon the payment of all costs which may be adjudged against the contractor filing the protest action. In lieu of a bond, the University will 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) Any contract for the purchase of services or tangible personal property for a period in excess of one fiscal year shall include the following statement: "The State of Florida's and University's performance and obligation to pay under this contract is contingent upon an annual appropriation by the Legislature."

(c) Extension of a contract shall be for a period not to exceed 12 months, shall be in writing, shall be signed by both parties, and shall be subject to the same terms and conditions set forth in the initial contract. There shall be only one extension of a contract.

(d) A contract may contain provisions for renewal. If the commodity or contractual service is purchased as a result of a competitive solicitation, the cost of any contemplated renewal must be included in the 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. When a commodity contract requires deferred payments and the payment of interest under that program, the contract will be submitted to the State of Florida Controller for the purpose of pre-audit review and approval prior to acceptance by the University. 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, F.S.

(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.

Specific Authority: BOG Resolution dated January 7, 2003.

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).

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