

REGULATION
FLORIDA BOARD OF GOVERNORS
FLORIDA STATE UNIVERSITY

6CR-2.015 Purchasing and Procurement

(1) Statement of Intent. It is the intent of the University to acquire quality goods and services in a cost effective manner, as economically as possible, within reasonable or required time frames, while promoting and maintaining fair and open competition in the public procurement process. This regulation rule establishes effective management oversight of the University's procurement process in order to comply with federal and state laws and rules, to reduce the appearance and opportunity for favoritism, and to preserve the integrity and reputation of the University with regard to purchasing and contracting.

(2) Purpose. These regulations rules implement the University's delegated authority from the University Board of Trustee with respect to the powers, duties and functions of the institutions purchasing jurisdiction as provided in Florida Board of Governor's Regulation 18.001 Sections 1001.74(5) and 1001.75(5), F.S.

(3) Application. These regulations rules shall apply to all expenditures of University funds on deposit with Florida State University involving a purchase, irrespective of their source, including federal assistance monies, except as otherwise specified herein, and may be applied to transactions that do not involve a purchase such as food service, bookstore, or vending contract, when it is in the best interests of the University.

(4) Procurement Organization

(a) The University Board of Trustees. By this ~~regulation rule~~, the Board of Trustees exercises their statutory authority to establish a system process to coordinate procurement policies, procedures, and practices to be used in acquiring commodities and contractual services required by the University.

(b) The University President. As chief administrative officer of the University, the President has the responsibility to implement the University's procurement authority as consistent with the ~~regulations rules~~ of the Florida Board of ~~Governors Regents State Board of Education~~ and University Board of Trustees. The President has ~~delegated statutory~~ authority to approve, execute and administer contracts for and on behalf of the University Board of Trustees for licenses; the acquisition or provision of commodities, goods, equipment and services; leases of real estate and personal property and planning and construction to be rendered to or by the University provided such contracts are within the law and the ~~regulations, rules and policies of the Florida Board of Governors State Board of Education~~ and the University Board of Trustees. The President may delegate all or any portion of such authority, which is not required by law or rule to be exercised personally, to any employee of the University in the interest of the efficient and effective operation of the University.

(c) Delegation of Purchasing Authority

1. Duties and Powers. The Director of Purchasing ~~Services~~ is delegated authority to serve as the ~~Chief Procurement Officer chief central procurement officer~~ for the University, and shall exercise the powers, duties and functions pertaining to the procurement of commodities and contractual services.

(a) The purchasing director ~~Director~~ may delegate to the purchasing department staff such portions of those powers, duties and functions as deemed appropriate.

~~2. Small and Disadvantaged Business Enterprise Assistance Officer. The Director of Purchasing, or a designee, shall serve as the Small and Disadvantaged Business Enterprise Assistance Officer for the University, responsible for overseeing the small and disadvantaged utilization activities in the procurement of commodities and services. The University is an equal opportunity institution and encourages procurement contracting with small and disadvantaged business which includes minority business enterprises.~~

3. Additional Purchasing Delegation. Departments' delegated authority to make purchases of commodities and services for their respective area is limited to the following:

~~Purchasing Department:~~ Food purchased for the cafeteria at the Florida State University Schools; books and periodicals purchased by University libraries, and purchases by the Facilities ~~Operations and Maintenance~~ Department. Any such purchases shall be processed by the appropriate University department in full compliance accordance with this regulation. References in this regulation to the purchasing department shall include all offices delegated purchasing authority under this regulation. References in this regulation to the duties and responsibilities of the purchasing director shall apply to the director or department head of all areas with delegated purchasing authority, regardless of title. rule.

4. Purchase of Private Attorney Services. Written approval from the Attorney General is not required for private attorney services acquired by the University.

5. 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;

~~6. Purchase of Printing. Printing shall be purchased in accordance with Chapter 283, F.S.~~

(6) Duties of the Chief Procurement Officer: ~~Purchasing Department~~.

(a) Canvass sources of supply, and contracting for the purchase or lease of all commodities and contractual services for the University, in any manner, including, reverse auctions and purchase by installment- or lease-purchase contracts. ~~Installment or lease-purchase contracts may provide for the payment of interest on unpaid portions of the purchase price.~~

(b) Remove any contractor from the University's competitive solicitation or vendor list that fails to respond to one (1) or more competitive solicitations or to fulfill any of its duties specified in a contract with the University and to reinstate any such contractor when satisfied that further instances of default will not occur. A "No Bid" or similar response is considered a response under this section.

(c) Plan and coordinating purchases, including ~~in~~ volume purchases; and negotiating and executing agreements and contracts for commodities and contractual services for use by all under which the University departments. may make purchases.

(d) Develop an Annual Certification List to serve as a waiver of the competitive solicitation requirement for commodities/services that are frequently purchased and are available from a single source.

(e) Evaluate and approve contracts established by the Federal Government, other states, political subdivisions, or any independent college or university or educational cooperative or educational consortium 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 established by such other entities. Contracts so approved are not subject to additional competitive solicitation requirements.

(f) 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.

(7) Source Selection and Contract Formation for Commodities and Contractual Services.

(a) Competitive Solicitation Required. The purchasing director shall be responsible for ensuring that all contracts for the purchase of commodities or contractual services exceeding the maximum competitive solicitation limit established in Board of Governors Regulation 18.001, (currently \$75,000), \$50,000 shall be are 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.

(b) Public Notice. The purchasing director ~~Director of Purchasing~~, or a designee, shall determine the method of public notice to be used in each case of a competitive solicitation based on the nature and quantity of the commodities, contractual services, or construction sought and the availability and extent of competitive solicitation lists. Posting of competitive solicitations on a Purchasing Department website constitutes public advertising.

(c) Receipt of Responses. Competitive solicitation responses shall be delivered, including electronically, as directed in the competitive solicitation to the appropriate Purchasing Department, or as otherwise directed in the competitive solicitation document, at or prior to the date and time specified in the competitive solicitation. Responses that are not delivered to that location and only that location, no matter what the reason, shall not be considered. It is the responder's responsibility to assure that their response is delivered at the proper time and place. The clock in the Reception area of the Purchasing Services Department is designated as the official timepiece for purposes of determining whether a response is received in Purchasing Services by the appointed date and hour. Purchasing departments with delegated purchasing authority may designate an alternate timepiece.

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

2. A responder 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.

3. The purchasing director ~~Director of Purchasing~~, or a designee, will permit the withdrawal of a competitive solicitation response for good cause if requested in writing within seventy-two (72) hours of the competitive solicitation opening and prior to final award of the purchase order being issued. Good cause shall include illegality, impossibility of performance, or a clear and inadvertent error in the response preparation, but shall not include a responder's lack of profitability or financial loss resulting from the competitive solicitation. Neither modification nor withdrawal will be permitted at any time if the result of such action is prejudicial to the fairness of the competitive procurement process or a monetary or educational interest of the University.

(d) Competitive Solicitation Evaluation. Responses to a competitive solicitation shall be evaluated based on the requirements set forth in the competitive solicitation. The requirements of the competitive solicitation include criteria such as price, inspection, samples, quality, testing, workmanship, convenience, experience, delivery and suitability for a particular purpose. Those criteria that affect ~~effect~~ the price shall be objectively measured to the extent practicable. ~~such as: all or none, discount, transportation cost or total or life cycle cost base.~~ In cases where more than one commodity or contractual service is listed on a response to a competitive solicitation, the University is not required to consider all alternates or options, nor do they have to be considered in sequence.

(e) Right to Reject Competitive Solicitation Responses and Waive Minor Irregularities. The University reserves the right to reject any and all responses to a competitive solicitation. The University also reserves the right to waive minor irregularities in an otherwise valid response. A minor irregularity is a variation from the competitive solicitation terms and conditions, which does not affect the price offered, or give the responder an advantage or benefit not enjoyed by other responders or does not adversely impact the business or educational interests of the University. The University shall correct mistakes clearly evident on the face of a response, such as an error in arithmetic or extension of pricing. In the case of extension errors, the unit price shall prevail.

(f) Receipt of Only One or No Responses to a Competitive Solicitation. When only one responsive offer or no response is received to a competitive solicitation exceeding the competitive solicitation limit \$50,000, the purchasing director ~~Director of Purchasing~~, or a designee, shall review the 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 competitive solicitation would not serve a useful purpose, the University may proceed with the acquisition based on the one response received or proceed to negotiate with any other possible source including the responder who submitted the only responsive offer.

(g) When multiple responses to a competitive solicitation are received that are equal in all respects, the University shall give preference to responses that include commodities manufactured in the state, Florida businesses, businesses with a drug-free workplace program, or foreign manufacturers located in the state to determine the contract

award. If none of these conditions exist and two or more responses are equal in every respect, the University will use a toss of a coin to select the successful response.

(h) 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.

(i) Competitive Solicitation Notice of Award. After evaluating the responses to a competitive solicitation, the purchasing director ~~Director of Purchasing~~, or a designee, shall make a determination as to the successful response based on the method of award contained in the competitive solicitation. A notice of award shall be posted electronically by posting a Competitive Solicitation Tabulation Sheet, or other appropriate document, on the purchasing department ~~Purchasing Department~~ Web Site on the date and time listed in the competitive solicitation or as soon as reasonably possible after the responses are evaluated. The Competitive Solicitation Tabulation Sheet shall contain the competitive solicitation name, the name of each responder including those whose responses were rejected, the dollar amount(s) of each response or the number of points awarded, the date and hour that it was posted and the date and hour that the posting period ends. The Notice of Award Web Site shall be maintained by the purchasing department ~~Purchasing Department~~ and shall be available for public inspection at all times during regular University business hours. Any person who is adversely effected by the University's decision or intended decision regarding a competitive solicitation shall file in writing a protest which shall be received in the appropriate purchasing department ~~Purchasing Department~~ before the end of the 72 hour posting period

or within 72 hours after the protestant received actual notice by other delivery of the decision, whichever occurs first. The 72 hour period excludes the hours involved in weekends and University holidays. Weekends are deemed to begin at 5 PM on Friday and end at 8 AM on Monday. Holidays are deemed to begin at 5 PM at the end of a regular workday or 8 AM after a Sunday and end at 8 AM on the next regular University workday. A Request for Quotation secured from contractors listed as suppliers on state contracts in order to achieve economies of scale, regardless of their total price, are not a decision subject to BOG Regulation 18.002. ~~s. 120.57(3)(a), F.S.~~ Posting of the proposed Notice of Award does not establish a contract between the University and the proposed supplier.

(j) In accordance with s. 119.07(3)(m), F.S., public review of responses to a competitive solicitation may be denied until the notice of a decision is posted or within 10 days after the competitive solicitation is opened, whichever occurs first.

(k) In accordance with 119.071(1)(b)1.a.b, F.S. if the University rejects all bids or proposals submitted in response to an invitation to bid or request for proposals and the University concurrently provides notice of its intent to reissue the invitation to bid or request for proposals, the rejected bids or proposals remain exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until such time as the University provides notice of a decision or intended decision pursuant to s. BOG Regulation 18.002 concerning the reissued invitation to bid or request for proposals or until the University withdraws the reissued invitation to bid or request for proposals.

(l) In accordance with 119.071(1)2.a., F.S., a competitive sealed reply in response to an invitation to negotiate, as defined in 6CR-2.015 is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until such time as the University provides notice of a decision

or intended decision pursuant to BOR Regulation 18.002 or until 20 days after the final competitive sealed replies are all opened, whichever occurs earlier.

(m) In accordance with 119.071(1)2.b., if the University rejects all competitive sealed replies in response to an invitation to negotiate and concurrently provides notice of its intent to reissue the invitation to negotiate and reissues the invitation to negotiate within 90 days after the notice of intent to reissue the invitation to negotiate, the rejected replies remain exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until such time as the University provides notice of a decision or intended decision pursuant BOR Regulation 18.002 concerning the reissued invitation to negotiate or until the University withdraws the reissued invitation to negotiate. A competitive sealed reply is not exempt for longer than 12 months after the initial University notice rejecting all replies.

(n) Each solicitation for the procurement of commodities or contractual services shall include the following provision: "Respondents to this solicitation or persons acting on their behalf shall not contact any employee or officer of the Florida State University Board of Trustees, a University Direct Support Organization, or The Florida State University concerning any aspect of this solicitation, except in writing to the Chief Procurement Officer or as provided in this solicitation document, from the date of release of this solicitation through the end of the 72-hour period following the University's posting of the notice of intended award, in accordance with BOG Regulation 18.002. Violation of this provision may be grounds for rejecting a response."

(8) Registration of Business. It is not necessary for a person or business to be registered with the University to receive competitive solicitations, a contract or a purchase order. The University does not guarantee that a business will receive notice of a competitive

solicitation for a particular commodity or contractual service for which they have registered as a supplier. The opportunity to participate in a competitive solicitation is a privilege not a right.

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

(a) Emergency Purchases. When the President, or a designee, determines in writing that a condition exists that threatens the health or safety of person(s) or animal(s) or the preservation or protection of property or the continuance of a vital University function, the University will proceed with an emergency purchase without a competitive solicitation. Due to the critical nature of the procurement, emergency purchases do not require that the action be posted in the Notice of Award Web Site for 72 hours. An emergency purchase shall be limited to the purchase of only the type of items and quantities that are required for a time period sufficient to relieve the immediate threat and shall not be used to meet long-term requirements.

(b) Sole Source Purchases. Commodities or contractual services available from a single source shall be exempted from the competitive solicitation process. A sole source document shall be publicly posted in the Notice of Award Web Site for 72 hours.

~~(c) Purchases from competitively secured Contracts and Negotiated Annual Price Agreements established by the State, other governmental entities, other public or private educational institutions, and educational cooperatives and educational consortiums are not subject to further competitive solicitation.~~

(c) ~~(d)~~ Construction Direct Purchase Program. Commodities to be incorporated into any public work (as that term is defined in Fla. Admin. Code R. 12A-1.094) which are

procured by the University in accordance with the requirements of the University's direct purchase program are not subject to any further competitive solicitation.

(d) ~~(e)~~ Commodities and contractual services that are exempt from the competitive solicitation process include:

1. Artistic services;
2. Academic reviews;
3. Lectures;
4. Auditing services;
5. Legal services, including attorney, paralegal, expert witness, appraisal, arbitrator or mediator services;
6. Health services involving examination, diagnosis, treatment, prevention, medical consultation or administration. Prescriptive assistive devices for medical, developmental or vocational rehabilitation including, but not limited to prosthetics, 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;
7. Training and education services for University employees;
8. Advertising, except media placement services;
9. Services or commodities provided by ~~any~~ governmental agencies ~~entity~~, ~~other~~ another University in the State University System, direct support organizations of the university, political subdivisions universities or independent colleges and universities;

10. Programs, conferences, workshops, or continuing education events or other university programs that are offered to the general public for which fees have been collected ~~from individual participants~~ to pay all expenses associated with the program or event;

11. Purchases from firms or individuals that are prescribed by state or federal law or specified by a granting agency;

12. Regulated utilities and government-franchised services;

13. Regulated public communications, except long distance telecommunication services or facilities;

~~14. Long distance telecommunications~~

~~14.~~ 15. Extension of an existing contract;

~~15.~~ 16. Renewal of an existing contract if the terms of the contract specify renewal option(s);

~~16.~~ 17. Purchases from the Annual Certification List developed by the Chief Procurement Officer. ~~University Purchasing Department.~~

~~17.~~ 18. Purchases for resale to the public.

~~18.~~ 19. Accountant Services

~~19.~~ 20. Implementation/programming/training services available only from the owner of copyrighted software or its contracted vendor; and

~~20.~~ 21. Purchases of materials, supplies, equipment, or services for research purposes when the Vice President for research, or a designee, certifies that, in a particular instance, it is necessary for the efficient or expeditious prosecution of a research project.

(10).. 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.

(11) 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 for bids and/or requests or proposals or invitations to negotiate shall be excluded from competing for such procurements.

(12) Standard of Conduct:

(a) It shall be a breach of ethical standards for any employee of the University or member of the University Board of Trustees to accept, solicit, or agree to accept a gratuity of any kind, form or type in connection with any contract for commodities or services. It shall also be a breach of ethical standards for any potential contractor to offer an employee of the University a gratuity of any kind, form or type to influence the development of a contract or potential contract for commodities or services.

(b) It shall be a breach of ethical standards for any employee to participate in the selection, award, or administration of a contract if a real or apparent conflict of interest would be involved. Such a conflict would arise when the employee, officer, or agent, any member of his immediate family, his or her partner, or an organization with employs or is about to employ any of the parties indicated herein, has a financial or other interest in the firm selected for an award.

~~(f) — Individuals or Vendors who Take Part in the Development and Drafting of a feasibility study, Competitive Solicitations or future program.~~

~~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 develops a program for future implementation shall be eligible to contract with the University dealing with the specific subject matter.~~

~~All persons taking part in the development or selection of criteria for evaluation, the evaluation process, and the contract award process in any purchase shall follow all relevant portions of the State of Florida Code of Ethics for Public Employees, Chapter 112, Part 3, Florida Statutes.~~

~~(13) (10) Bonding Requirements Bonds.~~

~~(a) Solicitation 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 in a competitive solicitation.~~

~~(b) (a) Payment and Performance Bonds.~~

~~1. The University is authorized to require any contractor contracting with the University to provide commodities, services or construction or commodities which include installation to furnish a payment and performance bond, with good and sufficient securities, to the University prior to the issuance of the contract. ~~when the total contract amount is greater than \$200,000.~~~~

~~2. (b) Competitive Solicitation Protest Bond. Any contractor that files an action pursuant to BOG Regulation 18.002 s. 120.57(3)(b), F.S., protesting a decision or intended decision pertaining to a solicitation, shall at the time of filing of the formal protest, post with the University, a bond payable to the University in an amount equal to: 10% of the estimated value of the protestor's competitive solicitation response; 10% of the estimated expenditure~~

during the contract term; \$10,000; or whichever is less. The bond shall be conditioned upon the payment of all costs which may be adjudged against the contractor filing the protest action. In lieu of a bond, the University will accept a cashier's check or money order in the amount of the bond. Failure of the protesting contractor to file the required bond, cashier's check or money order at the time of filing the formal protest shall result in the denial of the protest.

(14) ~~(11)~~ Contract Formation.

(a) Contracts for the purchase of commodities or contractual services or licenses shall consist of a purchase order or a purchase order and bilateral agreement signed by the President of the University, or a designee who has been granted power of attorney through the University President, prior to the goods or services being ordered, contracted for, or rendered by the contractor.

(b) Any contract for the purchase of services or tangible personal property for a period in excess of one fiscal year shall include the following statement: "The State of Florida's and University's performance and obligation to pay under this contract is contingent upon an annual appropriation by the Legislature."

(c) The extension of a contract granted to extend the time to complete the contract shall be in writing signed by the purchasing director. Contract extension shall not cause the University to incur additional costs. The contract extension shall be signed by both parties if a bilateral agreement and a purchase order were issued, and shall be subject to the same terms and conditions set forth in the initial contract. There shall be only one extension of a contract.

(d) A contract may contain provisions for renewal. If the commodity or contractual service is purchased as a result of a competitive solicitation, a the cost of any all contemplated renewal periods must be included in the competitive solicitation, and evaluated as part of the award evaluation process, including a cost algorithm to determine the cost to the university during renewal periods. ~~All contract renewals are subject to sufficient annual appropriations.~~

(e) The President, or a designee, shall have the authority to enter into deferred payment agreements, in accordance with Board of Governors debt policies. The University may utilize the State of Florida Department of Financial Services ~~Controller's~~ Consolidated Equipment Financing Program if it is deemed advantageous. When the Consolidated Equipment Financing Program is used, the University will submit the contract to the Department of Financial Services ~~State of Florida Controller~~ for the purpose of pre-audit review and approval prior to acceptance. No agreement shall establish a debt of the State or shall be applied to the faith and credit of the State; nor shall any agreement be a liability or obligation of the State except from appropriated funds.

(f) In order to promote cost-effective procurement of commodities and contractual services, the University may enter into contracts that limit the liability of a vendor consistent with Section 672.719, F.S.

(g) The total value of the contract shall be the purchase price for the initial term plus all renewal costs.

~~(12) Standard of Conduct. It shall be a breach of ethical standards for any employee of the University or a member of the Board of Trustees to accept, solicit, or agree to accept a gratuity of any kind, form or type in connection with any contract for~~

~~commodities or services. It shall also be a breach of ethical standards for any potential contractor to offer an employee of the University or member of the Board of Trustees a gratuity of any kind, form or type to influence the development of a contract or potential contract for commodities or services.~~

~~(15)~~ (13) Authority to Suspend or Debar a Business. The Chief Procurement Officer shall ~~Director of Purchasing~~ will remove a business ~~business's name~~ from the University's authorized vendor or competitive solicitation list and reject all responses offered by that business in the event the business's performance through acts of omission or commission results in any of the following grounds, when it is determined to be in the best interest of the University:

- (a) Failure to respond to a competitive solicitation without giving a justifiable reason for such failure.
- (b) ~~Failure to~~ If a vendor fails to make timely delivery or fully comply with the pricing, terms, conditions, or specifications, ~~drawings or terms of an agreement with the University~~ on any one contract or purchase order;
- (c) Any ~~unlawful~~ attempt to influence a ~~an~~ purchase, ~~or competitive solicitation~~ specification, award, or other pertinent factor, in violation of this Regulation and BOG Regulation 18.001.
- (d) Being charged or convicted before a court of competent jurisdiction with committing a fraud, misdemeanor or felony in connection with the business's commercial enterprise. If charges are dismissed, the owner of the business is found not guilty, or the guilty verdict is reversed through the appellate process, the business is found not guilty, or

the guilty verdict is reversed through the appellate process, the suspension shall be lifted immediately upon notification by the business.

(e) Bankruptcy.

(f) ~~Failure to participate by submitting a competitive response to three consecutive competitive solicitations.~~

(g) Continuing to supply ~~Supplies~~ commodities or contractual services before ~~without~~ receiving a purchase order or after receiving a notice not to supply commodities or contractual services without first receiving a an official Florida State University purchase order signed by the purchasing director.

(16)-(14) Default

(a) Vendors who fail to make delivery or perform in accordance with the conditions, specifications, drawings or terms and conditions of a purchase order or contract shall be notified in writing, stating the nature of their failure to perform and provide a time certain for correcting the failure. Reasonable time for correcting the failure should not be generally less than ten (10) calendar days after receipt of such notice by the vendor, except in case of a documented emergency. The notification shall also provide that should the vendor fail to perform within the time provided, that: It will be in default; it will be removed from the University's vendor and competitive solicitation lists; and the University will re-procure the commodity or service from another source, which will obligate the vendor to pay all procurement costs and costs for cover.

(b) Unless the vendor corrects its failure to perform within the time provided, or unless the University determines based on its own investigation that the vendor's failure is legally excusable, the vendor shall be found in default and issued a second notice stating the

reasons the vendor is considered in default and stating that the University has reprocured the commodity or service and the amount of the procurement and the cover cost. The University shall also advise the defaulting vendor that the firm has been removed from the vendor and competitive procurement lists pursuant to this rule and will not be eligible to submit a competitive solicitation or be awarded ~~for award~~ of a contract until such time as the University is reimbursed for all re-procurement costs and for costs of cover. The defaulting vendor also shall be advised of the right to petition the University President for an administrative hearing on the intended decision to remove the vendor from the University's vendor and competitive procurement lists pursuant to 120.57 Florida Statutes or applicable Board of Governors Regulations, and shall be given time within which to submit the petition.

(c) The purchasing director shall determine the method for re-procurement ~~Re-procurement~~ of commodities or contractual services as the best interests of the University require. ~~may be accomplished by first attempting to contract with the second responsive responder on a competitive solicitation, if available. If the University is not able to contract with the second responsive responder, it may attempt to contract with any other vendor willing to perform at acceptable pricing under the terms and conditions of the competitive solicitation.~~

(d) The University may issue a second competitive solicitation or purchase on the open market if a substantially similar procurement is not accomplished under c ~~☺~~, above. Until such time as the vendor reimburses the University for all re-procurement and cover costs, the defaulting vendor shall not be reinstated on the University's competitive solicitation list and shall not be eligible for any type of purchase order or contract by the University. All correspondence to vendors respecting failure to perform shall be sent by

certified mail, return receipt requested or documented courier delivery service. The foregoing provisions do not limit or exclude the University's remedies at law.

~~(17)-(15)~~ Protested Solicitations and Awards.

(a) Petitions. Any person who is aggrieved by a University decision or intended decision in connection with a University decision, shall file a written notice of intent to protest with the purchasing director. ~~Director of Purchasing.~~ The notice embodying such protest shall be received in the purchasing department ~~Purchasing Department~~ of the department issuing the competitive solicitation before the end of the 72 hour posting period or within 72 hours after the protestant received actual notice by other delivery of the decision, whichever occurs first. A notice of protest is not considered filed until it is actually received in the Purchasing Department which issued the solicitation. Within ten (10) consecutive calendar days after the notice of protest is filed, the protestant shall file a formal written protest in both the Office of the University President and the department to which the notice of intent to protest was filed, which shall state with particularity the facts, and law upon which the notice of protest is based. ~~A solicitation protest bond pursuant to this rule, payable to the University in an amount equal to the ten (10) percent of the University's estimate of the total volume of the contract or \$10,000, whichever, is less, shall be filed with the with the formal written protest. In the case of a competitive solicitation, the University's statement of the quantity on the competitive solicitation shall serve as the University's estimate of the volume of the volume of the contract.~~ No time service will be added to the above to time limits for mail service. Failure to timely file the notice of protest, the formal notice of protest or a solicitation protest bond

shall constitute a waiver of right to protest under this regulation and BOG Regulation 18.002. ~~rule and s. 120.57 (3), Florida Statutes.~~

(b) Informal Procedures : Unless superseded by a subsequent Board of Governor's Regulation, the following shall apply:

1. Upon receipt of the petition, the presiding officer shall issue to the protestant a notice of the informal proceeding in accordance with s. 120.57(2), Florida Statutes. Petitions to intervene will be considered on their merits as received.

2. At or prior to the informal proceeding, or as directed by the presiding officer, the protestant may submit any written or physical materials, objects, statements, affidavits and arguments that the protestant deems relevant to the issues raised.

3. In the proceeding the protestant, his representative or counsel, may also present written or oral evidence and arguments in opposition to the action if the university or its refusal to act. However, neither direct nor cross examination of witnesses will be permitted, although the presiding officer may make whatever inquiries deemed pertinent to a determination of the process.

4. The judicial rules of evidence shall not apply and the presiding officer shall issue a decision on such information adduced in the course of the proceeding upon which reasonably prudent persons may rely on in the conduct of their affairs.

5. The proceedings shall not be mechanically recorded unless the purchasing director ~~Director of Purchasing~~ receives a request for such recording at least three (3) working days prior to the date of the proceedings. If such request is for mechanical recording, the University will provide the appropriate equipment and operation personnel at

its expense. If such request is for stenographic recording, the requesting party shall arrange for the appearance of a certified court reporter and shall bear the expense of such appearance.

6. At any time in the course of the proceedings, the presiding officer may seek to resolve the protest by informal disposition, agreed settlement or consent order.

7. If the protestant's objections are overruled, the presiding officer shall render a written decision within seven (7) days after the conclusion of the proceedings, which conforms, to the requirements of s. 120.57, Florida Statutes. In the event the presiding officer finds that a dispute exists with respect to a fact deemed material to determine the protest, as to which there has been no stipulation, the decision shall also give notice to the protestant of his right to petition for a formal proceeding pursuant to s. 120.57(3), Florida Statutes, within ten (10) working days of the date upon which the decision is issued to him.

8. The President, or a designee, shall issue the final order. Provided, however, that if the decision contains notice of a right to petition for a formal proceeding the decision shall not constitute a final order until the expiration of the time for filing such petition or the conclusion of proceeding pursuant thereto.

(18) ~~(16)~~ Purchase of Motor Vehicles.

(a) The University has authority to:

1. Establish standard classes of motor vehicles to be leased, purchased or used by University personnel;

2. Obtain the most effective and efficient use of motor vehicles for state purposes;

3. Establish and operate facilities for the acquisition, disposal, operation, maintenance, repair, storage, control and regulation of University-owned motor vehicles.

Acquisition may be by purchase, lease, installment-purchase, loan or by any other legal means and may include a trade-in. All motor vehicles purchased or leased shall be of a class that will safely transport University personnel and adequately meet the requirements of the University;

4. Contract for specialized maintenance services.

(b) Motor vehicles owned, leased or operated by the University shall be available for official University business only.

(19) (17)–Definitions.

(a) Artistic Services. Services provided by an individual or group of individuals who profess and practice a skill in the area of music, dance, drama, folk art, creative writing, painting, sculpture, bronze, photography, antique or period furniture reproduction or restoration, graphic arts, website design, craft arts, industrial design, costume design, fashion design, motion pictures, television, radio or tape and sound recording or in any other related field, as determined by the chief procurement officer. Web design shall not include website hosting, maintenance, or and computer- related services; only the portion of the design meeting the definition of an artist shall be exempt. If artistic web design cannot be separated from the non-artistic portion of the purchase, the artistic exemption shall not apply.

(b) Business. Any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture or any other private legal entity.

(c) Commodity -- ~~Any of the various~~ Supplies, materials, goods, merchandise, food, equipment or other personal property, including a mobile home, trailer or other portable structure, which are purchased, leased, lease-purchased or otherwise contracted for by the University. “Commodity” also includes interest on deferred-payment contracts entered into

by the University for the purchase of other commodities. Printing of publications and photocopying shall be considered a “commodity.” ~~when let upon contract in accordance with Section 283.33, Florida Statutes.~~ Software ~~to be used pursuant to~~ license agreements shall be considered a “commodity.”

(d) Competitive Negotiation -- The establishment of a contract through deliberation, discussion or conference on the specifications, terms and conditions of a proposed agreement.

(e) Competitive Solicitation -- An Invitation to Bid, Request for Proposal or Invitation to Negotiate issued by a purchasing department with delegated authority as specified in this regulation to ~~competitively~~ select a contractor.

(f) Contract – Document issued by the purchasing department ~~Purchasing Department~~, including purchase orders and bi-lateral agreements, regardless of their designation.

(g) Contractual Service -- The rendering by a contractor of its time and effort rather than the furnishing of specific commodities. The term applies only to those services rendered by individuals and firms who are independent contractors. “Contractual service” does not include labor or materials or selection of professional services for the construction, renovation, repair, maintenance or demolition of facilities or grounds.

(h) Cover. The difference between the cost to procure substitute commodities or services and the contract price for such commodities or services.

(i) Department. Any college, school, department, principle investigator, club, organization or other budget entity, ~~which has been~~ assigned a departmental account by the University.

(j) Extension. An increase in the time allowed for the contract period.

(k) 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 the University as provided in s. 112.313, F.S.

(l) Invitation to Bid. A solicitation for competitive bids issued by the purchasing department, including reverse auctions, 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.~~

(m) Invitation to Negotiate -- An invitation extended to prospective vendors or contractors by the University, whether by advertisement, written solicitation, electronic media or any other form of communication, to define the specifications, terms and conditions of a contract for commodities or contractual services. An Invitation to Negotiate shall be awarded as the best interests of the University indicate and does not require numeric scoring. Cost may or may not be a consideration in the initial stages of negotiating.

(n) Minority Business Enterprise – A business concern as defined in s. 288.703(2), F.S.

(o) Mutuality of Management. That circumstance wherein two or more businesses are owned or managed by the same person or persons. Mutually managed businesses shall submit only one response to a competitive solicitation. The purchasing director may reject all responses from mutually managed businesses submitting more than one response to a competitive solicitation. If more than one response is submitted and subsequently evaluated, only ~~Only~~ the response with the lowest cost or score ~~lowest response~~

~~submitted by businesses that are mutually owned or managed~~ shall ~~may~~ be considered in determining an award.

(p) Person. Shall have the meaning provided in s.1.01(3), Florida Statutes.

(q) President. The chief executive officer of the University, responsible for its operation and administration.

(r) 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.

(s) 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.

(t) Purchases for Resale -- the purchase of commodities or contractual services acquired for the purpose of selling them to the general public for the benefit of the University. Purchases of commodities or contractual services acquired for resale or transfer of ownership to other University departments are not purchases for resale.

(u) 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.

(v) Request for Proposal. A written solicitation issued by the purchasing department for competitive proposals for commodities or contractual services with the title, date, and hour of the public opening designated. A request for proposals may be used when the scope of work is not clearly defined or cost is not the primary consideration.

(w) Responder. A person or business that has submitted a bid, proposal response or an offer to negotiate, as the result of a competitive solicitation.

(x) Response. 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 prescribing all general and special conditions.

(y) Responsible vendor or responder. Individuals or businesses who possess the potential ability to perform successfully under the terms and conditions of the proposed purchase.

(z) ~~(aa)~~ Responsive offer. A response from a responsible vendor or responder that complies in every respect with the terms, conditions and specifications of a competitive solicitation.

(aa) ~~(bb)~~ Request for Quotation. A written or oral request issued by the purchasing department to one or more vendors to provide pricing on specified commodities or contractual services when the ~~with~~ total costs, including all renewal options, is less than the ~~minimum amount required for a competitive solicitation~~ threshold. Requests for Quotations are not subject to the electronic posting requirements of BOG 18.002.s.120.57(3), F.S.

(bb) ~~(ee)~~ Specifications.

1. A clear and accurate description of the technical requirements, including the range of acceptable characteristics or minimum acceptable standards, for the material, product, or service to be purchased. In competitive solicitations, such specification shall not contain features which unduly restrict competition.

2. The specific features of “brand name or equal” descriptions that responders are required to meet when such items are included in a competitive solicitation.

3. A clear and accurate description of the ~~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.

(cc) ~~(dd)~~ Term Contract -- An indefinite quantity contract for the purchase of commodities or contractual services during a prescribed period of time.

(dd) ~~(ee)~~ Vehicle -- This term includes any automobile, airplane, truck, mobile construction equipment, golf cart, tractor, watercraft or other vehicle.

(ee) ~~(ff)~~ Vendor. A person or business that has received a duly executed purchase order or purchase order and contract from the University.

Specific Authority 1001.74(4) FS. Law Implemented 112.313, 120.57(3), 283.33, 672.719
1001.74(5), 1001.75(5), 1004.22(7) FS. History--New 1-5-81, Formally 6C2-2.15, 6C2-2.015 Amended 11-4-87, 6-11-91, 12-21-93 , 10-20-99, 3-17-03, _____