**NOTICE OF REGULATION REPEAL**

**December 10, 2019**

## DEPARTMENT OF EDUCATION

Division of Universities University of North Florida

## REGULATION TITLE:

Notice and Protest Procedures for Protests Related to a University Contract Procurement Process

## REGULATION NO.:

13.0020R

## SUMMARY:

The repeal is being undertaken to omit a separate regulation for protests. The language regarding procurement protests will be incorporated into UNF regulation 13.0010R as amended.

## FULL TEXT:

The full text of the regulation for repeal is attached.

## AUTHORITY:

Resolution of the Florida Board of Governors dated January 7, 2003 BOG regulation 18.002

**UNIVERSITY OFFICIAL INITIATING THE REPEALED REGULATION:**

# Shawn Corrigan Asmuth, Director Procurement Services

## INDIVIDUAL TO BE CONTACTED REGARDING THE REPEALED REGULATION:

Stephanie Howell, Paralegal, Office of the General Counsel, showell@unf.edu, phone (904)620- 2828; fax (904)620-1044; Building 1, Room 2100, 1 UNF Drive, Jacksonville, FL 32224.

***Any comments regarding the repeal of the regulation must be communicated in writing to the contact person on or before December 26, 2019, in order to receive full consideration.***

Polices & Regulations

|  |
| --- |
| **Subject: Notice and Protest Procedures for Protests Related to a University Contract Procurement Process** |
| **Number** | 13.0020R | **** New Regulation* Major Revision of Existing Regulation
* Minor/Technical Revision of Existing Regulation
* Reaffirmation of Existing Regulation
 |
| **Effective Date** | October 15, 2013 |
| **Revised Date** |  |
| **Responsible Division/Department:** Administration and Finance/ Purchasing |

## ~~OBJECTIVE & PURPOSE~~

~~The procedures set forth in this Regulation shall apply to protests that arise from all University~~ ~~contract procurement processes for the purchase of goods, services, leases and for construction-~~ ~~related competitive solicitations, and shall be the exclusive set of procedures applicable to all such~~ ~~protests.~~

## ~~STATEMENT OF REGULATION~~

### ~~Definitions.~~

* 1. ~~Adversely affected- where the University decision or intended decision will~~ ~~cause immediate injury in fact to the Protestor and the injury is of the type that the~~ ~~pertinent law or regulation is designed to protect.~~
	2. ~~Days- calendar days.~~
	3. ~~Decision or intended decision- the Specifications; the rejection of a response~~

~~or all responses to a competitive solicitation; the intent to award a contract pursuant to~~ ~~a competitive solicitation as indicated by a posted written notice; a sponsored~~ ~~research exemption; or a determination that a specified procurement can be made~~ ~~only from a sole source.~~

* 1. ~~Electronic posting- posting on the University’s designated website.~~
	2. ~~Filing- when filing documents or written materials with:~~

 ~~(1) the Issuing Office, the filing is the delivery of the original of the document or~~ ~~written materials at the Issuing Office. Filing the Notice of~~

~~Intent to Protest or the Formal Protest via email or facsimile is not permitted. The~~ ~~time allowed for filing any documents or written material is not extended by the~~ ~~mailing of such.~~

1. ~~the President, the President’s Designee or the Presiding Officer, filing is the~~ ~~delivery of the documents or written material to the President, President’s~~ ~~Designee or Presiding Officer via email or in person at a hearing.~~
2. ~~Formal Protest- the formal written complaint that complies with the~~ ~~requirements of Section (6) of this regulation.~~
3. ~~Issuing Office- the office that issued the solicitation, or if a solicitation has not been~~ ~~issued, the office that made the decision or intended decision that is~~

 ~~being protested.~~

1. ~~Legal holidays- those days designated as holidays in Section 110.117, Florida~~ ~~Statutes, and those days- other than Saturdays and Sundays- when the~~

 ~~University is officially closed.~~

1. ~~Notice of Intent to Protest- a short and plain written statement that complies with the~~ ~~requirements of Section (5) of this regulation.~~
2. ~~Potential Protestor- any actual or prospective bidder or offeror, person, or~~ ~~firm with standing to protest the decision or intended decision.~~
3. ~~President- means the presiding president of the University.~~
4. ~~President’s Designee – the person selected by the President to perform a specific~~ ~~delegated function on behalf of the President under this regulation.~~
5. ~~President/President’s Designee – means the presiding president of the~~ ~~University; however, if the presiding president appoints a designee, shall mean~~ ~~the presiding president’s designee only.~~
6. ~~Presiding Officer- the Quasi-Judicial Officer or the University Official~~ ~~handling the protest proceeding.~~
7. ~~Protest proceeding- either a summary proceeding involving a University~~ ~~Official or a quasi-judicial hearing involving a Quasi-Judicial Officer.~~
8. ~~Protestor- any actual or prospective qualified bidder or offeror, or person or~~

~~firm that is adversely affected and has standing who timely files a Notice of Intent to~~ ~~Protest and also timely files a Formal Protest.~~

1. ~~Quasi-Judicial Officer- the designated presiding official (may be an~~ ~~Administrative Law Judge or a qualified attorney with a minimum of five~~ ~~years’ experience practicing law) in a protest proceeding where there are~~ ~~disputed issues of material fact.~~
2. ~~Serve/Service- sending a copy of the information to the parties via email~~ ~~communication at the email addresses of record.~~
3. ~~Specification- the contents of the competitive solicitation or any addenda~~ ~~thereto; the approval of a sole source procurement; or other solicitation~~ ~~documents as permitted by applicable law or regulation.~~
4. ~~Timely filed- actual receipt of documentation or written material by the Issuing~~ ~~Office, the President, the President’s Designee, or the Presiding Officer on or~~ ~~before the deadline.~~
5. ~~University Official- the person appointed by the President to conduct a~~ ~~summary proceeding.~~
6. **~~Notice of Decision or Intended Decision~~**~~. The University shall provide a notice of decision~~ ~~or intended decision by electronic posting. The notice shall contain the following statement:~~ ~~“Failure to timely file a protest or failure to timely deliver the required bond or other security in~~ ~~accordance with the Board of Governors’ Regulations 18.002 and 18.003 shall constitute a~~ ~~waiver of protest proceedings.”~~
7. **~~Initiating a Protest.~~** ~~If a Potential Protestor desires to protest a decision or intended~~ ~~decision of the University, the Potential Protestor must timely file a Notice of Intent to Protest, a~~ ~~Formal Protest, and the required Solicitation Protest Bond prescribed by University Regulation~~ ~~13.0030R with the Issuing Office.~~

### ~~Notice of Intent to Protest.~~

* 1. **~~Timely Filing of a Notice of Intent to Protest.~~**
		1. ~~Protesting a Specification.~~

~~If the Potential Protestor is protesting a Specification, the Potential Protestor must timely file a~~ ~~Notice of Intent to Protest with the Issuing Office within 72 hours of the University’s~~

~~electronic posting of the Specification that is being protested. A Potential Protestor’s failure to~~ ~~timely file a Notice of Intent to Protest within 72 hours of the posting of the Specification shall~~ ~~constitute a waiver of the right to protest proceedings related to that Specification.~~

* + 1. ~~Protesting any Other Decisions or Intended Decisions.~~

~~If a Potential Protestor is protesting any decision or intended decision other than a Specification,~~ ~~the Potential Protestor must timely file a Notice of Intent to Protest such decision or intended~~ ~~decision with the Issuing Office within 72 hours of the University’s posting of the notice of decision~~ ~~or intended decision that is being protested. A Potential Protestor’s failure to timely file a Notice of~~ ~~Intent to Protest within 72 hours of the University’s posting of the notice of decision or intended~~ ~~decision being protested shall constitute a waiver of the right to protest proceedings related to that~~ ~~decision or intended decision.~~

### ~~Filing Period for the Notice of Intent to Protest.~~

~~The 72-hour period for filing the Notice of Intent to Protest regarding any decision or intended~~ ~~decision begins upon the electronic posting of the decision or intended decision. If the end of the~~ ~~72-hour period falls on a Saturday, Sunday, or legal holiday, the deadline for filing the Notice of~~ ~~Intent to Protest shall be the next business day. A Notice of Intent to Protest may not be filed~~ ~~before the 72-hour period begins.~~

### ~~Content of the Notice of Intent to Protest.~~

~~The Notice of Intent to Protest must be addressed to the Issuing Office; must identify the Potential~~ ~~Protestor and must provide the Protestor’s/Protestor’s counsel or representative’s address, phone~~ ~~number and email address; must state the name and address of the University whose action is~~ ~~being protested; must identify the solicitation by number and title, or if the intended protest is not~~ ~~related to a competitive solicitation, must provide other language that will enable the University to~~ ~~identify the decision or intended decision being protested; and must state that the Potential~~ ~~Protestor intends to protest the decision or intended decision.~~

###  ~~(5) Formal Protest and Solicitation Protest Bond.~~

1. **~~Timely Filing of a Formal Protest and Solicitation Protest Bond.~~**

~~The Potential Protestor must timely file a Formal Protest with the Issuing Office within ten (10)~~ ~~days after the date the Notice of Intent to Protest was filed. In addition, the Potential Protestor~~ ~~must timely file the required Solicitation Protest~~

~~Bond with the Issuing Office within ten (10) days after the date the Notice of Intent to Protest was~~ ~~filed. The failure of the Potential Protestor to timely file the Formal Protest or to timely file the~~ ~~Solicitation Protest Bond shall constitute a waiver of the Potential Protestor’s right to protest~~ ~~proceedings and/or the denial and dismissal of the Potential Protestor’s protest.~~

### ~~Content of the Formal Protest.~~

~~The Formal Protest must state with particularity the facts and law upon which the protest is~~ ~~based. Only actual or prospective bidders or offerors who would be adversely affected by the~~ ~~University’s proposed action have standing to protest the award or intent to award a contract~~ ~~through competitive solicitation. The Formal Protest must contain the following:~~

* 1. ~~The name of the Protestor and the address, telephone number and~~ ~~email address of the Protestor/Protestor’s counsel or representative. The~~ ~~email address provided will be the email address used by the Issuing~~ ~~Office, the President, the President’s Designee, the Presiding Officer,~~ ~~and the other parties for serving the Protestor with notice, documents and~~ ~~other materials related to the protest.~~
	2. ~~The identification of the University and competitive solicitation involved, if~~ ~~no competitive solicitation is involved, identification of~~

~~the action being protested;~~

* 1. ~~A statement of when and how the Protestor received notice of the~~ ~~decision or intended decision that is being protested;~~
	2. ~~A concise statement of the facts, including the specific facts the~~ ~~Protestor contends warrant reversal or modification of the~~ ~~University’s decision or intended decision;~~
	3. ~~A statement of all disputed issues of material fact, or if there are~~ ~~none, the Formal Protest must indicate so;~~
	4. ~~A statement of the specific regulations or laws that the Protestor~~ ~~contends require reversal or modification of the decision or intended~~ ~~decision, including an explanation of how the alleged~~

~~facts relate to the specific regulations or statutes;~~

* 1. ~~A statement of all information establishing that the Protestor is an~~ ~~interested party for the purpose of filing a protest, and how the Protestor~~ ~~would be adversely affected by the University’s proposed~~

~~action;~~

* 1. ~~A statement of the relief sought by the Protestor, stating precisely the~~ ~~action the Protestor wishes the University to take with respect~~

~~to the protest; and~~

* 1. ~~A copy of any documents or materials referenced or incorporated into~~ ~~the Formal Protest.~~

### ~~Impact on Procurement Process.~~

* 1. ~~Upon receipt of the Formal Protest by the Issuing Office, the Issuing Office~~ ~~will stop the solicitation or contract award process until the subject of the protest~~ ~~is resolved, unless the President sets forth in writing particular facts and~~ ~~circumstances which require the continuance of the solicitation or contract~~ ~~award process without delay in order to avoid an immediate and serious danger~~ ~~to the public health, safety or welfare.~~
	2. ~~The President/President’s Designee may, in response to a Protest, terminate~~ ~~the contract procurement process, terminate the solicitation process, and/or reject~~ ~~all bids. If any such action is taken, the Protest shall be automatically dismissed,~~ ~~and the University may, if desired, reinitiate the contract procurement process.~~
1. **~~University’s Response to a Formal Protest.~~** ~~The University will file a notice with the~~ ~~Issuing Office of the name, phone number and email address for the attorney representing the~~ ~~University in the protest; the email address provided will be the email address used by the~~ ~~Issuing Office, the President, the President’s Designee, the Presiding Officer, and the other~~ ~~parties for serving the University with notice, and documents and material related to the protest.~~ ~~The University may also file a written response to the Formal Protest with the Issuing Office~~ ~~within seven (7) days after the date the Formal Protest is filed.~~
2. **~~Right of Counsel~~**~~. A party participating in the protest or appearing in a protest proceeding~~ ~~has the right, at the party’s own expense, to be represented by counsel or by a qualified~~ ~~representative.~~

### ~~Resolution by Mutual Agreement.~~

1. **~~Informal Discussions.~~**

Following the timely filing of a Formal Protest and Solicitation Protest Bond, the University may hold informal discussions with the Protestor to resolve the protest by mutual agreement. Such ~~discussions, if made available, will take place within seven (7) days, of the filing of the Formal~~ ~~Protest. The President/President’s Designee has the authority to settle or resolve protests.~~

### ~~Time Tolled.~~

~~If informal discussions are scheduled, the time requirements related to this regulation are tolled~~ ~~for the period of time from the date the Formal Protest is~~

~~filed until the date the last informal discussion is scheduled for or held.~~

### ~~Settlement Agreement.~~

Unless prevented by law, if the parties reach a mutual agreement and a term in the settlement ~~agreement conflicts with this regulation, the term in the settlement agreement will control.~~

### ~~Failure of Parties to Resolve by Mutual Agreement.~~

~~If informal discussions are not held, or the informal discussions do not result in a mutual~~ agreement between the parties, the protest shall proceed to either a summary proceeding or a ~~quasi-judicial hearing, as appropriate.~~

1. **~~Determination of Appropriate Proceeding.~~** ~~When there is no resolution by mutual~~ ~~agreement, the President/President’s Designee shall appoint a University Official, and the~~ ~~Initiating Office will forward all material filed by the parties to the University Official. The~~ ~~University Official will review the material filed by the parties that would be admissible~~

~~in evidence to determine whether there are any disputed issues of material fact. If the~~ ~~protest contains no disputed issues of material fact, a summary proceeding is~~ ~~appropriate. If the protest contains disputed issues of material fact, a quasi-judicial~~ ~~hearing is appropriate.~~

### ~~Summary~~ ~~Proceeding.~~

~~If the protest contains no disputed issues of material fact, the University Official~~ ~~shall conduct a summary proceeding. The summary proceeding will be conducted~~ ~~within thirty (30) days after the date the Formal Protest was filed.~~

### ~~Notice of Proceeding.~~

~~The University Official shall serve written notice on all parties, such notice will allow the~~ ~~parties at least seven (7) days from the date of the notice to file with the University~~ ~~Official any documents, memoranda of law, or other written material (collectively~~ ~~referred to as “written material”) in support of or in opposition to the University’s action~~ ~~or refusal to act and to serve the other parties with a copy of the same. At the end of~~ ~~the seven (7) days, the University Official shall then serve a second notice to the~~ ~~parties stating that the parties have seven (7) days to file with the University Official and~~ ~~to serve the other parties with their written responses to the written material filed by the~~ ~~other parties.~~

### ~~Informal Hearing.~~

~~The University Official may, in the University Official’s sole discretion, schedule an~~ ~~informal hearing on the matter for the purpose of taking oral evidence or argument. If the~~ ~~University Official schedules an informal hearing, the University Official shall serve the~~ ~~parties with written notice at least fourteen (14) days prior to the hearing, setting forth the~~ ~~place, date, and time of the hearing.~~

### ~~University Official’s Recommended Order.~~

* 1. ~~The University Official will issue a Recommended Order to the President~~ on whether the University’s proposed action is contrary to the applicable ~~statutes, regulations, or policies governing the University, or to the~~ ~~Specifications. The University Official’s Recommended Order shall take into~~ ~~consideration only those documents and written materials filed by the parties,~~ and if an informal hearing is held, information obtained as a result of the ~~informal hearing.~~
	2. ~~The University Official’s recommended order shall be issued to the~~ ~~President within fifty (50) days after date the Formal Protest was filed. The~~ ~~University Official shall serve copies of the Recommended Order, along with~~ ~~the date the Recommended Order was issued, to the parties immediately after~~ ~~issuing the Recommended Order to the President.~~
	3. The University Official shall also submit the recording of the informal hearing, if one was held, and all documents and written material filed in ~~the matter to the President when issuing the Recommended Order.~~

### ~~Exceptions to the University Official’s Recommended Order.~~

~~The parties may file written exceptions to the Recommended Order. The~~ ~~Parties must file any exceptions to the Recommended Order with the President~~ ~~within seven (7) days after the date the Recommended Order was issued.~~

### ~~The Final Order.~~

~~The President shall enter a Final Order within twenty-one (21) days after the~~ ~~date the Recommended Order was issued. In deciding whether to follow or~~ ~~depart from the University Official’s Recommended Order, the President may~~ ~~consider the written materials and exceptions filed by the parties, and the~~ ~~recording of the informal hearing, if any. The President’s Final Order is the final~~ ~~decision of the University.~~

### ~~Point of Entry.~~

~~Judicial review of the University’s final decision shall be in accordance with~~ ~~Florida Rule of Appellate Procedure 9.190(b)(3), applicable to review of~~ ~~quasi- judicial decisions of an administrative body not subject to the~~ ~~Administrative Procedure Act. A request for review may be made by filing a~~ ~~petition for certiorari review with the appropriate circuit court within thirty~~

~~(30) days after the date of the University’s final decision.~~ ***~~Failure to seek~~ ~~timely review shall constitute a waiver of the right to appeal the~~ ~~University’s final decision.~~***

 ~~(12)~~ **~~Quasi-Judicial Hearing.~~**

~~If the Formal Protest contains issues of material fact, the President/President’s~~ ~~Designee shall refer the Formal Protest to a Quasi-Judicial Officer for a quasi-judicial~~ ~~hearing. The hearing shall be conducted within forty (40) days after the date the Formal~~ ~~Protest was filed.~~

### ~~Appointment of Quasi-Judicial Officer.~~

~~Within seven (7) days after the date the Formal Petition was filed, the~~ ~~President/President’s Designee shall appoint a Quasi-Judicial Officer or~~ ~~forward a request for hearing and such other documents, laws and~~ ~~regulations as may be required by the Florida Department of Administrative~~ ~~Hearings to the Department, and for assignment of an Administrative Law~~ ~~Judge to conduct a quasi-judicial hearing (“hearing”).~~

### ~~Notice of Hearing.~~

* 1. ~~Within seven (7) days after being appointed, the Quasi-Judicial~~ ~~Officer shall issue a Notice of Hearing, stating the time, date and~~ ~~location for the parties to present evidence and argument on the~~ ~~issues under consideration. The Quasi-Judicial Officer shall set a~~ ~~time and place for all hearings and shall serve written notice on all~~ ~~the parties.~~
	2. ~~The Quasi-Judicial Officer shall give no less than 14 days’ notice of~~ ~~the hearing on the merits of the protest, unless otherwise agreed~~ ~~by the parties.~~

### ~~University Statement of Actions.~~

~~Within seven (7) days after the appointment of the Quasi-Judicial Officer, the~~ ~~University shall file a written statement to the Quasi-Judicial Officer stating the~~ ~~actions (proposed actions, actions already taken, or refusal to take actions are~~ ~~referred to as “actions of the University, and a summary of the factual, legal,~~ ~~and policy grounds for such actions. The University shall immediately serve a~~ ~~copy of the Statement of Actions on the other parties.~~

### ~~Protestor’s Response to University Statement of Actions.~~

~~Within seven (7) days after the University provides the University Statement~~ ~~of Actions to the Quasi-Judicial Officer, the Protestor may file a written~~ ~~response to such statement with the Quasi-Judicial Officer. The Protestor~~ ~~shall immediately serve a copy of the Protestor’s Response to the University’s~~ ~~Statement of Actions on the other parties.~~

### ~~Discovery.~~

~~After the assignment of the Quasi-Judicial Officer, the parties may obtain~~ ~~discovery through the means and manner provided in the Florida Rules of Civil~~ ~~Procedure 1.280 through 1.400. The Quasi-Judicial Officer may issue~~ ~~appropriate orders to effectuate the purposes of discovery and to prevent~~ ~~delay.~~

# 7

* 1. ~~Each party must serve a list of evidence to the other parties at least~~ seven (7) days prior to the first day of the hearing, along with a general description of how the party intends to use the evidence in the hearing.
	2. Each party must file a witness list with the Quasi-Judicial Officer and serve the same on the other parties at least seven (7) days prior to the first day of the hearing. The parties must include a general description ~~of how the party intends to use each witness in the hearing with the~~ ~~witness list.~~

### ~~De Novo Proceeding.~~

~~The Quasi-Judicial Officer shall conduct a de novo proceeding to determine~~ ~~whether the University’s decision or intended decision is contrary to the statutes,~~ ~~regulations, or policies governing the University, or contrary to the Specifications.~~ ~~The standard of proof for the proceedings shall be whether the proposed~~ ~~University action was clearly erroneous, contrary to competition, arbitrary, or~~ ~~capricious. However, if the protest is regarding the University’s decision to reject~~ ~~all responses to a competitive solicitation, the standard of review shall be whether~~ ~~the University’s intended action is illegal, arbitrary, dishonest or fraudulent.~~

### ~~Burden of Persuasion.~~

~~The burden of proof rests with the party protesting the University action.~~

### ~~Conduct of Hearing.~~

~~All parties shall have an opportunity to: present evidence; to respond to all~~ ~~issues involved; to conduct cross-examination and submit rebuttal evidence;~~ ~~and to submit proposed findings of fact and proposed orders.~~

* 1. ~~The hearing shall be conducted in conformity with the Florida Rules of~~ ~~Civil Procedure and the Florida Rules of Evidence applicable to civil~~ ~~proceedings unless specifically contradicted by this regulation or~~ ~~otherwise agreed by the parties.~~
	2. ~~Each party shall have a minimum of fifteen (15) minutes to argue its~~ ~~position. The Protestor shall present its argument first and have the~~ ~~opportunity for rebuttal. At the Quasi-Judicial Officer’s discretion, the~~ ~~University may have the opportunity for surrebuttal.~~
	3. ~~The Quasi-Judicial Officer has the right to question each party and any~~ ~~witnesses.~~

### ~~Recommended Order.~~

The Quasi-Judicial Officer may request that the parties submit proposed ~~findings of fact, conclusions of law, orders and memoranda on the issues~~ ~~within a time designated by the Quasi-Judicial Officer. No later than thirty~~

~~(30) days after receipt of the hearing transcript, the Quasi-Judicial Officer~~ shall issue a written Recommended Order to the President, and serve a ~~copy on each of the parties.~~

### ~~Preliminary Order and Exceptions to the Preliminary Order.~~

~~Within fourteen (14) days after the date the Recommended Order was~~ ~~issued, the President shall issue a Preliminary Order and serve the parties~~ ~~with a notice of such order. If the Protestor takes exception to the~~ ~~Preliminary Order, the Protestor must timely file its written exceptions with~~ ~~the President within fourteen (14) days after the date the Preliminary Order~~ ~~was issued. The Preliminary Order shall provide, “This Preliminary Order is~~ ~~the Final Order unless the Protestor files written exceptions to the~~ Preliminary Order with the President no later than 14 days after the date ~~this Preliminary Order is issued.”~~

# 8

### ~~Final Order.~~

* 1. ~~If no written exceptions are timely filed, the Preliminary Order is the Final~~ ~~Order.~~
	2. If the Protestor timely files written exceptions, then within fourteen

~~(14) days after the end of the 14 day period for filing exceptions to the~~ ~~Preliminary Order, the President will review the Preliminary Order and~~ ~~the timely filed exceptions and will render a Final Order.~~

* 1. ~~The President’s Final Order is the final decision of the University.~~
1. **~~Point of Entry.~~** ~~Judicial review of the University’s final decision shall be in~~ ~~accordance with Florida Rules of Appellate Procedure Rule 9.190(b)(3),~~ ~~applicable to review of quasi-judicial decisions of an administrative body~~ not subject to the Administrative Procedure Act. A request for review may be made by filing a petition for certiorari review with the appropriate circuit ~~court within thirty (30) days after the University’s final decision.~~ ***~~Failure to~~ seek timely review shall constitute a waiver of the right to appeal the ~~University’s final decision.~~***
2. **~~Computation of Time.~~** ~~In computing any period of time under this regulation or by~~ ~~order of a Presiding Officer, the day of the act from which the period of time begins to~~ ~~run shall not be included. The last day of the period shall be included unless it is a~~ ~~Saturday, Sunday or legal holiday, in which event the period shall run until the end of~~ ~~the next day which is not a Saturday, Sunday or legal holiday. When the period of time~~ ~~allowed is less than 7 days, intermediate Saturdays, Sundays, and legal holidays shall~~ ~~be excluded in the computation. Notwithstanding the above, this Section does not~~ ~~apply when computing the time period for filing the Notice of Intent to Protest as it is~~ ~~computed in accordance with Section (5)(b) of this regulation.~~
3. **~~Conflict.~~** ~~Following appointment of the University Official or the Quasi-Judicial~~ Officer as the Presiding Officer of a protest proceeding, the attorney representing the ~~University in the protest will not serve as legal advisor to the Presiding Officer until the~~ protest proceedings are over (to include the period of time in which the final decision of ~~the University can be appealed).~~
4. **~~Intervenors~~**~~. Persons other than the original parties to a pending proceeding~~ ~~whose substantial interest will be affected by the proceeding and who desire to~~ ~~become parties may petition the Presiding Officer for leave to intervene. Except for~~ ~~good cause shown, petitions for leave to intervene must be filed with the Presiding~~ Officer no later than 20 days after the date the Formal Protest was filed. The petition ~~shall include allegations sufficient to demonstrate that the intervenor is entitled to~~ ~~participate in the proceeding as a matter of constitutional or statutory right or pursuant~~ ~~to a Board of Governors’ or University’s rule or regulation, or that the substantial~~ interests of the intervenor are subject to determination or will be affected through the ~~proceeding. The petition shall also include the email address of the~~ ~~intervenor/intervenor’s counsel or representative; the email address provided will be~~ ~~the email address used by the President, the President’s Designee, the Presiding~~ ~~Officer, and the other parties for serving the intervenor with notice, documents and~~ ~~materials related to the protest. If time permits, the parties may, within seven (7) days~~ after service of the intervenor’s petition, file a response in opposition to the petition with ~~the Presiding Officer and serve the same on the other parties. The Presiding Officer~~ may impose terms and conditions on the intervenor to limit prejudice to other parties.
5. **Presiding Officer Orders**. The Presiding Officer may issue any orders necessary to effectuate discovery, to prevent delay, and to promote the just, speedy, and ~~inexpensive determination of all aspects of the protest.~~

# 9

1. **Motions.** All requests for relief shall be by motion. All motions shall be in writing unless made on the record during a hearing and shall fully state the action requested ~~and the grounds relied upon. The moving party shall file the motion with the Presiding~~ ~~Officer and serve a copy on the other parties. When time allows, the other parties~~ ~~may, within seven (7) days after service of a written motion, file a response in~~ ~~opposition and serve the same on the other parties. Written motions will normally be~~ disposed of after the response period has expired based on the motion, together with ~~any supporting or opposing memoranda. The Presiding Officer shall conduct~~ ~~proceedings and enter such orders as are deemed necessary to dispose of issues~~ ~~raised by the motion. Motions, other than a motion to dismiss, shall include a~~ statement that the movant has conferred with the other parties of record and shall state whether any party has an objection to the motion. Motions for extension of time shall ~~be filed prior to the expiration of the deadline sought to be extended and shall state~~ ~~good cause for the request.~~
2. **Evidence.** In a protest to an invitation to bid or request for proposals procurement, ~~no submissions made after the bid or proposal opening which amend or supplement~~ ~~the bid or proposal shall be considered. In a protest to an invitation to negotiate~~ procurement, no submissions made after the University announces its intent to award a contract, reject all replies, or withdraw the solicitation which amend or supplement the ~~reply shall be considered.~~
3. **~~Extensions or Continuances.~~** ~~The Presiding Officer may extend the time period~~ ~~for holding the hearing. The Presiding Officer may also grant a continuance of a~~ ~~hearing for good cause shown. Except in cases of emergency, requests for~~ ~~continuance must be made at least seven (7) days prior to the date noticed for the~~ ~~hearing.~~
4. **~~Records.~~** ~~The University shall accurately and completely preserve all testimony~~ and evidence in the proceeding, and upon the request of any party shall provide a copy ~~of the testimony. The University may charge the cost of duplication to the requesting~~ ~~party. Proceedings shall be recorded by a certified court reporter or by recording~~ ~~instruments.~~

~~Any party to a hearing may, at its own expense, provide a certified court reporter if the~~ ~~University does not. The Presiding Officer may provide a certified court reporter. At a~~ ~~hearing reported by a court reporter, any party who wishes a transcript of the testimony~~ ~~shall order the same at its own expense. If a court reporter records the proceedings,~~ ~~the recordation shall become the official transcript.~~

1. **Costs and Attorney Fees.** If the Quasi-Judicial Officer determines that the non- ~~prevailing party has participated in the hearing for an improper purpose, the Quasi-~~ ~~Judicial Officer may award attorney’s fees and costs to the prevailing party, as~~ appropriate. If the Quasi-Judicial Officer awards the University attorney’s fees and/or ~~costs, upon Protestor’s payment of such costs, the University shall return the~~ ~~solicitation protest bond to the Protestor. “Improper purpose” means participation in~~ ~~the protest proceeding primarily to harass, cause unnecessary delay, frivolous~~ ~~purpose; needlessly increasing the costs of litigation, licensing, or securing the~~ ~~approval of an activity; or filing a meritless protest.~~

Authority: Section 7(d), Art. IX, Fla. Const.; History – New. Approved by BOT October 15, 2013.

10