

FLORIDA A&M UNIVERSITY BOARD OF TRUSTEES



NOTICE OF PROPOSED NEW REGULATION

Date: November 7, 2006

REGULATION CHAPTER TITLE: Purchasing Program **REGULATION CHAPTER NO.:** Chapter 6

REGULATION TITLES AND NUMBER: Definitions (6.003)

SUMMARY OF REGULATION: The amended and renumbered Regulation provides definitions for the various procurement and non-procurement terms used throughout the Regulation. The majority of the definitions from the former Regulation are carried over; however, many terms were not defined in the previous Regulation and have been defined and incorporated into this Regulation. In addition, obsolete definitions have been deleted and former definitions have been revised. This Regulation has been expanded from 25 to 39 definitions.

AUTHORITY FOR REGULATION: Article IX, Florida Constitution, Board of Governors Regulation Development Procedure dated July 21, 2005, Sections 120.57(3), 288.703(2), 1001.74(4), (5), 1001.75(5) and 1010.04, Florida Statutes.

UNIVERSITY OFFICIAL INITIATING THIS REGULATION: Dr. Grace Ali, Vice President for Fiscal Affairs.

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: Shira R. Thomas, Office of the General Counsel, Suite 300 Lee Hall, Tallahassee, Florida 32307, (850) 599-3591 (phone), (850) 561-2862 (fax), regulations@famu.edu.

FULL TEXT OF THE PROPOSED REGULATION: The full text of the proposed amended regulation follows:

Regulations of Florida A&M University



6.003 Definitions.

- (1) 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.
- (2) Bidder/Offeror – A person or business submitting a response to a competitive solicitation.
- (3) Blanket Purchase Order (Blanket Order) - An arrangement under which the University contracts with a vendor/contractor to provide the University's requirements for an item or a group of items or a service, ordered on an as needed basis. It prescribes the contract term and maximum amount of money which may be spent. No purchase may be divided into two or more purchases for the purpose of evading the competitive solicitation requirement and each purchase made under a blanket purchase order should be of the kind that could be made without competitive solicitation if there were no blanket purchase order.
- (4) Commodity - Any of the various supplies, materials, goods, merchandise, food, equipment, information technology, and other personal property, including a mobile home, trailer or other portable structure, which are purchased, leased, lease-purchases 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 this Regulation. Software to be used pursuant to license agreements shall be considered a "commodity."

- (5) Competitive Bid/Proposal - The response submitted to an Invitation to Bid, Invitation to Negotiate, or a Request for Proposal by responsive and responsible bidders or offerors.
- (6) Competitive Negotiation - The establishment of a contract through deliberation, discussion or conference on the specifications, terms and conditions of a proposed agreement.
- (7) Competitive Solicitation - An Invitation to Bid, Request for Proposal, Request for Quotation or Invitation to Negotiate to competitively select a contractor.
- (8) Construction - Construction means the process of building, altering, repairing, renovating, improving or demolishing any public facility or other improvements to any public real property by contract.
- (9) Contract- document issued by the Purchasing Department, including purchase orders and agreements, regardless of their designation.
- (10) Contractor/Vendor - A person or firm who contracts to sell commodities or contractual services to the University.
- (11) 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.

- (12) Definite Quantity Contract- a contract whereby the contractor agrees to furnish a specific quantity of an item or items at a specified price and time to specified locations. Delivery and acceptance of the specific quantity by the University completes such contract.
- (13) Direct Owner Purchase – The purchase of materials and equipment by the University that are originally included in a construction managers, contractors or subcontractors bid or proposal for university construction project.
- (14) Emergency- A sudden unforeseen turn of events detrimental to health, safety and welfare of the public or the University.
- (15) Electronic Posting or Electronically Post – means the posting of solicitations, university decisions or intended decisions, or other matters relating to procurement on the Purchasing Department website designated by the University for this purpose.
- (16) Exceptional Purchase - Any purchase of commodities, contractual services or construction excepted by law or regulation from the requirements for competitive sealed bids/proposals or acquisition including purchase from a single source, purchase upon receipt of no competitive bids/proposals and purchase through negotiation.
- (17) Extension - An increase in the time allowed for the contract period due to circumstances which, without fault of either party, makes performance impracticable or impossible, or which prevent a new contract from being executed, with or without a proportional increase in the dollar amount, with any increase to be based on the method and rate previously established.
- (18) 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.

- (19) Identical (Tie) Bid – Identical bids are two or more responsive bids which are equal in price, quality and service meeting all requirements of the solicitation.
- (20) Invitation to Bid - A written solicitation for competitive sealed 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.
- (21) Invitation to Negotiate - An invitation extended to prospective contractors/vendors 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.
- (22) Minor Irregularity – A variation from the competitive solicitation terms and conditions which does not affect the price of the solicitation, or give the bidder or offeror an advantage or benefit not enjoyed by other bidders or offerors, or does not adversely impact the interests of the University.
- (23) Minority Business Enterprise - A business concern as defined in s. 288.703(2), F.S.
- (24) Notice of Intended Award and Award.
- (a) Notice of award or intent award, including rejection of some or all of bids/proposals received, and intent to negotiate shall be given by posting electronically on the Purchasing Department website designed by the University and by posting bid/proposal tabulations where the bids/proposals were opened, or by certified United States mail, return receipt requested, other express delivery service, or as specified in the solicitation. All notices of decision or intended decisions shall contain the statement. “Failure to file a protest within the time

prescribed in Section 120.57(3)(b), Florida Statutes, shall constitute a waiver to proceeding under Chapter 120, Florida Statutes”, and show the beginning and ending posting time and dates for the bid/proposal posting, or if noticed by certified mail, indicated such action must be taken with 72 hours after receipt of such notice.

(b) The contract shall be awarded by purchase order, agreement or other written notice to the responsive/responsible bidder/proposer pursuant to the award criteria contained in the solicitation document for the commodities or contractual services University regulations and state laws, except that every procurement of contractual services in excess of \$50,000 shall be evidenced by a written agreement conforming to the provisions of this chapter.

(c) Issuance of a purchase order or execution of a contract by both parties for the purchase of commodities, contractual services or construction shall establish a contract between the University and the supplier on the terms, conditions and prices specified in the solicitation response.

(25) Person- shall have the meaning provided in Section 1.01(3), Florida Statutes. Price Agreement - An agreement which the Purchasing Department negotiates with a vendor to furnish items at a predetermined price. The agreement involves a minimum number of units, provides for orders to be placed directly with the vendor by the Purchasing Department and runs for a limited period of time.

(26) 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.

- (27) Purchase - An acquisition of commodities or services obtained by purchase order or contract whether by rent, lease, installment or lease purchase, outright purchase, or license.
- (28) Purchases for Resale -The purchase of commodities or contractual services acquired for the purpose of selling them for the benefit of the University. Such purchases are exempt from competitive solicitation.
- (29) Purchase Order - University document to formalize a purchase transaction with a vendor/contractor. The purchase orders should be numbered consecutively and contain statements regarding the quantity, description, and price of goods and services ordered; applicable terms as to payment, discount, date of performance, and transportation; and other factors or suitable references pertinent to the purchase such as bid number or contract number and shall be signed by the Purchasing Director, Assistant Director of Purchasing or authorized designee.
- (30) 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.
- (31) Request for Information – A written request to vendors for information concerning commodities or contractual services. Responses to these are not offers and may not be accepted by the University to form a binding contract.
- (32) Request for Quotation – An oral or written request for pricing from a vendor for commodities or contractual services which does not require competitive solicitation. Written evidence of oral quotations shall be maintained.

- (33) 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.
- (34) Requisition - A formal written request to procure commodities, services or construction on behalf of a program area. Requisitions must be approved by an authorized person, and must be filed with the Purchasing Department. The requisition serves to notify the Purchasing Department of University needs.
- (35) Response/Reply- a bid, proposal or offer to negotiate submitted as a result of a competitive solicitation that designates the title, date and time of the public opening. The response shall include and be submitted in accordance with instructions provided in the competitive solicitation.
- (36) Responsive/Responsible Bidder or Offeror - A contractor/vendor who has submitted a bid or proposal that conforms in all material respects to a competitive solicitation and has the capability in all respects to fully perform the contract requirements and reliability that will assure good faith performance.
- (37) Specifications - any description of the physical, performance or functional characteristics of a commodity or contractual services. It may include plans, drawings, samples or a description of any requirement for inspection, testing or preparing a commodity or contractual service for delivery.
- (38) Term Contract -- An indefinite quantity contract for the purchase of commodities or contractual services during a prescribed period of time.
- (39) University - University means the Florida Agricultural and Mechanical University.

Specific Authority 1001.74(4), F.S. Law Implemented 120.57(3), 288.703(2), 1001.74(5),
1001.75(5) F.S. History – New 12-07-06, Amended _____.