

NOTICE OF AMENDED REGULATION

December 10, 2019

DEPARTMENT OF EDUCATION

Division of Universities
University of North Florida

REGULATION TITLE:

Procurement Program

REGULATION NO.:

13.0010R

SUMMARY:

The amended regulation updates terminology so the regulation is current with common terms. Construction Owner Direct Purchases ("ODP") are now referenced in the amended regulation. The amended regulation also incorporates language from current procurement regulations 13.0020R, 13.0030R and 13.0040R which are being repealed. In addition, the regulation language has been clarified or simplified throughout as needed.

FULL TEXT:

The full text of the regulation being amended is attached.

AUTHORITY:

Resolution of the Florida Board of Governors dated January 7, 2003 and BOG Regulations 18.001, 18.002, and 18.003.

UNIVERSITY OFFICIAL INITIATING THE PROPOSED REGULATION:

Shawn Corrigan Asmuth, Director Procurement Services

INDIVIDUAL TO BE CONTACTED REGARDING THE PROPOSED REGULATION:

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

Polices & Regulations

Subject: <u>Purchasing Procurement Regulation Program</u>		
Number	13.0010R	<input type="checkbox"/> New Regulation
Effective Date	October 15, 2013	<input checked="" type="checkbox"/> Major Revision of Existing Regulation
Revised Date	<u>June 16th 2017</u>	<input type="checkbox"/> Minor/Technical Revision of Existing Regulation
Responsible Division/Department: Administration and Finance/ <u>Procurement Services Purchasing</u>		<input type="checkbox"/> Reaffirmation of Existing Regulation

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I. OBJECTIVE & PURPOSE

~~It is the objective of the University to acquire quality goods and services within reasonable or required time frames, while promoting fair and open competition in the public procurement process. The process shall 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. To establish authority within which the University can acquire the goods and services needed for fulfillment of the University's mission.~~

II. STATEMENT OF REGULATION

(1) **Regulation.** The University is authorized to adopt regulations establishing basic criteria related to procurement, including procedures and practices to be used in acquiring ~~commodities~~goods 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 and to reinstate any such contractor when satisfied that further instances of default will not occur.~~

~~(ab) Planning and coordinating purchases in volume and negotiating and executing agreements and contracts for commodities~~goods and ~~contractual~~ services under which the University may make purchases/acquisitions.

~~(be) Evaluating, approving, and utilizing contracts that are entered into after competitive solicitation let by any State of Florida agency or department, the Federal Government, other states, political subdivisions, cooperatives/consortia, not-for-profit cooperatives or consortia, or any independent college/-or university for the procurement/acquisition of commodities goods and contractual services, when it is determined to be cost-effective or and in the best interest of the University, to do so to make purchases under contracts let by such other entities.~~ The University shall review existing consortia and cooperative contracts to identify potential savings or other benefits to the University and, if in the best interest to the University, there is the potential for savings, enter into adopt those contracts, new consortia and cooperative contracts to achieve the savings, with the goal of achieving a five percent savings on existing contract prices.

~~(ce) Awarding contracts for goods 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.~~

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

(ef) Barring any vendor from doing business with the University and/or removing a vendor from the University's vendor list for demonstrated cause, including but not limited to: Failure to perform; attempts to inappropriately influence acquisition decisions/decision makers; being charged with or convicted of fraud; misdemeanor or felony in connection with the vendor's commercial endeavors; bankruptcy, receivership or any other assignment to creditors; commencing or continuing to deliver/supply goods/services to the University after being notified to stop doing so; federal or state debarment; other federal or state advisement. At the sole discretion of Procurement Services management, a barred vendor may have their status reviewed for reinstatement if the circumstances leading to the barrment are resolved to the University's satisfaction. previous unsatisfactory performance.

(fg) Prohibiting University employees and/or University Direct Support Organization employees participating in a competitive solicitation process procurement selection committee for commodities or services from soliciting donations from responding vendors during the selection process, except for donations financial considerations or other benefits expressly stated in the solicitation procurement document.

(g) Permitting the extension(s) of a contract, entered into as a result of a competitive solicitation, for up to twelve (12) months or until completion of the competitive solicitation and award or protest, whichever is longer.

(h) Permitting the renewal(s) of a contract, entered into as a result of a competitive solicitation, for a period that may not exceed 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.

(2) Competitive Solicitation Threshold. The competitive solicitation threshold is \$75,000 (the "Competitive Solicitation Threshold") for the acquisition purchase of commodities goods or contractual services.

(a) When only one response is received to a the competitive solicitation for commodities or contractual services that exceed the Competitive Solicitation Threshold, 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 goods and contractual services shall not be divided to avoid the requirement of competitive solicitation.

(3) Preferences for Florida-Based Vendors.

(a) Preferences for Personal Property. When the University awards a contract to purchase personal property, other than printing, by competitive solicitation pursuant to paragraph (2) of this regulation, a preference shall be provided to vendors with a principal place of business in Florida (such vendors hereinafter referred to as "Resident Vendors") as follows:

1. If the responsible and responsive vendor that submits the lowest bid, the most advantageous proposal, or the best value reply is one whose principal place of business is outside of Florida and is in a state or political subdivision thereof that grants a preference for the same purchase to a vendor in such state or political subdivision, as applicable, then the University shall grant the same preference to the responsible and responsive Resident Vendor with the lowest bid received pursuant to an Invitation to Bid, the most advantageous proposal received pursuant to a Request for Proposals, or the best value reply received pursuant to an Invitation to Negotiate.
2. With respect to Invitations to Bid, if the lowest responsible and responsive bid is from a vendor whose principal place of business is in a state that does not grant a preference for the purchase to a vendor in such state, then the University shall grant a preference in the amount of five percent (5%) to the lowest responsible and responsive Resident Vendor.

3. For vendors whose principal place of business is outside of Florida, such vendors must, at the time of submitting its bid, proposal or reply, provide a written opinion from a licensed attorney in its state specifying: (a) the preferences(s) granted by the state or political subdivision, as applicable, under the laws of that state to vendors whose principal place of business is in that state or political subdivision; and (b) how the preference is calculated. The failure to submit the written opinion may be waived as non-material if all vendors responding to the solicitation have principal places of business outside of Florida.
4. The vendor's principal place of business, as represented by the vendor in its bid or reply, may be relied upon by the University without further inquiry. If the University determines that a vendor has misrepresented its principal place of business, the vendor's bid, proposal or reply shall be rejected.
5. For the purpose of paragraph (3)(a), "personal property" shall be defined as goods ~~and~~ or commodities, but not real estate, intellectual property or services.

(b) Preferences for Printing. When the University acquires purchases printed materials by competitive solicitation pursuant to paragraph (2) of this regulation, a preference shall be provided Resident Vendors as follows:

1. If the lowest responsible and responsive bid received pursuant to an Invitation to Bid is from a vendor whose principal place of business is outside of Florida, then the University shall grant a preference to the lowest responsible and responsive Resident Vendor in the amount of five percent (5%) if the University has determined that the printing can be performed by the Resident Vendors at a level of quality comparable to that obtainable from the vendor submitting the lowest bid whose principal place of business is outside of Florida.
2. For purposes of subparagraph ~~3(b)(1)~~3(b)1, the level of quality shall be determined by whether a vendor satisfies the minimum specification requirements as set forth in the Invitation to Bid.

(c) Method of Calculating Five Percent Preference. If the competitive solicitation is an Invitation to Bid, then an amount equal to five percent (5%) of the total base bid and any alternates shall be deducted from the base bid and alternates, as applicable, of the lowest responsible and responsive Resident Vendor's bid.

(d) Determining a Vendor's Principal Place of Business. A vendor's "principal place of business" is determined as follows:

1. If the vendor is an individual or a sole proprietorship, then its "principal place of business" is in the state where the vendor's primary residence is located.
2. If the vendor is a business organization, then its "principal place of business" is in the state where the majority of the vendor's executive officers direct the management of the vendor's business affairs.

(e) Federally Funded Projects. Acquisitions Purchases made to perform specific obligations under federally funded projects shall not be subject to this preference requirement to the extent the application of a preference is not allowed under applicable federal law or regulation.

(4) **Exceptional Acquisitions Purchases**. The University is authorized to make exceptional acquisitions purchases of goods, commodities or contractual services without bidding as follows:

(a) ~~Purchase of~~ Products with Recycled Content. The 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. The 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. However, if the University determines that it is in the best interests of the University to purchase printed materials through a competitive solicitation process, the preference provision in paragraph (3)(b) shall apply.

(e) ~~Construction Owner Direct Purchases (ODP). Acquisition of materials to be incorporated into any public work under the University's owner direct purchase program.~~

(5) ~~Acquisitions Purchases~~ from Contractors Convicted of Public Entity Crimes. The University shall not accept a competitive solicitation ~~response/submittal~~ from or ~~purchase acquire goods 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.

(6) **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 ~~Acquisitions Purchases~~. When the University President or his/her designee determines, in writing, that ~~at 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 ~~goods commodities~~ or ~~contractual~~ services without a competitive solicitation.

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

(c) ~~Acquisitions Purchases~~ from Contracts ~~and/or 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, or cooperatives/consortia are not subject to further competitive solicitation.~~

(d) The following listed ~~goods 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, wheelchairs and other related equipment and supplies, provided they 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; [except for media placement services](#);

12. Services or [commodities goods](#) 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. [Acquisitions 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~~ [Purchases Acquisitions](#) from an Annual Certification List developed by the University;

~~18~~ [Purchases Acquisitions](#) for resale;

~~19~~ Accounting Services;

~~20~~ 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;

~~21~~ Implementation/programming/training services available from owner of copyrighted software or its contracted vendor; or

~~22~~ [Acquisitions 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.

(7) **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 to Bid, Request for Proposals and/or Invitations to Negotiate shall be excluded from competing for such procurements.

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

[\(9\) Protested Solicitations and Awards. 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.](#)

[\(10\) Bonding Requirements. The University may set bonding requirements for Solicitation Security, Payment & Performance, and/or Solicitation Protest in accordance with BOG Regulation 18.003.](#)