

NOTICE OF PROPOSED REGULATION AMENDMENT

Date: November 2, 2020

REGULATION TITLE: Administration and Finance; Procurement Services
REGULATION NO.: UCF-7.130

SUMMARY OF REGULATION AMENDMENT: This regulation is amended to add new language to section (1)(e) concerning the use of existing Shared Initiatives contracts where practical, unless not in the best interest of the university and section (1)(g) has been amended to add language providing justification documentation for the use of contract adoption. Additional language has also been added to (3)(i)4 to clarify the use of auditor services that are not subject to the competitive solicitation process. These language changes conform to recent amendments to Florida Board of Governors' Regulation 18.001.

AUTHORITY: BOG Regulations 1.001, 18.001, 18.002, and 18.003

NAME OF PERSONS WHO INITIATED PROPOSED REGULATION AMENDMENT:
Regulations Administrator

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:

Regulations Administrator
4365 Andromeda Loop N.
Millican Hall, Suite 360
Orlando, FL 32816-0015
Phone: (407) 823-2482
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FULL TEXT OF THE PROPOSED REGULATION AMENDMENT:

UCF-7.130 Administration and Finance; Procurement Services.

(1) The University Board of Trustees (BOT) 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 University Procurement Services Department has the duty to:

- (a) Develop procurement procedures.
- (b) Canvass sources of supply and contracting for the procurement or lease of all commodities and contractual services for the University, in any manner, including procurement 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.
- (c) Recommend or advise the suspension or debarment of a contractor, in accordance with University Regulation UCF-7.124, from doing business with the University for demonstrated cause, including previous unsatisfactory performance.
- (d) Plan and coordinate procurements in volume and negotiate and execute agreements and contracts for commodities and contractual services under which the University may make procurements.
- (e) Where practical and available, implementing the use of existing State University System (SUS) Shared Initiatives contracts; unless the Director of Procurement/Chief Procurement Officer or designee documents that such use is not in the best interest of the university.
- (fe) Develop an Annual Certification List to serve as a waiver of the competitive solicitation requirement for commodities/services that are frequently procured and are available from a single source.
- ~~(gf)~~ Evaluate, approve, and utilize contracts that are entered into after a public and open competitive solicitation by any State of Florida agency, ~~or~~ department, Florida state college or university, 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. The Universityies must maintain appropriate justification for use of services contract adoption. The University shall review existing consortia and cooperative contracts to identify potential savings and, if there is the potential for savings, enter into new consortia and cooperative contracts

to achieve the savings, with the goal of achieving a five-percent savings on existing contract prices.

- (hg) Elect as an alternative to any provision in Board of Governor's (BOG) Regulation 18.002 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 a contract resulting from a competitive solicitation in which a timely protest was received and in which the University did not prevail, the contract may be canceled and re-awarded to the prevailing party.
- (ih) 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.
- (ij) Reject or cancel any or all competitive solicitations when determined to be in the best interest of the Institution.
- (kj) Inspect the part of the plant or place of business to determine the capability of contract performance of a contractor or any subcontractor which is related to the performance of any contract awarded or to be awarded by the University, when specified in the agreement.

(2) Competitive Solicitations Required.

- (a) All contracts for the procurement of commodities or contractual services exceeding \$75,000 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 the University shall 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 shall proceed with the acquisition or cancel 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, or foreign manufacturers located in the state to determine the contract award, or, if these conditions do not exist, will use coin toss to determine the award.~~toss of the coin.~~
- (d) The procurement of commodities and contractual services shall not be divided to avoid the requirement of competitive solicitation.
- (e) The Procurement Services Department, in issuing an Invitation to Bid, Request for Proposal or Invitation to Negotiate, shall provide notice of a decision or intended decision concerning a solicitation, or contract award by electronic posting for 72 hours, which is interpreted as three business days. (Business days do not include Saturdays, Sundays, State or University holidays, or any other days when the University is otherwise closed for business.) This notice shall contain the following statement: "Failure to file a protest in accordance with BOG regulation 18.002, or failure to post the bond or other security as required in BOG regulation 18.003, shall constitute a waiver of protest proceedings."
- (f) Advertisement. 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 \$75,000 shall be advertised in the Florida Administrative Weekly or the State of Florida's VBS System. The head of The Procurement Services Department or designee shall have the authority to waive this 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) Bids and proposals shall remain sealed (with the exception of typical information revealed at the Bid/Proposal opening for the tabulation sheet) until notice of final contract award is given or in accordance with Florida Statute as appropriate.
- (h) In the case of extension errors, the unit price will prevail.
- (i) 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.

- (j) Bid/Proposal Evaluations – Bids/Proposals shall be evaluated based on the requirements set forth in the Invitation to Bid/ Request for Proposal/Invitation to Negotiate, which may include criteria to determine acceptability such as inspection, testing quality, workmanship, delivery and suitability for a particular purpose. Those criteria that will affect the bid/proposal price and be considered in evaluation for award shall be objectively measured, such as all or none, discounts, transportation costs and total or life cycle costs. The Invitation to Bid, Request for Proposal or Invitation to Negotiate shall set forth the criteria to be used. No criteria may be used in bid/proposal evaluation that is not set forth in the Invitation to Bid, Request for Proposal or Invitation to Negotiate.

(3) Procurement of Commodities or Contractual Services.

- (a) Procurement of Products with Recycled Content. The University encourages the procurement and use of products and materials with recycled content and post consumer recovered material.
- (b) Procurement of Private Attorney Services. Written approval from the Attorney General is not required for private attorney services acquired by the University.
- (c) Procurement of Insurance. The University has the authority to procure 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 (but are not limited to) insurance coverage for:
 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. Loss of rental income;
 6. Excess general liability coverage;
 7. Professional liability;
- (d) Procurement of Printing. Printing shall be procured in accordance with the requirements of these rules. The University may refer to the requirements of

Chapter 283, F.S., and rules promulgated thereto for guidance with respect to the procurement of printing services.

- (e) Procurements from Small, Minority ~~and~~ Woman, and Veteran-Owned Business Enterprises (SMWBE). The University is an equal opportunity institution and encourages procurement contracting with SWMVBE.
- (f) Procurements from Contractors Convicted of Public Entity Crimes. The University shall not accept a competitive solicitation from, or procure 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.
- (g) Preferences for Florida-Based Vendors when Procuring Personal Property: For procurements of tangible personal property, the Florida Legislature enacted economic development laws establishing certain conditions and circumstances which, when applicable, require the granting of price preferences to businesses whose principal place of business is the State of Florida. Pursuant to §287.084 Florida Statute, award recommendations shall make appropriate adjustments to Resident Vendor pricing when considering solicitations from Bidders having a principal place of business outside the State of Florida. Refer to Florida Statute 287.084 and BOG Regulation 18.001 for additional information regarding applicability and implementation of this section.
- (h) Procurement actions that are not subject to the competitive solicitation process include but are not limited to:
 1. Emergency Procurements. When the President or his or her 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 may proceed with an emergency procurement without a competitive solicitation. The emergency procurement shall be limited to the procurement 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 Procurements. Commodities or contractual services available from a single source shall be exempted from the competitive solicitation process. Sole Source document shall be publicly posted by the Procurement Services Department for three working days. Working days do not include Saturdays, Sundays, or State or University Holidays.
 3. Procurements from competitively bid Contracts and Negotiated Annual Price Agreements established by the State, other governmental entities, other public or private educational institutions, and any procurement cooperative or consortium are not subject to competitive solicitation.
 4. Construction Direct Procurement Program. Commodities to be incorporated into any public work (as that term is defined in Rule 12A-1.094, F.A.C.) which are procured by the University in accordance with the requirements of the University's direct procurement program are not subject to any further competitive solicitation.
- (i) Commodities and contractual services that are not subject to the competitive solicitation process include:
1. Artistic services;
 2. Academic reviews;
 3. Lectures;
 4. Accountant services,
 5. ~~including a~~ Auditor services, including those services needed to address audit, financial and fraud-related compliance, controls, and investigative matters, or such other related services;
 65. Legal services, including attorney, paralegal, expert witness, appraisal, lobbyist, arbitrator or mediator services;
 76. Health services, including related equipment and supplies, involving examination, diagnosis, treatment, prevention, consultation or administration of physical or mental conditions or the provision of developmental or vocational rehabilitation;
 87. 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;

- 98. Training and education services;
- 109. Advertising; except for media placement services;
- 1140. Services or commodities provided by governmental agencies, another university in the State of Florida or other independent colleges and universities;
- 1244. 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;
- 1342. Procurements from firms or individuals that are prescribed by state or federal law or specified by a granting agency;
- 1413. Regulated utilities and government franchised services;
- 1514. Regulated public communications, except long distance telecommunication services or facilities;
- 1615. Extension of an existing contract; (see section (6)(c));
- 1746. Renewal of an existing contract if the terms of the contract specify renewal option(s); see section (6)(d));
- 1847. Procurements from the Annual Certification List developed by the University;
- 1948. Procurements for resale;
- 2019. Contracts or services provided by not-for-profit support and affiliate organizations of the University, direct support organizations, health support organizations and faculty practice plans;
- 2120. Implementation/programming/training services available from the owner of copyrighted software or its contracted vendor;
- 2221. Procurements 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. Sponsored research documents shall be publicly posted by the Procurement Services Department for three business days.

~~2322~~. Procurements for the Florida High Tech Corridor initiative.

(j) Participants in Contract Awards Not Subject to Competitive Solicitations.

1. 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 specifications, or designs or develops a program for future implementation shall be eligible to contract with the University dealing with the specific subject matter.
2. The individuals taking part in the development or selection of criteria for evaluation, the evaluation process and the contract award in any procurement shall be independent of, and have no conflict of interest in, the entities evaluated and selected and may be required to so attest in writing.

(4) Bonds.

- (a) Solicitation Security. A certified, cashier's or treasurer's check, bank draft or bid bond may be required as a condition for participating in a competitive solicitation where the University is reasonably uncertain about the contractor's ability to perform, and the expected value of the contract is in excess of \$100,000.
- (b) Payment and Performance Bonds for Commodities and Services Contracts. The head of the Procurement Services Department or designee is authorized to require any contractor contracting with the University to provide services or commodities (including 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 \$100,000 and the University is uncertain about the contractor's ability to perform.
- (c) A bond or security required pursuant to paragraphs (a) or (b) above must be in an amount equal to 100% of the response submitted to the competitive solicitation.
- (d) Solicitation Protest Bond. Any contractor that files a formal protest pursuant to the protest procedures of BOG Regulation 18.002 and this regulation 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 may accept a cashier's check or money order in the amount of the bond.

(5) Notice and Protest Procedures for Protests Related to a University's Contract Procurement Process

- (a) The procedures set forth in BOG Regulation 18.002 shall apply exclusively to any protest that arises from any university contract procurement processes for the procurement of goods, services, leases and for construction-related competitive solicitations.
- (b) Any qualified offeror who is adversely affected by the university's decision may file a written notice of intent to protest within 72 hours after university posting of award or intent to award notice. The protesting firm must reduce its complaint to a written petition and file it with the department that issued the solicitation within ten (10) calendar days from registration of the original complaint. Failure to timely file a protest or failure to timely deliver the required bond or other security in accordance with the Board of Governors' (BOG) Regulations 18.002 and 18.003 shall constitute a waiver of protest proceedings. Additional information on protest procedures can be viewed in the above referenced BOG Regulations.

(6) Contracts.

- (a) Acquisitions of commodities, contractual services, or licenses shall be executed with a purchase order or a bilateral agreement/contract, prior to the goods or services being ordered, contracted for, or rendered by the vendor. Procurement using a pCard, where compliant with applicable policies and procedures, or prior verbal approval from the Procurement Services Department, are also acceptable means to obligate the university for a procurement. All necessary procurement actions (i.e. competition, competition exemptions, approvals) must take place prior to signing a contract/agreement or engaging in any actions that will obligate the university. For procurement under a bilateral agreement/contract or prior verbal

approval from the Procurement Services Department, the requisition to process the associated purchase order must be submitted within thirty (30) days of (i) delivery of the commodities or (ii) the obligation for contractual services or licenses being incurred.

- (b) Any contract for the procurement of services or tangible personal property for a period in excess of one fiscal year shall include the following or an equivalent 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) ~~Permitting the extension(s) of a~~ contract, entered into as a result of a competitive solicitation may be extended, for up to twelve (12) months or until completion of the competitive solicitation and award or protest, whichever is longer. The extension shall be in writing, signed by both parties, and shall be subject to the same terms and conditions set forth in the initial contract.
- (d) A contract may contain provisions for renewal. If the commodity or contractual service is procured 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. Renewals of a contract, whether the contract resulted from a competitive process or other procurement method, shall be for a period that may not exceed 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.
- (e) When any commodity contract requires deferred payments and the payment of interest, such contract may be submitted to the State of Florida Comptroller for the purpose of pre-audit review and approval prior to acceptance by the University. The President shall have the authority to enter into deferred payment agreements utilizing the State of Florida Comptroller’s Consolidated Equipment Financing Program. No agreement shall establish a debt of the state or shall be a pledge of 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 is, for purposes of this regulation and university procedures, the procurement price for the initial term plus all renewal costs.
- (h) If a contractor does not furnish proof of payment to subcontractors, suppliers, or laborers within 60 days after the project is certified to be finally complete by the University, the University will pay any retainage, on a pro-rata basis, directly to the subcontractors, suppliers or laborers. In order to obtain payment, subcontractors, suppliers, or laborers who have not been paid after the 60 days have passed have an additional 30 days to submit documentation satisfactory to the University showing that they have performed work on the project, the amount due, and certifying that they have not been paid. If a contractor does not complete a project, the University will use any retainage to complete the work and then pay any balance of the retainage, on a pro-rata basis, to subcontractors, suppliers, or laborers who provide the above required documentation within 30 days after the completion of the project.

(7) Standard of Conduct. It shall be a breach of ethical standards: (a) 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; (b) 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; or (c) for any University or University direct support organization employee participating on a procurement selection committee to solicit donations from responding vendors during the selection process, except for donations or benefits expressly stated in the procurement document.

(8) Procurement 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, procured or used by University personnel;
 - 2. Obtain the most cost effective and efficient 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 procurement, lease, installment-purchase, loan or by any other legal means and may include a trade-in. All motor vehicles procured or leased shall be of a class that will safely transport University personnel and adequately meet the minimum 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.

(9) Public Records.

- (a) Agreements may be canceled unilaterally by the University for refusal by the vendor/contractor to allow public access to all papers, documents, letters or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received by the vendor/contractor in conjunction with the Agreement.
- (b) The University is subject to the Florida Public Records laws.
- (c) Contract for Services. To the extent that Payee meets the definition of “contractor” under Section 119.0701, Florida Statutes, in addition to other contract requirements provided by law, Payee must comply with public records laws, including the requirements of Section 119.0701, Florida Statutes.

(10) Vendors Excluded from Competition. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, Invitations to Bid, Request for Proposals and/or Invitations to Negotiate shall be excluded from competing for such procurements.

Authority: BOG Regulations 1.001, 18.001, 18.002 and 18.003. History—New 4-23-03, Amended 4-17-06, 8-6-07, 10-19-07, Formerly 6C7-7.130, Amended 7-6-09, 8-8-14, 10-29-15, 7-5-16, 4-17-17, 1-24-19, _____-20.