

## **BOG 18.001 Purchasing Regulations**

(1) **Authority of the Institutions.** Each university Board of Trustees shall adopt regulations establishing basic criteria related to procurement, including procedures and practices to be used in acquiring commodities and contractual services, as follows:

(a) Removing any contractor from the University's competitive vendor list that fails to fulfill any of its duties specified in a contract with the University(s) and to reinstate any such contractor when satisfied that further instances of default will not occur.

(b) Planning and coordinating purchases in volume and negotiating and executing agreements and contracts for commodities and contractual services under which the University may make purchases.

(c) Evaluating and approving contracts let 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 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.

(d) Awarding 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 State University System-wide basis and the contracts may be for multiple years.

(e) Rejecting or canceling any or all competitive solicitations when determined to be in the best interest of the University.

(f) Barring any vendor from doing business with the University for demonstrated cause, including previous unsatisfactory performance.

(2) **Competitive Solicitation Threshold.** Each university Board of Trustees shall establish a competitive solicitation threshold not greater than \$50,000 for the purchase of commodities or contractual services.

(a) When only one response is received to the competitive solicitation threshold for commodities or contractual services exceeding \$50,000, the University may 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 may proceed with the acquisition.

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

(3) **Exceptional Purchases.** Each university is authorized to make exceptional purchases of commodities or contractual services as follows:

(a) Purchase of Products with Recycled Content. Each University may establish a program to encourage the purchase and use of products and materials

with recycled content and postconsumer 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. Each University shall have the authority to purchase insurance as deemed necessary and appropriate for the operation and educational mission of the University.

(d) Purchase of Printing. Printing is not subject to Chapter 283, F.S.

(4) **Purchases from Contractors Convicted of Public Entity Crimes.** A 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.

(5) **Competitive Solicitation Exceptions.** The following types of purchasing actions, and commodities and contractual services purchases are not subject to the competitive solicitation process:

- a) Emergency Purchases. When a university president or his/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 contractual services without a competitive solicitation.
- b) Sole Source Purchases. Commodities or contractual services available from a single source may be exempted from the competitive solicitation process.
- c) Purchases from Contracts and Negotiated Annual Price Agreements established by the State of Florida, other governmental entities, other Universities in the State University System, or other independent colleges and universities are not subject to further competitive solicitation.
- d) The following listed commodities and services are not subject to competitive solicitation:
  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 and other related equipment and supplies, provided they 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 University System, direct support organizations of the university, political subdivisions or other independent colleges and universities;
13. Programs, conferences, workshops, Continuing education events or other university programs that are offered to the general public for which fees are collected to pay all expenses associated with the event or program;
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 an Annual Certification List developed by each University;
20. Purchases for resale.
21. Accounting 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
24. Purchases of materials, supplies, equipment, or services for instructional or sponsored 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 in accordance with sponsored research procedures or to attain the instructional objective.

- (6) **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 for proposals shall be excluded from competing for such procurements.
- (7) **Standard of Conduct.** It shall be a breach of ethical standards for any employee of an 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 a University a gratuity of any kind, form or type to influence the development of a contract or potential contract for commodities or services.

#### **18.002 Notice and Protest Procedures.**

##### (1) Notification.

(a) Bid Solicitation - The university shall provide notice of any information relating to a bid solicitation by advertising for bids or by distribution of bidding documents.

(b) Contract Award - The university shall provide notice of a decision or intended decision concerning a solicitation, contract award, or exceptional purchase by electronic posting. This notice shall contain the following statement: "Failure to file a protest in accordance with BOG regulation 18.002, or failure to post the bond or other security as required in BOG regulation 18.002, shall constitute a waiver of protest proceedings.

##### (2) Protest.

(a) Any qualified bidder who is adversely affected by the university's decision may file a written notice of protest within 72 hours after receipt of the notice with the president. The protesting firm must reduce its complaint to written petition and file it with the president within ten (10) days from

registration of the original complaint. If the bid documents require the posting of a bond with the protest, the bond shall be included with the protest.

(b) Failure to file a notice of protest or the written petition shall constitute a waiver of the right to protest proceedings.

(3) Upon receipt of the formal written petition filed in accordance with this regulation, the president or designee shall delay the execution of the contract until the protest is resolved by mutual agreement between the parties or by final presidential action, unless the president shall make a finding and declares that such delay would cause serious danger to the public health, safety or welfare.

(4) Petitions involving disputed issues of material fact shall be referred for a quasi-judicial hearing. The president may designate a hearing officer to conduct a hearing in accordance with university procedures. At the conclusion of the hearing, the hearing officer shall submit a written recommended order to the president. The president shall then issue a preliminary order for final action and notify the firm of such order. The preliminary order of the president shall be final, unless the firm under consideration takes exception to such order; in which event, it may file with the president such exceptions within twenty-one (21) days receipt of notice of the preliminary order. At the end of the period for filing exceptions, the president will review the preliminary order and any exceptions that have been filed, and will render the final order. The decision of the president is final.

Authority - Section 7(d), Article IX, Florida Constitution

### **18.003 Bonding Requirements**

(1) 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.

(2) Payment and Performance Bonds.

(a) Any contractor contracting with a University to provide commodities, services or commodities ~~which~~ which include installation, may be required to furnish a payment and performance bond, with good and sufficient securities, to the University prior to the issuance of the contract.

(b) The bond or security must be in an amount equal to 100% of the response submitted to the competitive solicitation.

(3) Solicitation Protest Bond. Any contractor that files an action 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, bank official check or money order at the time of filing the formal protest shall result in the denial of the protest.