

FLORIDA A&M UNIVERSITY BOARD OF TRUSTEES



NOTICE OF PROPOSED AMENDED REGULATION

DATE: May 15, 2024

REGULATION CHAPTER NO.: Chapter 6

REGULATION CHAPTER TITLE: Purchasing Program

REGULATION TITLE AND NO: Procurement of Commodities and Contractual Services (6.005)

SUMMARY OF REGULATION: As a result of Board of Governor's increased competitive solicitation thresholds, this Regulation amends the requirements and purchasing thresholds for obtaining written quotations when purchasing commodities and services as follow: Requiring one (1) quote instead of two (2) for a purchase value of \$5,000.01 up to \$10,000.00, requiring two (2) instead of three (3) quotes for a purchase value of \$10,000.01 but less than \$75,000.00, and added a requirement of three (3) quotes for a purchase value of \$75,000.01, but less than \$150,000.00; amended the competitive solicitation threshold from \$75,000.00 to \$150,000.00. The Commodities and Commodities and Contractual Services that are not subject to the competitive solicitation process categories were expounded upon and categories added. Approval authority threshold for contracts and contract amendments was changed for the following administrators: Director of Procurement changed from \$25,000.00 to \$75,000.00. The President or President's designee changed from \$25,000.00 up to \$150,000.00 and the President changed from \$75,000.00 to \$150,000.00. In addition, this Regulation is amended to make technical and grammatical revisions.

AUTHORITY FOR REGULATION: Article IX, Section 7(c), Florida Constitution, Board of Governors Regulation Development Procedure dated July 21, 2005, Board of Governors Regulation 1.001, 18.001, 18.002, and 18.003, Section 1.004.22(7), Florida Statutes.

UNIVERSITY OFFICIAL INITIATING THIS REGULATION: Mattie Hood, Interim Assistant Vice President, Finance and Administration.

PROCEDURE FOR COMMENTS: Written comments concerning this proposed regulation shall be submitted within 14 days of the date of this notice to the person identified below. The comments must specifically identify the regulation you are commenting on.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED REGULATION IS: W. Rebecca Brown, Sr. Vice President for Finance and Administration/Chief Financial Officer, 1601 S. Martin Luther King Jr. Blvd., 103 Lee Hall, Tallahassee, Florida 32307, (850) 599-3211 (phone), (850) 599-3848 (fax), rebecca.brown@fam.u.edu.

FULL TEXT OF THE PROPOSED REGULATION: The full text of this amended Regulation follows:

Florida A&M University Regulation



6.005 Procurement of Commodities and Contractual Services.

(1) Purchases with a value of up to \$5,000 shall be carried out using good purchasing practices. Purchases with a value of \$5,000.01 up to \$10,000 shall be carried out using good purchasing practices which shall include but not be limited to one (1) ~~two (2)~~ or more written quotations or written records of verbal quotations. Purchases with a value of \$10,000.01, but less than \$75,000 shall be made by securing at least two (2) ~~three (3)~~ written quotations. Purchases with a value of \$75,000.01, but less than \$150,000 shall be made by securing at least three (3) written quotations. If verbal quotations are received, the company name and company contact person, date and address of company and amount quoted shall be a part of the written documentation. All purchases with values which exceed \$150,000~~75,000~~ shall be awarded pursuant to a competitive solicitation, unless otherwise authorized herein. If the University Office of Procurement Services determines that commodities/contractual services are available only from a single source or that conditions warrant negotiation on the best terms and conditions, the University Department may proceed with the procurement. The Office of Procurement Services University shall document the conditions and circumstances used to determine the procurement method.

(2) *Purchase of Private Attorney Services.* Written approval from the General Counsel of the University is required for private attorney services acquired by the University.

(3) *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:

- (a) Physical damage on vehicles and boats;
- (b) Inland marine on property owned, leased, or loaned to or by the University;
- (c) Building and property damage;
- (d) Equipment losses due to theft;
- (e) Equipment subject to transportation;
- (f) Loss of rental income;

- (g) Commercial general liability insurance for scientific equipment;
 - (h) Excess general liability coverage; and
 - (i) Camps insurance.
- (4) *Purchase of Printing.* Printing shall be purchased in accordance with Chapter 283, F.S. and the University's Procurement Manual.
- (5) *Purchases from Minority Business Enterprises.* The University is an equal opportunity institution which encourages and promotes procurement participation and contracting with minority business enterprises ("MBEs"). MBEs should have a fair and equal opportunity to compete for dollars spent by the University to procure commodities and services. Competition ensures that prices are competitive and that a broad vendor base is available. The University will use good faith efforts to ensure that MBE vendors are aware of procurement and contract opportunities.
- (6) *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-, Department of Management Services' eConvicted veVndor HList for a period of 36 months from the date of being added to the convicted vendor list https://www.dms.myflorida.com/business_operations/state_purchasing/state_agency_resources/vendor_registration_and_vendor_lists/convicted_vendor_list.
- (7) *Purchases for Personal Convenience Prohibited.* Items requested that are of a personal nature or for personal convenience of employees shall not be purchased. Examples are: fans, heaters, coffee pots, mugs, refrigerators, microwaves, picture frames, wall hangings, smoke/air filters and various decorative items.
- (8) *Cooperative Purchasing.* The University may participate in, sponsor, conduct or administer cooperative purchasing agreements for the procurement of any supplies, service or construction with one or more Universitiesy in that State University System, the Board of Governors or other governmental agencies/entities. Such cooperative purchasing may include, but is not limited to, joint or multi-party contracts between Universities and open-ended procurement with contracts which are made available to other state entities.
- (9) *Competitive Solicitation.*
- (a) *Purchases Exceeding \$150,000 ~~75,000~~.* All contracts for the purchase of commodities or contractual services exceeding \$150,000 ~~75,000~~ shall be

awarded pursuant to a competitive solicitation, unless otherwise authorized herein. The purchase of commodities and contractual services shall not be divided to avoid the requirement of competitive solicitation. The opportunity to respond to a competitive solicitation is a privilege, not a right.

(b) *Advertisement.* Competitive solicitations for purchases in excess of ~~\$75~~150,000 shall be electronically posted on the Procurement Department's website designed by the University and electronically posted on Florida Communities Network and may be advertised in a newspaper of general circulation or in the Florida Administrative Weekly. The Director of Procurement shall have the authority to waive the advertisement requirement when determineds in writing to be in the best interest of the University. The Director of Procurement shall waive the advertisement requirement when the number of potential bidders or proposers is limited and can be solicited, when the availability of funding so requires, or where delivery is urgent.

(c) *Receipt of Responses.* Competitive solicitation responses shall be delivered, - as directed in the competitive solicitation to the Procurement Department or as otherwise directed, at or prior to the date and time specified in the competitive solicitation. Responses that are not delivered to the specific ~~place~~location, as directed in the competitive solicitation, no matter what the reason, shall not be considered. It is the offeror's responsibility to assure that their response is delivered at the proper time and place.

1. Prior to the time a competitive solicitation is opened, the Director of Procurement or designee, may change or correct the terms, conditions, or specifications by posting or issuing an addendum to all known recipients of the competitive solicitation.

2. An offeror to a competitive solicitation may withdraw or correct a response prior to the time that the competitive solicitation is opened. Any alteration or correction to a response must be in writing and signed by the authorized representative who ~~singed~~signed the original response.

(d) When only one response is received to a competitive solicitation for commodities or contractual services exceeding ~~\$75~~150,000, 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 after written justification prepared by the Director of Procurement and approved by the Vice President for ~~Finance and Administration~~Fiscal Affairs prior to the acquisition.

- (e) When multiple responses that are equal in all respects are received to a competitive sealed solicitation, the University will give preference to responses that include commodities manufactured in the State of Florida, Florida businesses, businesses with a drug-free workplace program, or foreign manufacturers located in the state, to determine the contract award. If these conditions do not exist or are the equivalent between two or more responses, the toss of the coin shall be used to award the contract.
- (f) Late responses to a competitive solicitation shall remain sealed and shall not be evaluated.
- (g) In the case of extension errors in a response to a competitive solicitation, the unit price will prevail.
- (h) *Withdrawal of Response.* A vendor may withdraw their competitive solicitation in writing within 72 hours of the competitive solicitation opening, if the competitive solicitation is clearly erroneous and the error can be independently verified, it may be withdrawn prior to final award or purchase order being issued or thereafter with written consent of the President or designee when the interest of the University will not be adversely affected by the withdrawal.
- (i) *Evaluation Committee.* The President or President's designee shall appoint at least three persons to evaluate proposals and replies who collectively have experience and knowledge in the program areas and service requirements for which commodities or contractual services are sought. And, at least three persons to conduct negotiations during a competitive solicitation who collectively have experience and knowledge in negotiating contracts, contract procurement, and the program areas and service requirements of which commodities or contractual services are sought. The President or President's designee may bring in an outside consultant(s) to assist in the decision.
- (j) *Posting of Award.* The intended award shall be electronically posted on the Purchasing Department website designated by the University and may also be

publicly posted by the Office which issues the competitive solicitation for 72 hours which is interpreted as three working days excepting Saturdays, Sundays, or State holidays. The notice shall contain the following statement: “Failure to timely file a protest or failure to timely deliver the required bond or other security in accordance with the Board of Governors’ Regulations 18.002 and 18.003 shall constitute a waiver of protest proceedings.”

- (k) *Protest.* The procedures set forth in Board of Governors Regulation 18.002 shall apply to protests that arise from all university contract procurement processes for the purchase of goods, services, leases, and for construction-related competitive solicitations, and shall be the exclusive set of procedures applicable to all such protests.

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

- (a) *Emergency Purchases.* When the President or Vice President for Finance and Administration~~is~~seal Affairs certifies in writing, that a condition exists that threatens the health, welfare, or safety of person(s) or animal(s) or the preservation or protection of property, the continuance of a vital University function, or when the delayed incident to such procurement may be detrimental to the interest of the University, the University will proceed with an emergency purchase without a competitive solicitation, provided that such emergency procurement is made with such competition as is practical under the circumstances. The certification shall be received within thirty (30) days of the declaration of the emergency. The written certification shall be included in the Purchasing Department file.
- (b) *Sole Source Purchases.* Upon receipt of justification from the user department, school, college or division and the proposed single source, the Director of Procurement or designee may select a single source without competitive solicitation if, after conducting a search for available sources, the Director of Procurement or designee certifies in writing that only a single source is practicable or for other reasons a single source selection is in the University’s best interest. Upon Purchasing the Director’s written approval of a sole source selection, contract negotiations shall commence with the single source. The

Purchasing Department shall maintain a record of the sole source procurement. The sole source document shall be publicly posted by the Purchasing Office for three working days. The President or Vice President for Finance and Administration~~Fiscal Affairs~~ may approve and execute an annual certification list for those commodities and services purchased on a regular basis and proved to be available from a single source. The sole source exemption “form” will be publicly posted in accordance with Florida Board of Governors Regulation 18.002.

- (c) *Other Governmental or University Contracts.* Purchases from competitively solicited Contracts and Negotiated Annual Price Agreements established by the State, other governmental entities, university in the state of Florida, other public or private educational institutions, and educational cooperatives and educational consortiums are not subject to further competitive solicitation.
- (d) *Construction Direct Purchase Program.* Commodities to be incorporated into any public work (as that term is defined in 12A-1.094, F.A.C.) 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.

(11) *Commodities and Contractual Services that are not subject to the competitive solicitation process include:*

- (a) Academic ~~R~~ reviews;
- (b) Accounting ~~S~~ services;
- (c) Auditing services including those services needed to address audit, financial and fraud-related compliance, controls, and investigative matters, or such other related services;
- (d) Advertising; except for media placement services;
- (e) Artistic ~~S~~ services;
- (f) Family placement services;
- (g) 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~~~~esthetics~~, and wheelchairs and other related equipment and

supplies, 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;

- (h) 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;
- (i) 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;
- (j) Lectures;
- (k) Legal services, including attorney, paralegal, expert witness, appraisal, arbitrator or mediator services;
- (l) Payment of membership dues pursuant to Section 216.345, F.S.;
- (m) Programs, conferences, workshops or continuing education events or other University programs that are offered to the general public for which fees have been collected to pay all expenses associated with the program or event or that are required by a grant to be purchased, attended held or organized;
- (n) Purchases from firms or individuals that are prescribed by state or federal law, or specified by a granting agency;
- (o) Purchases from the Annual Certification List developed by the University;
- (p) 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;
- (q) Implementation/programming/training services available from owner of copyrighted software or its contracted vendor;
- (r) Regulated utilities and government-franchised services, ~~R~~regulated public communications, except Long distance telecommunications;
- (s) Purchases of materials, supplies, equipment, or services for instructional or sponsored research purposes when the Vice President for Research or designee certifies in writing 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 and Regulation 6.007;
~~and~~

~~(t)~~ Training and education services;-

~~—Purchases for resale;~~

~~(u)~~ 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.

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

- (a) No individual, firm or contractor/vendor 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.
- (b) 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 be independent of and have no conflict of interest in the entities evaluated and awarded the contract. Such persons shall follow all relevant portions of the State of Florida Code of Ethics for Public Employees, Chapter 112, Part 3, Florida Statutes and the Universities regulations and University Board of Trustees policies governing conflicts of interest.

(13) *Bonding Requirements.*

- (a) Solicitations Security. A certified, cashier's or treasurer's check, bank draft, ~~bank~~ official check or bid bond may be required as a condition for participating~~en~~ in a competitive solicitation.
- (b) Payment and Performance bonds.

(1.) Any contractor contracting with the university to provide commodities, services or commodities which include installation, may be required to furnish a payment and performance bond, with good and sufficient securities, to the University prior to the issuance of the contract.

(2.) The bond or security must be in an amount equal to 100% of the response submitted to the competitive solicitation.

(c) Solicitation Protest Bond. Any entity filing an action protesting a decision or intended decision pertaining to a competitive solicitation shall, at the time of filing of the formal protest, post with the university a bond payable to the University in the 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 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 entity to file the required bond, cashier's check, bank official check or money order at the time of filing the formal protest shall result in the denial of the protest.

(14) *Contracts.*

(a) Contracts for commodities or contractual services or licenses shall consist of a purchase order or bilateral agreement signed by the Director of Procurement, University President or University President's designee, in accordance with the requirements herein, prior to goods or services being rendered by the contractor or within thirty (30) days of the good and services being rendered in the case of a valid emergency as certified by the President or Vice President for Finance and Administration~~seal-Affairs~~. Such purchase orders and bilateral agreements shall contain the following provisions:

1. A provision providing dates of service.
2. A provision detailing price and payment terms.

3. A provision that bills for fees or other compensation for services or expenses be submitted in detail sufficient for a proper pre-audit and post-audit thereof.
4. A provision that bills for any travel expenses be submitted in accordance with section 112.061, Florida Statutes. The university may establish rates lower than the maximum provided in section 112.061, F. S.
5. A provision dividing the contract into units of deliverables, which shall include, but not be limited to, reports, findings and drafts, that must be received and accepted in writing by the contract manager prior to payment.
6. A provision specifying the criteria and the final date by which such criteria must be met for completion of the contract.
7. A provision specifying that the contract may be renewed for a period that may not exceed 5 years or the term of the original contract, whichever period is longer, specifying the renewal price for the contractual services purchased by competitive solicitation which shall be set forth in the competitive solicitation, specifying that costs for the renewal may not be changed, and specifying that renewals shall be contingent upon satisfactory performance evaluations by the University and are subject to the availability of funds.
8. A provision allowing unilateral cancellation by the University for contractor's refusal to allow public access to all documents, papers, letters, or other material made or received by the contractor in conjunction with the contract, unless records are exempt from section 24(a) of Art. I, of the State Constitution and section 119.07 (1), F. S.
9. 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."
10. Extension of a contract, entered into as a result of a competitive solicitation, shall be for a period not to exceed 12 months or until completion of the competitive solicitation and award or protest,

whichever is longer, 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 and any amendments thereto.

11. A Public Records, Chapter 119, F.S., provision.

12. A provision stating the University does not indemnify or hold harmless any party or entity.

13. A provision prohibiting contingency fees termination clause.

- (b) The President or President's designee is authorized to enter into deferred payment agreements when it is financially advantageous to the University. The University may utilize the State of Florida Department of Financial Services Consolidated Equipment Financing Program if it is deemed financially advantageous. When the Consolidated Equipment Financing Program is used, the University will submit the contract to the State of Florida Chief Financial Officer 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 a pledge to the faith and credit of the State; nor shall any agreement be a liability or obligation of the State except from appropriated funds.
- (c) In order to promote cost effective procurement of commodities and contractual services, the University may enter into contracts that limit the liability of a contractor/vendor consistent with Section 672.719, F.S. and consistent with the lawful limits of sovereign immunity.
- (d) The total value of the contract shall be the purchase price for the initial term plus all renewal costs.
- (e) The Director of Procurement shall approve contracts and contract amendments up to \$275,000. The President or President's designee shall approve contracts and contract amendments ~~from \$25,000 up~~ to \$75150,000. All contracts and contract amendments from \$75150,000 to \$1,000,000 shall be approved by the University President, unless otherwise delegated by the University President or the University Board of Trustees. All contracts which exceed \$1,000,000 shall be approved by the University Board of Trustees. The authority to execute contracts may be further delegated by the University Board of Trustees or the University President.

- (f) All contracts must be approved by the University Attorney as to form and legal sufficiency, except form contracts issued by the General Counsel, which have not been amended.

Specific Authority: Article IX, Section 7, Florida Constitution, Board of Governors Regulation 1.001, ~~and 18.001~~, 18.002, and 18.003, Sections 672.719 and 1004.22(7), Florida Statutes. History – New 12-07-06; Amended 10-26-07; Amended 8-25-08, Amended 7-14-18, Amended XX-XX-24.