

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

**NOTICE OF PROPOSED REGULATION**

**REGULATION NO.:** FIU-2201

**REGULATION TITLE:** Purchasing

**SUMMARY:** This regulation is supplemental to the Florida Board of Governors' Purchasing regulations and provides the basic criteria related to procurement, including definitions; the Purchasing Department's duties; and information regarding the competitive solicitation process, ethical obligations, contracts, and the purchase of motor vehicles.

**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://bot.fiu.edu/regulations/>. If you would like a copy of the Proposed Regulation, please contact Eli Deville, Coordinator, Administrative Services, Office of the General Counsel, (305) 348-2103.

**AUTHORITY:** Resolution of the Florida Board of Governors dated January 7, 2003, and Board of Governors' Regulation 18.001.

**NAME OF PERSON INITIATING PROPOSED REGULATION:** Cristina Mendoza, Vice President and General Counsel.

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, Coordinator, Administrative Services, Office of the General Counsel, Florida International University, 11200 SW 8<sup>th</sup> Street, PC 511, Miami, FL 33199. Email: devillee@fiu.edu Fax: (305) 348-3272. Phone: 305-348-2103.

**DATE OF PUBLICATION:** August 12, 2008.

**THE FULL TEXT OF THE REGULATION IS PROVIDED BELOW:**

**6C8-7.030-FIU-2201 Purchasing.**

(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 ~~goods~~commodities and services within reasonable or required time frames, while promoting fair and open competition in the public procurement process. Responsible purchasing officials shall be protected from improper pressures of external political or business interests. The purpose of the process shall 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 and contracting. The opportunity to bid on University contracts is a privilege, not a right.

(2) Definitions.

(a) Artistic Services – Services provided by ~~a~~ an individual or group of individuals 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) 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 ~~to be used pursuant to license agreements shall be considered a “commodity.”~~ are commodities.

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

~~-(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 to competitively select a contractor.

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

~~(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 or demolition of facilities.~~

~~(h) Extension—An increase in the time allowed for the contract period.~~

(i) Independent Contractor – A person or firm who provides a service to the University, but does not have any employment or other relationship or connection with ~~that the~~ University, except as ~~provided~~ permitted by Florida law in Section 112.313, F.S.

(j) Invitation to Bid – A written solicitation for competitive ~~bids~~ responses ~~with the title, date, and hour of the public bid opening designated and~~ for the commodity, group of commodities and/or services defined, ~~for which bids are sought.~~

(k) Invitation to Negotiate – An ~~written solicitation for invitation extended to~~ prospective contractors ~~by the University, 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 negotiating ~~negotiation~~.

~~(l) Minority Business Enterprise—A business concern as defined in Section 288.703(2), F.S.~~

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

~~(n) 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.~~

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

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

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

(r) Request for Proposal – A written solicitation for competitive ~~proposals~~ responses for commodities and/or ~~contractual~~ services ~~with the title, date, and hour of the public opening designated.~~ The request for proposal may be used when the scope of work is not clearly defined by the University.

(s) Responsive and Qualified Bidder or Offeror – A contractor/~~vendor~~ who has submitted a ~~bid or proposal~~ competitive response that conforms in all material respects to a competitive solicitation.

~~(t) Term Contract—An indefinite quantity contract for the purchase of commodities or contractual services during a prescribed~~

~~period of time.~~

(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.

(3) Purchasing 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 Department has the duty to:

(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 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 vendor list that fails to respond to three (3) or more ~~invitations~~ 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 BidResponse,” such will be treated as a is a response for purposes of this provision.

(c) Plan and coordinate ~~ing~~ purchases in volume and ~~negotiating negotiate~~ and ~~executing execute agreements and~~ contracts for commodities and ~~contractual~~ services under which the University may make purchases.

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

(e) Evaluate and approve contracts ~~let~~ awarded by any State of Florida agency or department, the Federal Government, other states, political subdivisions, not-for-profit cooperatives or consortiums, or any independent college or university ~~or educational cooperative or educational consortium of 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~~ awarded by such other entities.

~~(f) 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 will be canceled and re-awarded to the prevailing party unless the final order or settlement between the parties provides otherwise. 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.~~

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

(h) 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 ~~Required~~.

(a) All contracts for the purchase of commodities and/or ~~contractual~~ services exceeding \$~~5075~~75,000 shall be awarded pursuant to a competitive solicitation, unless otherwise authorized herein.

(b) When only one response ~~if is~~ received to a competitive solicitations for commodities or contractual services exceeding ~~\$50,000~~\$75,000, the University ~~will~~ may review the solicitation response ~~and circumstances surrounding the solicitation~~ to determine if a second call for a competitive solicitation is in the best interest of the University. If it is determined that a second call would not serve a useful purpose, the University ~~will~~ may proceed with the acquisition.

(c) 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 ~~foreign 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, ~~will use~~ the contract award will be determined by the toss of ~~the~~ a coin.

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

~~(e) The 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 excepting Saturdays, Sundays, or State holidays.~~

~~(f) Advertisement. Invitations to bid, requests for proposals, and invitations to negotiate~~ 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 Purchasing Department's website. ~~The Director of Purchasing shall have has the authority to waive the advertisement requirement when the number of potential bidders or offerors 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 until notice of final contract award is given or within ten (10) days after the bid or proposal opening, whichever is earlier.~~ Competitive responses and negotiations will be confidential only to the extent permitted by Florida law.

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

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

~~(5) Purchase of Commodities or Contractual Services.~~

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

~~(b) 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:~~

- ~~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; and~~
- ~~9. Camps insurance.~~

~~(c) Purchases from Minority Business Enterprises. The University is an equal opportunity institution and encourages procurement contracting with Minority Business Enterprises.~~

~~(d) 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.~~ (e) Purchasing 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) 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. ~~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. 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.(b) Sole Source Purchases. Commodities or contractual services available from a single source shall~~ may be exempted from the competitive solicitation process. ~~The sole source document shall be publicly posted by the Purchasing Office for three working days.~~

~~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.(c) 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.

~~(f) 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, 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, orthotics, 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. Services provided to persons with mental or physical disabilities by not for profit corporations organized under the provisions of s. 501(c)(3) of the Internal Revenue Code or services governed by the provisions of the Office of Management and Budget Circular A-122;~~

~~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;~~

~~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 owner of copyrighted software or its contracted vendor; and~~

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

~~(g) 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. (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](#), ~~Chapter 112, Part 3III, F.S.,~~ and the University's policy on outside activities.

~~(6) Bonds. (a) Payment and Performance Bonds. The University 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 \$200,000 and the University is uncertain about the contractor's ability to perform.~~

~~(b) 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 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.~~

(7) Contracts.

(a) Contracts for commodities ~~and/or contractual~~ services ~~or licenses~~ shall consist of a purchase order or shall consist of a bilateral agreement signed by the President of the University or designee prior to ~~or within thirty (30) days of the~~ goods/commodities or 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 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) 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 being extended. 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 an Invitation to Bid or a Request for Proposals ~~competitive solicitation~~, the cost of any contemplated renewal must be included in the competitive ~~solicitation~~ response. All contract renewals are subject to sufficient annual appropriations.

(e) The President ~~shall have~~ has the authority to enter into deferred payment agreements utilizing the State of Florida ~~Controller's~~ 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 ~~Controller~~ 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.

(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~~-contractor consistent with [Florida law-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.

(8) 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.

(9) 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 [for University business purposes](#);

2. Obtain the most effective and efficient use of motor vehicles for ~~state~~[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, ~~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.

*Specific Authority ~~1010.04(2)~~[Florida Board of Governors resolution dated 1-7-03, BOG Regulation 18.00](#) ~~FS~~. Law Implemented [Chapter 18 of the Board of Governors regulations](#) ~~112.313, 119.07(3)(m), 120.57(3), 287.059, 627.719, 1004.22(7), 1010.04(2)~~ History– New 12-2-02, Amended 8-22-04. Formerly 6C8-7.030, Amended \_\_\_\_\_.*