

NOTICE OF PROPOSED REGULATION AMENDMENT

Date: July 5, 2007

REGULATION TITLE:

Administration and Finance; Purchasing

REGULATION NO.:

6C7-7.130

SUMMARY OF REGULATION: This regulation is amended to reflect that the acquisition of commodities or contractual services that are specifically provided for in an existing contract, grant, subcontract, or letter of agreement will be exempt from the competitive solicitation requirements.

AUTHORITY: BOG Resolution dated January 7, 2003

NAME OF PERSON WHO INITIATED PROPOSED REGULATION AMENDMENT:

Gregory Robinson, Associate Director of Purchasing

COMMENTS CONCERNING THE PROPOSED REGULATION AMENDMENT SHOULD BE SUBMITTED WITHIN 14 DAYS OF THE DATE OF THIS NOTICE TO THE CONTACT PERSON IDENTIFIED BELOW. The comments must identify the regulation you are commenting on.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED REGULATION AMENDMENT IS:

Regulations Administrator
4000 Central Florida Blvd.
Millican Hall, Suite 360
Orlando, FL 32816-0015
Phone: (407) 823-2482
Fax: (407) 823-6155
e-mail: regulations@mail.ucf.edu

FULL TEXT OF THE PROPOSED REGULATION AMENDMENT:

6C7-7.130 Administration and Finance; Purchasing.

(1) The University Board of Trustees has authority to establish a system of coordinated procurement policies, procedures, and practices to be used in acquiring commodities and contractual services required by the University. The Purchasing Department has the duty to:

(a) Develop purchasing procedures.

(b) Canvass sources of supply and contracting for the purchase or lease of all commodities and contractual services for the University, in any manner, including 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.

(c) Recommend or advise the suspension or debarment of a contractor in accordance with Rule 6C7-7.124, F.A.C.

(d) Plan and coordinate purchases in volume and negotiate and execute agreements and contracts for commodities and contractual services under which the University may make purchases.

(e) 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.

(f) Evaluate and approve contracts let 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 let by such other entities.

(g) Elect as an alternative to any provision in Section 120.57(3)(c), F.S., to proceed with a bid solicitation or contract award process when it is set forth, in writing, that the particular facts

and circumstances which demonstrate that the delay due to staying the solicitation or contract award process would be detrimental to the interests of the University. After the award of contract resulting from a competitive solicitation in which a timely protest was received and in which the University did not prevail, the contract may be canceled and re-awarded to the prevailing party.

(h) 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.

(i) Reject or cancel any or all competitive solicitations when determined to be in the best interest of the Institution.

(j) Inspect the part of the plant or place of business to determine the capability of contract performance of a contractor or any subcontractor which is related to the performance of any contract awarded or to be awarded by the University, when specified in the agreement.

(2) Competitive Solicitations Required.

(a) All contracts for the purchase of commodities or contractual services exceeding \$50,000 shall be awarded pursuant to a competitive solicitation, unless otherwise authorized herein.

(b) When only one response is received to a competitive solicitation for commodities or contractual services exceeding \$50,000 the University shall review the solicitation responses to determine if a second call for a competitive solicitation is in the best interest of the University. If it is determined that a second call would not serve a useful purpose, the University shall proceed with the acquisition or cancel the acquisition.

(c) When multiple responses that are equal in all respects are received to a competitive solicitation, the University will give preference to responses that include commodities

manufactured in the state, Florida businesses, businesses with a drug-free workplace program, or foreign manufacturers located in the state to determine the contract award, or, if these conditions do not exist, will use toss of the coin.

(d) The purchase of commodities and contractual services shall not be divided to avoid the requirement of competitive solicitation.

(e) Intended award shall be publicly posted by the Purchasing Office which issues the Invitation to Bid, Request for Proposal or Invitation to Negotiate for 72 hours, which is interpreted as three working days. (Working days do not include Saturdays, Sundays, or State or University holidays.)

(f) Advertisement. Invitations to Bid, Requests for Proposals, and Invitations to Negotiate for commodities expected to be in excess of \$150,000 and for contractual services expected to be in excess of \$50,000 shall be advertised in the Florida Administrative Code or Florida Communities Network, the Director of Purchasing shall have the authority to waive the advertisement requirement when the number of potential bidders or proposers is limited and can otherwise be solicited, when the availability of funding so requires, or where delivery is urgent.

(g) Bids and proposals shall remain sealed (with the exception of typical information revealed at the Bid/RFP opening for the tabulation sheet) until notice of final contract award is given or in accordance with Florida Statute as appropriate.

(h) In the case of extension errors, the unit price will prevail.

(i) Withdrawal. A vendor may withdraw his or her bid or proposal in writing if done within seventy-two (72) hours of the bid or proposal opening, if the bid or proposal is clearly erroneous and it is withdrawn prior to final award or the purchase order being issued.

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

(3) Purchase of Commodities or Contractual Services.

(a) Purchase of Products with Recycled Content. The University encourages the purchase and use of products and materials with recycled content and post consumer recovered material.

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

(c) 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 (but are not limited to) insurance coverage for:

1. Physical damage on vehicles and boats;
2. Inland marine on property owned, leased, or loaned to or by the University;
3. Building and property damage;
4. Equipment losses due to theft;
5. Equipment subject to transportation;
6. Loss of rental income;

7. Commercial general liability insurance for scientific equipment;
8. Excess general liability coverage;
9. Campus insurance; and
10. Professional liability.

(d) Purchase of Printing. Printing shall be purchased in accordance with the requirements of these rules. The University may refer to the requirements of Chapter 283, F.S., and rules promulgated thereto for guidance with respect to the purchase of printing services.

(e) Purchases from Minority-Owned and Small Business Enterprises. The University is an equal opportunity institution and encourages procurement contracting with Minority-Owned and Small Business Enterprises.

(f) 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.

(g) Preference Given Within the State – Preference shall be given to manufacturers located within the state when awarding contracts whenever such commodities or services can be purchased at no greater expense than, and at a level of quality comparable to, that obtainable from a manufacturer located outside the state.

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

1. Emergency Purchases. When the President or his or her designee determines in writing, that a condition exists that threatens the health or safety of person(s) or animal(s) or the preservation or protection of property or the continuance of a vital University function, the

University may proceed with an emergency purchase without a competitive solicitation. The emergency purchase shall be limited to the purchase of only the type of items and quantities or for a time period sufficient to meet the immediate threat and shall not be used to meet long-term requirements.

2. Sole Source Purchases. Commodities or contractual services available from a single source shall be exempted from the competitive solicitation process. Sole Source document shall be publicly posted by the Purchasing Office for three working days. Working days do not include Saturdays, Sundays, or State or University Holidays.

3. Purchases from competitively bid 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.

4. Construction Direct Purchase Program. Commodities to be incorporated into any public work (as that term is defined in Rule 12A-1.094, F.A.C.) which are procured by the University in accordance with the requirements of the University's direct purchase program are not subject to any further competitive solicitation.

(i) Commodities and contractual services that are not subject to the competitive solicitation process include:

1. Artistic services;
2. Academic reviews;
3. Lectures;
4. Auditing services;

5. Legal services, including attorney, paralegal, expert witness, appraisal, lobbyist, arbitrator or mediator services;
6. Health services, including related equipment and supplies, involving examination, diagnosis, treatment, prevention, consultation or administration of physical or mental conditions or the provision of developmental or vocational rehabilitation;
7. Services provided to persons with mental or physical disabilities by not-for-profit corporations organized under the provisions of Section 501(c)(3) of the Internal Revenue Code or services governed by the provisions of the Office of Management and Budget Circular A-122;
8. 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;
9. Family placement services;
10. Training and education services;
11. Advertising;
12. Services or commodities provided by governmental agencies, another university in the State of Florida or other independent colleges and universities;
13. Programs or continuing education events that are offered to the general public for which fees have been collected to pay all expenses associated with the program or event;
14. Purchases from firms or individuals that are prescribed by state or federal law or specified by a granting agency;
15. Regulated utilities and government franchised services;

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

17. Extension of an existing contract;

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

19. Purchases from the Annual Certification List developed by the University;

20. Purchases for resale;

21. Accountant Services, including auditor services;

22. 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;

23. Implementation/programming/training services available from the owner of copyrighted software or its contracted vendor;

24. Purchases of materials, supplies, equipment, or services for research purposes when a director of sponsored research or designee(s) certifies that, in a particular instance, it is necessary for the efficient or expeditious prosecution of a research project; and

25. Purchases for the Florida High Tech Corridor initiative.

26. The acquisition of commodities or contractual services that are specifically provided for in an existing contract, grant, subcontract, letter of agreement, etc.

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

1. No person or firm who receives a contract to perform a feasibility study for potential implementation of a subsequent contract, participates in the drafting of a competitive solicitation, or develops a program for future implementation shall be eligible to contract with the University dealing with the specific subject matter.

2. The individuals taking part in the development or selection of criteria for evaluation, the evaluation process and the contract award in any purchase shall be independent of, and have no conflict of interest in, the entities evaluated and selected and may be required to so attest in writing.

(4) Bonds.

(a) Solicitation Security. A certified, cashier's or treasurer's check, bank draft or bid bond may be required as a condition for participating in a competitive solicitation where the University is reasonably uncertain about the contractor's ability to perform, and the expected value of the contract is in excess of \$100,000.

(b) Payment and Performance Bonds for Commodities Contracts. The Purchasing Director is authorized to require any contractor contracting with the University to provide commodities 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 \$100,000 and the University is uncertain about the contractor's ability to perform.

(c) Solicitation Protest Bond. Any contractor that files an action pursuant to Section 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 bid or proposal; 10% of the estimated expenditure during the contract term; \$10,000; or whichever is less. The bond shall be conditioned upon the payment of all costs which may be adjudged against the contractor filing the protest action. In lieu of a bond, the University may accept a cashier's check or money order in the amount of the bond. 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.

(5) Contracts.

(a) Contracts for commodities or contractual services or licenses shall consist of a purchase order or bilateral agreement signed by the President of the University or designee prior to or within thirty (30) days of the goods or services being 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 or an equivalent statement: “The State of Florida’s and University’s performance and obligation to pay under this contract is contingent upon an annual appropriation by the Legislature.”

(c) 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. 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, the cost of any contemplated renewal must be included in the competitive solicitation. All contract renewals are subject to sufficient annual appropriations.

(e) When any commodity contract requires deferred payments and the payment of interest, such contract may be submitted to the State of Florida Comptroller for the purpose of pre-audit review and approval prior to acceptance by the University. The President shall have the authority to enter into deferred payment agreements utilizing the State of Florida Comptroller’s Consolidated Equipment Financing Program. No agreement shall establish a debt of the state or

shall be a pledge of the faith and credit of the state; nor shall any agreement be a liability or obligation of the state except from appropriated funds.

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

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

(h) If a contractor does not furnish proof of payment to subcontractors, materialmen, or laborers within 60 days after the project is certified to be finally complete by the University, the University will pay any retainage, on a pro-rata basis, directly to the subcontractors, materialmen or laborers. In order to obtain payment, subcontractors, materialmen, or laborers who have not been paid after the 60 days have passed have an additional 30 days to submit documentation satisfactory to the University showing that they have performed work on the project, the amount due, and certifying that they have not been paid. If a contractor does not complete a project, the University will use any retainage to complete the work and then pay any balance of the retainage, on a pro-rata basis, to subcontractors, materialmen, or laborers who provide the above required documentation within 30 days after the completion of the project.

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

(7) Purchase of Motor Vehicles.

(a) The term “motor vehicle” includes any automobile, truck, watercraft or other vehicle designed primarily for transporting persons, and construction vehicles or farm equipment.

(b) The University has authority to:

1. Establish standard classes of motor vehicles to be leased, 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.

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

Authority: BOG Resolution dated January 7, 2003. History—New 4-23-03, Amended 4-17-06.
