

FLORIDA A&M UNIVERSITY BOARD OF TRUSTEES



NOTICE OF PROPOSED NEW REGULATION

DATE: July 24, 2008

REGULATION CHAPTER NO.: Chapter 6

REGULATION CHAPTER TITLE: Purchasing Program

REGULATION TITLE AND NUMBER: Purchase of Commodities and Contractual Services (6.005)

SUMMARY OF REGULATION: This regulation is amended change the competitive solicitation threshold from \$50,000 to \$75,000 and to amend the bid protest procedures and bond requirements in accordance with the Board of Governors Regulations 18.001, 18.002 and 18.003.

AUTHORITY FOR REGULATION: Article IX, Florida Constitution; Board of Governors Regulation Development Procedure dated July 21, 2005, Board of Governors Resolution Adopted January 7, 2003; Board of Governor's Regulation Chapter 18.

UNIVERSITY OFFICIAL INITIATING THIS REGULATION: Ms. Teresa Hardee, Vice President for Administration and Financial Service.

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: Jacquelynne Maxey, Interim Purchasing Director, 208 Foote-Hilyer Administration Center, Tallahassee, Florida 32307-3100, (850)599-3203 (phone), (850) 561-2160 (fax), jacquelynne.maxey@famuedu.

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

Regulations of Florida A&M University



6.005 Purchase 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 two (2) or more written quotations or written records of verbal quotations. Purchases with a value of \$10,000.01 ~~up~~ to ~~\$50,000~~ but less than \$75,000 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 value which exceed ~~\$50,000~~ \$75,000 shall be awarded pursuant to a competitive solicitation, unless otherwise authorized herein. If the University 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 may proceed with the procurement. The 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;
- (i) Camps insurance.

(4) *Purchase of Printing.* Printing shall be purchased in accordance with Chapter 283, F.S.

(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 convicted vendor list for a period of 36 months from the date of being added to the 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 University 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 contract which are made available to other state entities.

(9) *Competitive Solicitation.*

- (a) *Purchases Exceeding ~~\$50,000~~ \$75,000.* All contracts for the purchase of commodities or contractual services exceeding ~~\$50,000~~ \$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 ~~\$50,000~~ \$75,000 shall be electronically posted on the Purchasing Department 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 Purchasing shall have the authority to waive the advertisement requirement when determines in writing to be in the best interest of the University. The Director of Purchasing 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 Purchasing 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 location, 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 Purchasing 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 signed the original response.
- (d) When only one response is received to a competitive solicitation for commodities or contractual services exceeding ~~\$50,000~~, \$75,000, 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 Purchasing and approved by the Vice President for 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 or 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.
- ~~(k) *Protests.* Protests shall be handled in accordance with Section 120.57(3), Florida Statutes. The appropriate competitive solicitation protest bond, as set forth in subsection 6.005(12) (c) of this Regulation shall be submitted.~~
- (k) *Protest.* 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 written petition and file it with the president within ten (10) calendar days from registration of the original complaint. If the competitive solicitation documents require the posting of a bond with the protest, the bond shall be included with the protest.
- (1) Failure to file a notice of protest or the written petition, including posting of the required protest bond, shall constitute a waiver of the right to protest proceedings.
- (2) Upon receipt of the formal written petition filed in accordance with this regulation, the president or designee shall delay the execution of the contract until the protest is resolved by mutual agreement between the parties or by final presidential action, unless the president shall make a finding and declares that such delay would cause serious danger to the public health, safety or welfare.
- (3) Petitions involving disputed issues of material fact shall be referred for a quasi-judicial hearing. The president shall designate an administrative law judge to conduct a hearing in the accordance with university procedures. At the conclusion of the hearing, the administrative law judge shall submit a written recommendation order to the president. The president shall then issue a preliminary order for final action and notify the firm of such order. The

preliminary order of the president shall be final, unless the firm under consideration takes exception to such order. At the end of the period for filing exceptions, the president will review the preliminary order and any exceptions that have been filed, and will render the final order. The decision of the president is final. Appellate review of the final order shall be in accordance with the requirements of Rule 9.190(b) (3), Florida Rules of Appellate Procedures.

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

- (a) *Emergency Purchases.* When the President or Vice President for Fiscal 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 delay 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 Purchasing or designee may select a single source without competitive solicitation if, after conducting a search for available sources, the Director of Purchasing 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 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 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.

- (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 Reviews;
- (b) Accounting Services;
- (c) Auditing services;
- (d) Advertising;
- (e) Artistic 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, esthetics, 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;
- (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 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) Purchases for resale;
- (q) 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;
- (r) Implementation/programming/training services available from owner of copyrighted software or its contracted vendor;
- (s) Extension of an existing contract;
- (t) Renewal of an existing contract if the terms of the contract specify renewal option(s);
- (u) Regulated utilities and government-franchised services, Regulated public communications, Long distance telecommunications;
- (v) Purchases of materials, supplies, equipment, or services for 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 Regulation 6.007; and

(w) Training and education services.

(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) ~~*Bonds.*~~ *Bond Requirements*

~~(a) — *Competitive Solicitation Bond/Security.* The University is authorized to require a vendor to submit to the University, as a condition for participating in the solicitation, a bid bond, certified cashier's check or treasurer's check, or bank draft with their responses to the solicitation when the University deems it is in its best interest and to ensure that vendor will honor and secure any required payment and/or Performance Bond if awarded the bid. The required amount shall be no greater than ten percent (10%) of the estimated value of the response value. Failure to submit such security with the response shall result in disqualification.~~

~~(b) — *Payment and Performance Bonds.* The University is authorized to require any contractor contracting with the University to provide construction, commodities or contractual services 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. The University has the option to require a payment and performance bond from contractors providing commodities or commodities that need installation, when the total value is greater than \$100,000.~~

- (c) ~~*Competitive 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 written protest, post with the University, a bond, cashier's check or money order 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. The bond, cashier's check or money order shall be conditioned upon payment of all costs that may be adjudged against the contractor filing the protest action. Failure of the protesting contractor to file the required bond, cashier's check or money order at the time of filing the formal written protest shall result in the denial of the protest and constitute a waiver of proceeding under Chapter 120, F.S. and the University shall summarily dismiss the petition.~~

- (a) (a) Solicitations Security. A certified, cashier's or treasurer's check, bank draft, band official check or bid bond may be required as a condition for participation 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 god 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 bond 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 Purchasing, 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 Fiscal 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 3 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 refusal by the contractor 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 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 and any amendments thereto. There shall be only one extension of a contract.

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 Purchasing shall approve contracts and contract amendments up to \$25,000. The President or President's designee shall approve contracts and contract amendments from \$25,000 to ~~\$50,000~~ \$75,000. All contracts and contract amendments from ~~\$50,000~~ \$75,000 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 Board of Governors Regulation Development Procedure Dated July 21, 2005. Law Implemented Article IX, Florida Constitution, Board of Governors Resolution Adopted January 7, 2003, Florida Statutes History-Amended -08.