

**THE FLORIDA INTERNATIONAL UNIVERSITY BOARD OF TRUSTEES
FLORIDA BOARD OF GOVERNORS**

NOTICE OF PROPOSED AMENDMENT TO REGULATION

REGULATION NO.: FIU-2201

REGULATION TITLE: Purchasing

SUMMARY: FIU Purchasing Regulation is being amended to formalize the practices that have been followed during FIU's procurement process, and also to make it consistent with the Board of Governors' Purchasing regulations, including but not limited to: by changing provisions regarding contract extensions and renewals; clarifying the language on exceptions from the competitive solicitation requirements, and specifying more in detail the standard of conduct during the procurement process.

TEXT OF REGULATION: The full text of the proposed regulation can be viewed below and on the website of The Florida International University Board of Trustees, <http://regulations.fiu.edu/>. If you would like a copy of the proposed regulation, please contact Eli Deville, Departmental Administrator, Office of the General Counsel, (305) 348-2103, devillee@fiu.edu.

AUTHORITY: Board of Governors' Regulation 1.001., and Board of Governors' Regulation 18.001.

NAME OF PERSON INITIATING PROPOSED REGULATION: Kenneth Jessell, CFO and Senior Vice President

ANY PERSON SEEKING TO COMMENT ON THE PROPOSED REGULATION MUST SUBMIT COMMENTS IN WRITING TO THE CONTACT PERSON LISTED BELOW. ALL WRITTEN COMMENTS MUST BE RECEIVED BY THE CONTACT PERSON WITHIN 14 CALENDAR DAYS OF THE DATE OF PUBLICATION OF THIS NOTICE.

CONTACT PERSON REGARDING THE PROPOSED REGULATION:

Eli Deville, Departmental Administrator, Office of the General Counsel, Florida International University, 11200 SW 8 Street, PC 511, Miami, FL 33199. Email: devillee@fiu.edu. Phone: (305) 348-2103, Fax: (305) 348-3272.

DATE OF PUBLICATION: June 7, 2019

THE FULL TEXT OF THE PROPOSED REGULATION IS PROVIDED BELOW.

FIU-2201 Purchasing

(1) ~~(1)~~ Statement of Intent. These Purchasing regulations are supplemental to Chapter 18 of the Florida Board of Governors' Purchasing regulations. It is the intent of the University to acquire quality commodities and contractual services within reasonable or required time frames, while promoting fair and open competition in the public procurement process. Responsible ~~purchasing~~procurement officials shall be protected from improper pressures of external political or business interests. ~~The purpose of the process is to reduce the appearance and opportunity for favoritism, ensure that contracts are awarded equitably and economically, and establish effective management oversight in the acquisition of commodities and~~ contractual services, in order to preserve the integrity of public ~~purchasing~~procurement and contracting.

~~The opportunity to bid on University contracts is a privilege, not a right.~~

(2) Definitions.

(a) ~~(a)~~ Artistic Services – Services provided by a contractor who professes and practices a skill in the area of music, dance, drama, folk art, creative writing, painting, sculpture, photography, graphic arts, web design, craft arts, industrial design, costume design, fashion design, motion pictures, television, radio or tape and sound recording or in any other related field.

(b) ~~(b)~~ 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. The printing of publications and licensing of software- are commodities.

(c) ~~(c)~~ Competitive Response – The response submitted to an Invitation to Bid, Invitation to Negotiate, or a Request for Proposal by a responsive and qualified bidder or offeror.

(d) ~~(d)~~ Competitive Solicitation – An Invitation to Bid, Request for Proposal or Invitation to Negotiate to competitively select a contractor/vendor.

(e) ~~(e)~~ Contractor/Vendor- A person, ~~vendor, corporation, business~~ or firm that sells commodities or contractual services to the University.

(f) ~~(f)~~ 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 contractors who are independent contractors. “Service” does not include labor or materials or selection of professional services for the construction, renovation, repair or demolition of facilities.

(g) ~~(g)~~ 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, except as ~~permitted~~provided by Florida law.

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(h) ~~(g)~~ **Invitation to Bid** – A written solicitation for competitive responses for the commodity, group of commodities and/or contractual services defined.

(i) ~~(h)~~ **Invitation to Negotiate** – A written solicitation for prospective contractors, whether by advertisement, written solicitation, electronic media or any other form of communication, to negotiate with the University to define the specifications, terms and conditions of a contract for commodities and/or contractual services. Cost may or may not be a consideration in the initial stages of evaluation or negotiation. An invitation to negotiate may be used when negotiations are beneficial to achieve the best outcome for the University.

(j) ~~(i)~~ **Purchase** – An acquisition of commodities and/or contractual services obtained by credit card purchase, purchase order or contract whether by rent, lease, installment- or lease-purchase, outright purchase, or license.

(k) ~~(j)~~ **Purchases for Resale** – The purchase of commodities and/or contractual services by the University for the purpose of selling them for the benefit of the University.

(l) ~~(k)~~ **Renewal** – Contracting with the same contractor for an additional period of time after the initial contract term, provided the original terms of the contract specify an option to renew.

(m) ~~(l)~~ **Request for Proposal** – A written solicitation for competitive responses for commodities and/or contractual services. The request for proposal may be used when the scope of work is not clearly defined by the University.

(n) ~~(m)~~ **Responsive and Qualified Bidder or Offeror** – A contractor who has submitted a competitive response that conforms in all material respects to a competitive solicitation.

(o) ~~(n)~~ **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 contractors who are independent contractors. “Service” does not include labor or materials or selection of professional services for the construction, renovation, repair or demolition of facilities.~~ Motor vehicle – Includes any automobile, truck, motorcycle, bicycle, golf cart, watercraft or other vehicle designed primarily for transporting persons, as well as construction vehicles or farm equipment.

(3) **Purchasing Procurement Department’s Duties.** –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 Procurement** Department has the duty to:

(a) Develop purchasing Procurement 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.

(bc) Remove any contractor from the University's competitive vendor list that fails to ~~respond to three (3) or more competitive solicitations or fails 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.

~~If a contractor replies to a competitive solicitation by submitting a "No Response," such will be treated as a response for purposes of this provision.~~

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

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

(ef) Evaluate, approve and ~~approve~~ utilize -contracts that are entered into after a public and open competitive solicitation awarded by any State of Florida agency or department, the Federal Government, other states, political subdivisions, ~~not for profit~~ cooperatives or ~~consortiums~~consortia, or any independent college or university 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 ~~awarded~~let by such other entities, and to identify potential savings and, if there is the potential for savings, enter into new consortia and cooperative contracts to achieve the savings, with the goal of achieving a five-percent savings on existing contract prices.

(fg) Issue competitive solicitations and requests for information on behalf of the University and oversee and facilitate the process of selection of contractors and award of contracts pursuant to the competitive solicitation process.

(gh) 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-wide, regional or multiple State University System-wide basis and the contracts may be for multiple years.

(hi) Reject any or all competitive responses or cancel any competitive solicitations when it is determined to be in the best interest of the University.

(4) **Competitive Solicitations.**

(a) ~~(a)~~ General.

1. The opportunity to bid on a University contract is a privilege, not a right.

2. All contracts for the purchase of commodities and/or contractual services exceeding \$75,000 shall be awarded pursuant to a competitive solicitation, unless otherwise authorized herein.

—3. The purchase of commodities and contractual services shall not be divided to avoid the requirement of competitive solicitation.

4. ~~(b)~~ When only one response is received to a competitive solicitations for commodities or contractual services exceeding \$75,000, the University may review the solicitation response 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 may proceed with the acquisition.

5~~(e)~~. -When multiple responses that are equal in all respects are received to a competitive solicitation or quote process, the University will give preference to responses that include commodities manufactured in the state, Florida businesses, businesses with a drug-free workplace program, and/or out-of-state manufacturers located in the state to determine the contract award, or, if these conditions do not exist or are the equivalent between two or more responses, the contract award will be determined by the toss of a coin.

~~6. (d) The purchase of commodities and services shall not be divided to avoid the requirement of competitive solicitation.~~

~~(e)~~ Competitive solicitations for commodities and/or for contractual services shall be advertised in the Florida Administrative Weekly, the Florida Communities Network (MyFlorida.com), or ~~the University~~ FIU's Purchasing Procurement Department's website.

7. ~~(f)~~ Competitive responses and negotiations will be confidential only to the extent permitted by Florida law.

~~(g)~~ 8. In the case of extension errors in a competitive response, the unit price will prevail.

~~(h)~~ 9. The intended award shall be publicly posted by the University for 72 hours which is interpreted as three working days excluding Saturdays, Sundays, and State and University Holidays.

10. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, Invitations to Bid, Request for Proposals and/or Invitations to Negotiate shall be excluded from competing for such procurements.

11. Withdrawal of competitive response. A contractor may withdraw its competitive response in writing if done within seventy-two (72) hours of the competitive solicitation opening, or where the competitive response is clearly

erroneous, if done prior to final award or the purchase order being issued.

~~(5b) **Competitive Solicitation Exceptions.** Purchasing Procurement~~ actions that are not subject to the competitive solicitation process are as follows: ~~and include all of the competitive solicitation exceptions provided in the Board of Governors' Purchasing regulations,~~

~~(a) 1. All exceptions provided in the Board of Governors' -Purchasing regulations. Emergency Purchases. When the President or his or her designee determines, in writing, that the delay due to the competitive solicitation process is an immediate danger to the public health or safety or the welfare of the University, including University tangible and/or intangible assets; or would otherwise cause significant injury or harm not in the best interest of the University, the University may proceed with the procurement of commodities or services without a competitive solicitation.~~

~~(b) Sole Source Purchases. Commodities or services available from a single source may be exempted from the competitive solicitation process.~~

~~(2. e) 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.~~

~~(6) **Code of Ethics.** All persons taking part in the development of specifications 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 Officers and Employees, and the University's policy on outside activities.~~

~~—(75) **Contracts.**~~

(a) Contracts for commodities and/or contractual services shall consist of a purchase order or shall consist of a bilateral agreement signed by the President of the University or designee prior to the commodities or contractual services being rendered by the contractor. This provision does not apply to appropriate ProCard (University issued procurement card) purchases that are made in accordance with applicable policies and procedures.

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

(c) Contract extensions, renewals, modifications to terms, conditions and scope, or amendments shall be permitted, shall be in writing, signed by all parties, and, where applicable, are subject to annual appropriations by the Florida Legislature. ~~Extension~~
1. The extension of a contract, entered into as a result of a competitive solicitation, shall be permitted for up to twelve (12) months or until completion of the competitive solicitation and award or protest, whichever is longer.

~~_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 contract being extended. There shall be only one extension of a contract.~~

~~(d) 2.~~ A contract may contain provisions for renewal. The renewal of a contract, entered into as a result of a competitive solicitation, shall be permitted for a period that may not exceed five (5) years or twice the term of the original contract, whichever is longer. This provision is not intended to apply retroactively; existing contracts entered into prior to January 1, 2017, including any specified renewal period(s) may continue in accordance with the existing contract terms. ~~If the commodity or service is purchased as a result of an Invitation to Bid or a Request for Proposals,~~ The cost of any contemplated renewal must be included in the competitive response.

~~All contract renewals are subject to sufficient annual appropriations.~~

(ed) The President has the authority to enter into deferred payment agreements utilizing the State of Florida Chief Financial Office's Consolidated Equipment Financing Program. When a commodity contract requires deferred payments and the payment of interest under that program, the contract will be submitted to the State of Florida Chief Financial Office 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 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.

(fe) 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 consistent with Florida law.

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

~~(86)~~ **Standard of Conduct.**

(a) All individuals participating in the procurement process are bound by the State of Florida Code of Ethics for Public Employees, Chapter 112, Part 3, F.S., and the University's policies, including but not limited to, policies on conflicts of interest, gifts and ethics in purchasing.

(b) -All individuals 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 selected. University employees and University direct support organization employees participating on a procurement selection committee for commodities or services are prohibited from soliciting donations from responding vendors during the selection process, except for donations or other benefits expressly stated in the procurement document.

(c) 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.

~~(9)~~(7) Protest Procedures. Protests arising from all University contract procurement processes for the purchase of goods, services, leases and for construction-related competitive solicitations shall be handled in accordance with BOG Regulation 18.002.

(8) Purchase of Motor Vehicles.

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

~~(b)~~(a) The University has authority to:

1. Establish standard classes of motor vehicles to be leased, purchased, or used by University personnel for University business purposes;
2. Obtain the most effective and efficient use of motor vehicles for University business 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, 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)~~(b) Motor vehicles owned, leased, or operated by the University shall be available for official University business only.

Specific Authority: Board of Governors’ Regulation 1.001 ~~Florida Board of Governors resolution dated 1-7-03~~, BOG Regulation 18.00 . Law Implemented Chapter 18 of the Board of Governors regulations History– New 12-2-02, Amended 8-22-04. Formerly 6C8-7.030, Amended 9-12-08, Amended.