

FSU-2.015 –Procurement and Purchasing

(1) **Statement of Intent.** It is the intent of the University to acquire quality goods and services in a cost effective manner, within reasonable or required time frames, while promoting and maintaining fair and open competition in the public procurement process. This regulation establishes effective management oversight of the University’s procurement process in order to comply with federal and state laws, rules and regulations, to reduce the appearance and opportunity for favoritism, and to preserve the integrity and reputation of the University with regard to procurement and contracting.

(2) **Purpose.** These regulations implement the University’s delegated authority from the University Board of Trustees with respect to the powers, duties and functions of the university’s procurement jurisdiction consistent with Florida Board of Governor’s Regulation 18.001

(3) **Application.** These regulations shall apply to all expenditures of funds on deposit with Florida State University involving a purchase, regardless of their source, including federal assistance monies, except as otherwise specified herein, and may be applied to transactions that do not involve a purchase including revenue generating contracts such as food service, bookstore, or vending, when it is in the best interests of the University.

(4) Procurement Organization

(a) The University Board of Trustees. By this regulation, the Board of Trustees exercises their authority to establish a system and process to coordinate procurement policies, procedures, and practices to be used in acquiring commodities and contractual services required by the University.

(b) The University President. As chief administrative officer of the University, the President has the responsibility to implement the University’s procurement authority as consistent with the regulations of the Florida Board of Governors and University Board of Trustees. The President has delegated authority to approve, execute and administer contracts for and on behalf of the University Board of Trustees for licenses; the acquisition or provision of commodities, goods, equipment and services; to acquire real property and contract for the sale and disposal of same; leases of real estate and personal property and planning and construction to be rendered to or by the University provided such contracts are within the law and the regulations, rules and – policies of the Florida Board of Governors and the University Board of Trustees. The President may delegate all or any portion of such authority, which is not required by law or regulation to be exercised personally, to any employee of the University in the interest of the efficient and effective operation of the University.

(5) Delegation of Procurement Authority

(a) Duties and Powers. The Chief Procurement Officer is delegated authority to exercise the powers, duties and functions pertaining to the procurement of commodities and contractual services or which are assigned specifically to that position.

(b) The Chief Procurement Officer may delegate to the Procurement Services department staff such portions of those powers, duties and functions as deemed appropriate.

(c) Additional Procurement Delegation. Departments’ delegated authority to make purchases of commodities and services for their respective area is limited to the following: Food purchased for the cafeteria at

the Florida State University Schools; books and periodicals purchased by University libraries, and construction and construction related purchases by the Facilities Department. Any such purchases shall be processed by the appropriate University department in full compliance with this regulation. References in this regulation to the procurement department shall include all offices delegated procurement authority under this regulation. References in this regulation to the duties and responsibilities of the Procurement Director shall apply to the director or department head of all areas with delegated procurement authority, regardless of title, however shall not include those powers and duties delegated and granted here to the Chief Procurement Officer, who is head of the Procurement Services Department.

(d) Purchase of Private Attorney Services. Written approval from the Attorney General is not required for private attorney services acquired by the University; however, University General Counsel approval must be obtained.–

(e) 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;

(6) Duties and Authority of the Chief Procurement Officer

(a) Canvass sources of supply, and contract for the purchase or lease of all commodities and contractual services for the University, in any manner, including, reverse auctions and purchase by installment- or lease-purchase contracts.

(b) Remove any contractor from the University's competitive solicitation or ~~vendor~~supplier list that fails to respond to one (1) or more competitive solicitations or 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. A "No Bid" or similar response is considered a response under this section.

(c) Plan and coordinating purchases, including volume purchases; and negotiating and executing agreements and contracts for commodities and contractual services for use by all University departments.

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

(e) Evaluate, approve and use contracts that are entered into after a public and open competitive solicitation established by any State of Florida agency or department, the Federal Government, other states,

political subdivisions, cooperatives or consortia or any independent college or university ~~or educational cooperative or educational consortia~~ 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 established by such other entities. Consortia and cooperative contracts should be reviewed to identify potential savings, and, if there is the potential for savings, enter into new consortia and cooperative contracts to achieve the savings, with the goal of achieving a five-percent savings on existing contract prices. Contracts so approved are not subject to additional competitive solicitation requirements.

(f) 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, regional or multiple state university-wide basis and the contracts may be for multiple years.

(7) Source Selection and Contract Formation for Commodities and Contractual Services.

(a) Competitive Solicitation Required. The Procurement Director shall be responsible for ensuring that all contracts for the purchase of commodities or contractual services exceeding the maximum competitive solicitation limit established in Board of Governors Regulation 18.001, (currently \$75,000), are awarded pursuant to a competitive solicitation, unless otherwise authorized herein or by other applicable law. The purchase of commodities and contractual services shall not be divided to avoid the requirement of competitive solicitation.

(b) Public Notice. The Procurement Director, or a designee, shall determine the method of public notice to be used in each case of a competitive solicitation based on the nature and quantity of the commodities, contractual services, or construction sought and the availability and extent of competitive solicitation lists. Posting of competitive solicitations on a Procurement Department website constitutes public advertising.

(c) Receipt of Responses. Competitive solicitation responses shall be delivered, including electronically, as directed in the competitive solicitation to the appropriate Procurement Department, or as otherwise directed in the competitive solicitation document, at or prior to the date and time specified in the competitive solicitation. Only responses that are delivered to that specific location shall be considered. It is the responder's responsibility to assure that their response is delivered at the proper time and place. If the competitive solicitation is not administered through an electronic sourcing solution, the clock in the Reception area of the Procurement Services Department is designated as the official timepiece for purposes of determining whether a response is received in Procurement Services by the appointed date and hour. Otherwise, the official timepiece is dependent upon the built-in functionality of the electronic sourcing solution. Any individual university Procurement departments with delegated procurement authority may designate an alternate timepiece.

1. Prior to the time a competitive solicitation response is opened, the Procurement Director, or a designee, may change or correct the terms, conditions or specifications by issuing an addendum to all known recipients of the competitive solicitation.

2. A responder to a competitive solicitation may withdraw or correct a response prior to the time that the competitive solicitation response is opened. Any alteration or correction to a response must be in writing and signed or approved electronically, by an authorized representative of the firm who signed the original response.

3. The Procurement Director, or a designee, will permit the withdrawal of a competitive solicitation response for good cause if requested in writing within seventy-two (72) hours of the competitive solicitation response opening and prior to final award of the purchase order being issued. Good cause shall include- illegality,

impossibility of performance, or a clear and inadvertent error in the response preparation, but shall not include a responder's lack of profitability or financial loss resulting from the competitive solicitation. Neither modification nor withdrawal will be permitted at any time if the result of such action is prejudicial to the fairness of the competitive procurement process or a monetary or educational interest of the University.

(d) **Competitive Solicitation Evaluation.** Responses to a competitive solicitation shall be evaluated based on the requirements set forth in the competitive solicitation. The requirements of the competitive solicitation include but are not limited to criteria such as price, inspection, samples, quality, testing, workmanship, convenience, experience, delivery and suitability for a particular purpose. Those criteria that affect the price shall be objectively measured to the extent practicable. In cases where more than one commodity or contractual service is listed on a response to a competitive solicitation, the University is not required to consider all alternates or options, nor do they have to be considered in sequence.

(e) **Right to Reject Competitive Solicitation Responses and Waive Minor Irregularities.** The University reserves the right to reject any and all responses to a competitive solicitation. The University also reserves the right to waive minor irregularities in an otherwise valid response. A minor irregularity is a variation from the competitive solicitation terms and conditions, which does not affect the price offered, or give the responder an advantage or benefit not enjoyed by other responders or does not adversely impact the business or educational interests of the University. The University shall correct mistakes clearly evident on the face of a response, such as an error in arithmetic or extension of pricing. In the case of extension errors, calculations—based upon multiples of the unit price, the unit price shall prevail.

(f) **Receipt of Fewer Than Two Responsive Offers to a Competitive Solicitation.** When fewer than two responsive offers are received in response to a competitive solicitation exceeding the competitive solicitation threshold, the Procurement Director, or a designee, shall review the 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 competitive solicitation is not in the best interests of the University, the University may proceed with the acquisition based on the one responsive offer received or may proceed to negotiate with any other possible source including the sole responder.

(g) **Preferences for Florida-Based ~~Vendor~~Suppliers.**

1. **Preferences for Personal Property.** When a University awards a contract to purchase personal property, other than printing, by competitive solicitation a preference shall be provided to ~~vendor~~suppliers with a principal place of business in Florida (“Resident ~~Vendor~~Suppliers”) as follows:

a. If the responsible and responsive ~~vendor~~supplier who submits the lowest bid, the most advantageous proposal, or the best value and is one whose principal place of business is outside of Florida and whose state or political subdivision grants a preference for the same purchase to a local ~~vendor~~supplier then the University shall grant the that same preference to the lowest or best responsible and responsive Resident ~~Vendor~~Supplier.

b. With respect to Invitations to Bid, if the lowest responsible and responsive bid is from a ~~vendor~~supplier whose principal place of business is in a state that does not grant a preference for the purchase to a ~~vendor~~supplier 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~~Supplier.

c. For ~~vendor~~suppliers whose principal place of business is outside of Florida, such ~~vendor~~suppliers 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 ~~vendor~~suppliers 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 ~~vendor~~suppliers responding to the solicitation have principal places of business outside of Florida.

d. The ~~vendor~~supplier's principal place of business, as represented by the ~~vendor~~supplier in its bid or reply, may be relied upon by the University without further inquiry. If the University determines that a ~~vendor~~supplier has misrepresented its principal place of business, the ~~vendor~~supplier's bid, proposal or reply shall be rejected.

e. For the purpose of paragraph (g) 1., "personal property" shall be defined as goods and commodities, but not real estate, intellectual property or services.

2. Preferences for Printing. When a University purchases printed materials by competitive solicitation, a preference shall be provided to Resident Vendor/Suppliers as follows:

a. If the lowest responsible and responsive bid received pursuant to an Invitation to Bid is from a ~~vendor~~supplier whose principal place of business is outside of Florida, then the University shall grant a preference to the lowest responsible and responsive Resident Vendor/Supplier in the amount of five percent (5%) if the University has determined that the printing can be performed by the Resident Vendor/Suppliers at a level of quality comparable to that obtainable from the ~~vendor~~supplier submitting the lowest bid whose principal place of business is outside of Florida.

b. For purposes of subparagraph (g) 2.a. the level of quality shall be determined by whether a ~~vendor~~supplier satisfies the minimum specification requirements as set forth in the Invitation to Bid.

3. 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/Supplier's bid.

4. Determining a Vendor/Supplier's Principal Place of Business. A ~~vendor~~supplier's "principal place of business" is determined as follows:

a. If the ~~vendor~~supplier is an individual or a sole proprietorship, then its "principal place of business" is in the state where the ~~vendor~~supplier's primary residence is located.

b. If the ~~vendor~~supplier is a business organization, then its "principal place of business" is in the state where the majority of the ~~vendor~~supplier's executive officers direct the management of the ~~vendor~~supplier's business affairs.

5. Federally Funded Projects. 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.

6. If no preference exists or where after application of the preference here, two or more responses are equal in every respect, the University will use a toss of a coin to select the successful response

(h) 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 ~~vendors~~supplier list for a period of 36 months from the date of being added to the convicted ~~vendors~~supplier list.

(i) Competitive Solicitation Notice of Award. After evaluating the responses to a competitive solicitation, the Procurement Director, or a designee, shall make a determination as to the successful response based on the method of award contained in the competitive solicitation. A notice of award shall be posted electronically by posting a Competitive Solicitation Tabulation Sheet, or other appropriate document, on the Web Site of the Procurement department that issued the competitive solicitation, on the date and time listed in the competitive solicitation or as soon as reasonably possible after the responses are evaluated. The Competitive Solicitation Tabulation Sheet shall contain the competitive solicitation name, the name of each responder including those whose responses were rejected and the dollar amount(s) of each response ~~or the number of points awarded~~, the date and hour that it was posted and the date and hour that the posting period ends. The Notice of Award Web Site shall be maintained by each department with delegated procurement responsibility, and shall be available for public inspection at all times during regular University business hours. Any person who is adversely effected by the University's decision or intended decision regarding a competitive solicitation shall file in writing a protest which shall be received in the procurement department responsible for issuing the competitive solicitation before the end of the 72 hour posting period shown on the Notice of Award, or within 72 hours after the protestant received actual notice by other delivery of the decision, whichever occurs first. The 72-hour period excludes the hours in weekends and University holidays. Weekends are deemed to begin at 5 PM on Friday and end at 8 AM on Monday. Holidays are deemed to begin at 5 PM at the end of regular workday before the holiday or 8 AM after a Sunday if the holiday begins on a Monday and end at 8 AM on the next regular University workday. Posting of the proposed Notice of Award does not establish a contract between the University and the proposed supplier.

(j) The following shall apply to every solicitation for the procurement of commodities or contractual services: "Respondents to this solicitation or persons acting on their behalf shall not contact any employee or officer of the Florida State University Board of Trustees, a University Direct Support Organization, or The Florida State University concerning any aspect of this solicitation, except in writing to the Chief Procurement Officer or as provided in this solicitation document, from the date of release of this solicitation through the end of the 72-hour period following the University's posting of the notice of intended award, in accordance with BOG Regulation 18.002. Violation of this provision may be grounds for rejecting a response."

(8) Competitive Solicitation Registration. Individuals and businesses shall register with the University's Procurement Services department to receive competitive solicitations, a contract or a purchase order from the Central procurement department. The University does not guarantee that a business will receive notice of a competitive solicitation for a particular commodity or contractual service for which they have registered as a supplier and are responsible for monitoring posted notices which interest them. The opportunity to participate in a competitive solicitation is a privilege not a right.

(9) Procurement actions that are not subject to the competitive solicitation process include:

(a) Emergency Purchases. When the President, or a designee, determines in writing that 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. Due to the critical nature of the procurement, emergency purchases do not require that the action be posted in the Notice of Award Web Site for 72 hours. An emergency purchase shall be limited to the purchase of only the type of items and quantities that are required for a time period sufficient to relieve the immediate threat and shall not be used to meet long-term requirements.

(b) Sole Source Purchases. Commodities or contractual services available from a single source shall be exempted from the competitive solicitation process. A sole source document shall be publicly posted in the Notice of Award Web Site for 72 hours, unless the sole source is covered under the annual certification list ~~sole source certification~~ provided in (6)(d).

(c) Construction Direct Purchase Program. Commodities to be incorporated into any public work (as that term is defined in Fla. Admin. Code R. 12A-1.094 as authorized under Section 212.08(6), F.S. [tax- exempt purchase] 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.

(d) Commodities and contractual services that are exempt from 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, esthetics, 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. Training and education services for University employees;
8. Advertising, except for media placement services;
9. Services or commodities provided by governmental agencies, another University in the State University System, direct support organizations of the university, cooperatives or consortia, political subdivisions or independent colleges and universities;
10. Goods or services purchased with auxiliary funds authorized for such purchases, in direct support of specific programs, conferences, workshops, or continuing education events offered to the general public, for which fees have been collected to pay all expenses associated with the program or event;
11. Purchases from firms or individuals who are prescribed by state or federal law or specified by a granting agency;
12. Regulated utilities and government-franchised services;
13. Regulated public communications, except long distance telecommunication services or facilities;

~~14. Extension of an existing contract;~~

~~15. Renewal of an existing contract if the terms of the contract specify renewal option(s);~~

~~16-14. Purchases from the Annual Certification List provided in (6) (d)~~

~~17-15. Purchases for resale to the public.~~

~~18-16. Accounting Services~~

~~19-17. Implementation/programming/training services available only from the owner of copyrighted software or its contracted ~~vendor~~supplier; and~~

~~20-18. Purchases of materials, supplies, equipment, or services for research purposes when the Vice President for research, or a designee, certifies that, in a particular instance, it is necessary for the efficient or expeditious prosecution of a research project.~~

~~21-19. 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.~~

(10) ~~Vendor~~Suppliers 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, projects or programs for future implementation, or competitive solicitation documents, shall be excluded from competing for such procurements.

(11) Standard of Conduct

(a) It shall be a breach of ethical standards for any employee of the University or member of the University Board of Trustees 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.

(b) It shall be a breach of ethical standards for any employee to participate in the selection, award, or administration of a contract if a real or apparent conflict of interest would be involved. Such a conflict would arise when the employee, officer, or agent, any member of his immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in the firm selected for an award.

(12) Bonding Requirements

(a) 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.

(b) Payment and Performance Bonds.

1. ~~The University is authorized to require any contractor contracting with the University to provide commodities, services 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. Any contractor contracting with the University to provide commodities, services or commodities 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 as pursuant to BOG Regulation 18.003.

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

2.3. Competitive Solicitation Protest Bond. Any contractor that files an action pursuant to BOG Regulation 18.002, 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 competitive solicitation response; 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.

(13) Contract Formation

(a) Contracts for the purchase of commodities or contractual services or licenses shall consist of a purchase order or a purchase order and bilateral agreement [an individual written contract in addition to the purchase order] signed by the President of the University, or a designee who has been granted power of attorney through the University President, prior to the goods or services being ordered, contracted for, or rendered by the contractor.

(b) Any contract for the purchase of 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) The extension of a contract granted to extend the time to complete the contract shall be in writing signed by the Chief Procurement Officer. Contract extension shall not cause the University to incur additional costs. The contract extension shall be signed by both parties if a bilateral agreement and a purchase order were issued, and shall be subject to the same terms and conditions set forth in the initial contract: for up to twelve months or until completion of the competitive solicitation and award or protest, whichever is longer. ~~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 a competitive solicitation, all contemplated renewal periods must be included in the competitive solicitation, and evaluated as part of the award evaluation process, including a cost algorithm to determine the cost to the university during renewal periods. Renewal(s) of a contract 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 existing contract terms.

(e) The President, or a designee, shall have the authority to enter into deferred payment agreements, in accordance with Board of Governors debt policies. The University may utilize the State of Florida Department of Financial Services Consolidated Equipment Financing Program if it is deemed advantageous. When the Consolidated Equipment Financing Program is used, the University will submit the contract to the Department of Financial Services for the purpose of pre-audit review and approval prior to acceptance. No such 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~~supplier consistent with Section 672.719, F.S. and consistent with the lawful limits of state sovereign immunity.

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

(14) Authority to Suspend or Debar a Business.

The Chief Procurement Officer shall remove a business from the University's authorized ~~vendor~~supplier or competitive solicitation list and reject all responses offered by that business in the event the business's performance through acts of omission or commission results in any of the following grounds, when it is determined to be in the best interest of the University, including but not limited to:

(a) Failure to respond to a competitive solicitation without giving a justifiable reason for such failure.

(b) Failure to make timely delivery or fully comply with the pricing, terms, conditions, or specifications, on any one contract or purchase order;

(c) Any attempt to influence a purchase, specification, award, or other pertinent factor, in violation of this Regulation and BOG Regulation 18.001.

(d) Being charged or convicted before a court of competent jurisdiction with committing a fraud, misdemeanor or felony in connection with the business's commercial enterprise. If charges are dismissed, the owner of the business is found not guilty, or the guilty verdict is reversed through the appellate process, the business is found not guilty, or the guilty verdict is reversed through the appellate process, the suspension shall be lifted immediately upon notification by the business.

(e) Bankruptcy.

(f) Continuing to supply commodities or contractual services before receiving a purchase order or after receiving a notice not to supply commodities or contractual services without first receiving an official Florida State University purchase order signed by the Procurement Director.

(g) Failure or refusal to use any of the university's automated procurement and payment processes when instructed to do so, including but not limited to the on-line submission of responses to requests for quotations, competitive solicitations, or invoices.

(15) Default

(a) ~~Vendor~~Suppliers who fail to make delivery or perform in accordance with the conditions, specifications, drawings or terms and conditions of a purchase order or contract shall be notified in writing, stating the nature of their failure to perform and provide a time certain for correcting the failure. Reasonable —time for correcting the failure should not be generally less than ten (10) calendar days after receipt of such notice by the ~~vendor~~supplier, except in case of a documented emergency. The notification shall also provide that should the ~~vendor~~supplier fail to perform within the time provided, that: It will be in default; it will be removed from the University's ~~vendor~~supplier and competitive solicitation lists; and the University will re-procure the commodity or service from another source, which will obligate the ~~vendor~~supplier to pay all re-procurement costs and costs for cover.

(b) Unless the ~~vendor~~supplier corrects its failure to perform within the time provided, or unless the University determines based on its own investigation that the ~~vendor~~supplier's failure is legally excusable, the ~~vendor~~supplier shall be found in default and issued a second notice stating the reasons the ~~vendor~~supplier is considered in default and stating that the University has re-procured the commodity or service and the amount of the procurement and the cover cost. The University shall also advise the defaulting ~~vendor~~supplier that the ~~vendor~~supplier has been removed from the ~~vendor~~supplier and competitive procurement lists pursuant to this regulation and will not be eligible to submit a competitive solicitation or be awarded a contract until such time as the University is reimbursed for all re-procurement costs and for costs of cover. The defaulting ~~vendor~~supplier also shall be advised of the right to protest as ~~provided in (16) (c) of this Regulation~~ and shall follow the protest procedures provided ~~in BOG Regulation 18.002~~ in (16).

(c) The Procurement Director shall determine the method for re-procurement of commodities or contractual services as the best interests of the University require.

(d) The University may issue a second competitive solicitation or purchase on the open market if a substantially similar procurement is not accomplished under (c) above. Until such time as the ~~vendor~~supplier reimburses the University for all re-procurement and cover costs, the defaulting ~~vendor~~supplier shall not be reinstated on the University's competitive solicitation list and shall not be eligible for any type of purchase order or contract with the University.

(e) All correspondence to ~~vendors~~suppliers respecting failure to perform shall be sent by certified mail, return receipt requested or documented courier delivery service. The foregoing provisions do not limit or exclude the University's remedies at law.

(16) 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.

~~(a) 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.~~

~~(b) 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.~~

~~4. Electronic posting posting on the University's designated website.~~

~~5. Filing when filing documents or written materials with:~~

~~a. 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;~~

~~b. 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.~~

~~6. Formal Protest—the formal written complaint that complies with the requirements of Section (6) of this regulation.~~

~~7. 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.~~

~~8. 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.~~

~~9. Notice of Intent to Protest—a short and plain written statement that complies with the requirements of Section (5) of this regulation.~~

~~10. Potential Protestor—any actual or prospective bidder or offeror, person, or firm with standing to protest the decision or intended decision.~~

~~11. President—means the presiding president of the university.~~

~~12. President's Designee—the person selected by the President to perform a specific delegated function on behalf of the President under this regulation.~~

~~13. 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.~~

~~14. Presiding Officer—the Quasi Judicial Officer or the University Official handling the protest proceeding.~~

~~15. Protest proceeding—either a summary proceeding involving a University Official or a quasi-judicial hearing involving a Quasi Judicial Officer.~~

~~16. 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.~~

~~17. 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.~~

~~18. Serve/Service—sending a copy of the information to the parties via email communication at the email addresses of record.~~

~~19. Specification—the contents of the competitive solicitation or any addenda thereto; the approval of sole source procurement; or other solicitation documents as permitted by applicable law or regulation.~~

~~20. 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.~~

~~21. University Official—the person appointed by the President to conduct a summary proceeding.~~

~~(c)—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.”~~

~~(d)—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 of Governors Regulation 18.003 with the Issuing Office.~~

~~(e)—Notice of Intent to Protest.~~

~~1.—Timely Filing of a Notice of Intent to Protest.~~

~~a.—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 Specifies~~

~~b.—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.~~

~~i.—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.~~

~~ii.—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.~~

~~(f)—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.~~

~~2.—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:~~

~~a.—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;~~

~~b.—The identification of the University and competitive solicitation involved, if no competitive solicitation is involved, identification of the action being protested;~~

~~c.—A statement of when and how the Protestor received notice of the decision or intended decision that is being protested;~~

~~d.—A concise statement of the facts, including the facts the Protestor contends warrant reversal or modification of the university's decision or intended decision;~~

~~e.—A statement of all disputed issues of material fact, or if there are none, the Formal Protest must indicate so;~~

~~f.—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;~~

~~g.—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;~~

~~h.—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~~

~~i.—A copy of any documents or materials referenced or incorporated into the Formal Protest.~~

~~(g)—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 processes, 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.~~

~~(h)—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.

(i) ~~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.

(j) ~~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.

2. ~~Time Tolloed.~~ If informal discussions are scheduled, the time requirements related to this regulation are tolled for the period from the date the Formal Protest is filed until the date the last informal discussion is scheduled for or held.

3. ~~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.

4. ~~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.

(k) ~~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.

(l) ~~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.

1. ~~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.

2. ~~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.~~

~~3.—University Official’s Recommended Order.~~

~~a.—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;~~

~~b.—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;~~

~~c.—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.~~

~~4.—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.~~

~~5.—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.~~

~~6.—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.~~

~~(m)—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.~~

~~1.—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”).~~

~~2.—Notice of Hearing.~~

~~a.—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;

b. ~~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.~~

3. ~~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 action 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.~~

4. ~~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.~~

5. ~~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.~~

a. ~~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;~~

b. ~~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.~~

6. ~~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.~~

7. ~~Burden of Persuasion. The burden of proof rests with the party protesting the university action.~~

8. ~~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.~~

a. ~~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;~~

b. ~~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;

e. ~~The Quasi Judicial Officer has the right to question each party and any witnesses.~~

9. ~~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.~~

10. ~~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."~~

11. ~~Final Order.~~

a. ~~If no written exceptions are timely filed, the Preliminary Order is the Final Order;~~

b. ~~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;~~

e. ~~The President's Final Order is the final decision of the University.~~

12. ~~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.~~

(n) ~~Computation of Time. In computing any period under this regulation or by order of a Presiding Officer, the day of the act from which the period 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 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.~~

(o) ~~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).~~

(p) ~~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.~~

~~(q) — 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.~~

~~(r) — 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.~~

~~(s) — 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.~~

~~(t) — 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.~~

~~(u) — 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.~~

~~(v) — 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.~~

(17) Purchase of Motor Vehicles.

(a) The University has authority to:

1. Establish standard classes of motor vehicles to be leased, purchased or used by University personnel;
2. Obtain the most effective and efficient use of motor vehicles for university 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.

(b) Motor vehicles owned, leased or operated by the University shall be for official University business only.

(18) Definitions.

(a) Artistic Services. Services provided by an individual or group of individuals who profess and practice a skill in the area of music, dance, drama, folk art, creative writing, painting, sculpture, bronze, photography, antique or period furniture reproduction or restoration, graphic arts, website design, craft arts, industrial design, costume design, fashion design, motion pictures, television, radio or tape and sound recording or in any other related field, as determined by the Chief Procurement Officer. Web design shall not include website hosting, maintenance, or and computer-related services; only the portion of the design meeting the definition of an artist shall be exempt. If artistic web design cannot be separated from the non-artistic portion of the purchase, the artistic exemption shall not apply.

(b) Business. Any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture or any other private legal entity.

(c) Commodity.—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. Printing of publications and photocopying shall be considered a "commodity." Software license agreements shall be considered a "commodity."

(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 issued by a procurement department with delegated authority as specified in this regulation to select a contractor.

(f) Contract.—Document issued by the procurement department, including purchase orders and bi-lateral agreements, regardless of their designation.

(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, maintenance or demolition of facilities or grounds.

(h) Cover. The difference between the cost to procure substitute commodities or services and the contract price for such commodities or services.

(i) Department. Any Florida State University college, school, department, principle investigator, club, organization or other budget entity assigned a departmental account by the University.

(j) Extension. An increase in the time allowed for the contract period.

(k) Independent Contractor -- A person or firm who provides a service to the University, but does not have any employment or other relationship or connection with the University as provided in s. 112.313, F.S.

(l) Invitation to Bid. A solicitation for competitive bids issued by the procurement department, including reverse auctions, with the title, date, and hour of the public bid opening designated and the commodity, group of commodities or services defined.

(m) Invitation to Negotiate.— An invitation extended to prospective ~~vendors~~suppliers or contractors by the University, whether by advertisement, written solicitation, electronic media or any other form of communication, to define the specifications, terms and conditions of a contract for commodities or contractual services. An Invitation to Negotiate shall be awarded as the best interests of the University indicate and does not require numeric scoring. Cost may or may not be a consideration in the initial stages of negotiating.

(n) Minority Business Enterprise.— A business concern as defined in s. 288.703(2), F.S.

(o) Mutuality of Management. That circumstance wherein two or more businesses are owned or managed by the same person or persons. Mutually managed businesses shall submit only one response to a competitive solicitation. The Procurement Director may reject all responses from mutually managed businesses submitting more than one response to a competitive solicitation. If more than one response is submitted and subsequently evaluated, only the response with the lowest cost or score shall be considered in determining an award.

(p) Person. Shall have the meaning provided in s.1.01 (3), Florida Statutes.

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

(r) 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.

(s) Purchase.— an acquisition of commodities or services obtained by purchase order or contract whether by rent, lease, installment- or lease-purchase, outright purchase, or license.

(t) Purchases for Resale.— the purchase of commodities or contractual services acquired for selling them to the public. Purchases of commodities or contractual services acquired for resale or transfer of ownership to other University departments are not purchases for resale.

(u) Procurement Services, — also known as Central Procurement; the department with primary procurement responsibilities at the University.

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

(w) Request for Proposal. A written solicitation issued by the Procurement department for competitive proposals for commodities or contractual services with the title, date, and hour of the public opening designated. A request for proposals may be used when the scope of work is not clearly defined or cost is not the primary consideration.

(x) Responder. A person or business that has submitted a bid, proposal response or an offer to negotiate, as the result of a competitive solicitation.

(y) Response. A bid, proposal or offer to negotiate submitted as a result of a competitive solicitation that designates the title, date and time of the public opening. The response shall be submitted in accordance with instructions provided in the competitive solicitation prescribing all general and special conditions.

(z) Responsible ~~vendor~~supplier or responder. Individuals or businesses that possess the ability to perform successfully under the terms and conditions of the proposed purchase.

(aa) Responsive offer. A response from a responsible responder that complies in every respect with the terms, conditions and specifications of a competitive solicitation.

(bb) Request for Quotation. A written or oral request issued by the Procurement department to one or more ~~vendors~~suppliers to provide pricing on specified commodities or contractual services when the total costs, including all renewal options, is less than the competitive solicitation threshold. Requests for Quotations are not subject to the electronic posting requirements of BOG 18.002.

(cc) Specifications.

1. A clear and accurate description of the technical requirements, including the range of acceptable characteristics or minimum acceptable standards, for the material, product, or service to be purchased. In competitive solicitations, such specification shall not contain features which unduly restrict competition.

2. The specific features of “brand name or equal” descriptions that responders are required to meet when such items are included in a competitive solicitation.

3. A clear and accurate description of the physical, performance or functional characteristics of a commodity or contractual services. It may include plans, drawings, samples or a description of any requirement for inspection, testing or preparing a commodity or contractual service for delivery.

(dd) Term Contract, — An indefinite quantity contract for the purchase of commodities or contractual services during a prescribed period of time.

(ee) Vehicle, — This term includes any automobile, airplane, truck, mobile construction equipment, golf cart, tractor, watercraft or other vehicle.

(ff) ~~Vendor~~Supplier. A person or business that has received a duly executed purchase order or purchase order and contract from the University.

17-03, 9-19-2008, 6-25-2010, 3-7-2014, 10-9-2015, _____