

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.** This regulation implements 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.** This regulation shall apply to all expenditures of public funds on deposit ~~by~~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 or to be approved by the Board of Trustees, 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 or designee 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 and establish policy and procedures for purchases below the competitive solicitation procurement threshold, which may be found in adopted policy or on the Procurement Services department webpage.
- (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 School and the FSU Collegiate School at Panama City; books and periodicals purchased by University libraries, and construction and construction related purchases by the Facilities Department. Such purchases shall be processed by the appropriate University department in full compliance with this regulation. References in this regulation to the Procurement Services department shall include all offices delegated procurement authority under this regulation. References in this regulation to the duties and responsibilities of the Chief Procurement Officer 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 to the Chief Procurement Officer, who is head of the Procurement Services department.

(e) 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.

(f) 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 but not limited to:

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 contracts for the purchase or lease of all commodities and contractual services for the University, in any manner, including, reverse auctions and purchase by installment-purchase or lease-purchase contracts.
- (b) Remove any contractor from the University's competitive solicitation or 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~~ limited sources.
- (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 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 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 not to exceed ten years unless approved by the Board of Trustees.

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

- (a) Competitive Solicitation Required. The Chief Procurement Officer 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 competitive solicitation threshold will be reviewed every three years using the Consumer Price Index for All Urban Consumers (CPI-U), to determine if an adjustment should be recommended to the threshold. The purchase of commodities and contractual services shall not be divided to avoid the

requirement of competitive solicitation.

- (b) Public Notice. The Chief Procurement Officer, 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 the Procurement Services department website or public Procurement Services portal 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 Services 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 respondent'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 time clock 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 Chief Procurement Officer, 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 Respondent to a competitive solicitation may withdraw or correct a response prior to the date and 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 Chief Procurement Officer, 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 Respondent'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 Respondent an advantage or benefit not enjoyed by other Respondents 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 Responses to a Competitive Solicitation. When fewer than two responsive responses are received for a competitive solicitation exceeding the competitive solicitation threshold, the Chief Procurement Officer, or a designee, shall review the circumstances surrounding the solicitation to determine if a ~~second call for a competitive solicitation~~ re-procurement 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 respondent.
- (g) Preferences for Florida-Based Suppliers.
1. Preferences for Personal Property. When the University awards a contract to purchase personal property, other than printing, by competitive solicitation, a preference shall be provided to suppliers with a principal place of business in Florida (“Resident Suppliers”) as follows:

- a. If the responsible and responsive 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 supplier then the University shall grant that same preference to the lowest or best responsible and responsive Resident Supplier.
- b. With respect to an Invitation to Bid, if the lowest responsible and responsive bid is from a supplier whose principal place of business is in a state that does not grant a preference for the purchase to a 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 Supplier.
- c. For suppliers whose principal place of business is outside of Florida, such 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 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 suppliers responding to the solicitation have principal places of business outside of Florida.
- d. The supplier's principal place of business, as represented by the supplier in its bid or reply, may be relied upon by the University without further inquiry. If the University determines that a supplier has misrepresented its principal

place of business, the 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 Suppliers as follows:

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

4. Determining a Supplier's Principal Place of Business. A supplier's "principal place of business" is determined as follows:
 - a. If the supplier is an individual or a sole proprietorship, then its "principal place of business" is in the state where the supplier's primary residence is located.
 - b. If the supplier is a business organization, then its "principal place of business" is in the state where the majority of the supplier's executive officers direct the management of the 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 supplier list for a period of 36 months from the date of being added to the convicted supplier list.
- (i) Competitive Solicitation Notice of Award. After evaluating the responses to a competitive solicitation, the Chief Procurement Officer, 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 Procurement Services department website or the public Procurement Services portal ~~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 respondent including those whose responses were rejected and the dollar amount(s) of each response, the date and hour that it was posted and the date and time that the posting period ends. The Notice of Award ~~Web Site~~ shall be maintained by the Procurement Services department ~~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 affected 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 protester 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) In every solicitation for the procurement of commodities or contractual services, the 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 by utilizing the public Procurement Services portal 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**
- (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 sole source shall be exempted from the competitive solicitation process. A sole source document shall be publicly posted ~~in the Notice of Award Web Site~~ on the public Procurement Services portal for 72 hours, unless the sole source is covered under the annual certification list, ~~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, including those services needed to address audit, financial, and fraud-related compliance, controls, and investigative matters, or such other related 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. Purchases from the Annual Certification List;
15. Purchases for resale to the public;
16. Accounting Services;
17. Implementation/programming/training services available only from the owner of copyrighted software or its contracted supplier;

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; and
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) **Suppliers Excluded from Competition.** In order to ensure objective contractor performance and eliminate an 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 their immediate family, their 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. 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.
 2. The bond or security must be in an amount equal to 100% of the response submitted to the competitive solicitation.
 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 written agreement or purchase order (where no other agreement exists) ~~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~~ signature authority 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 funded by appropriated funds 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 approved~~ signed by the Chief Procurement Officer or designee. A contract extension shall not cause the University to incur additional costs. The contract extension shall be executed in the same manner as the original purchase ~~signed by both parties if the initial agreement was a contract signed by both parties a bilateral agreement and or a new purchase order where that was the originating agreement 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.
- (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 supplier consistent with Section 672.719, F.S. and consistent with the lawful limits of state sovereign immunity.
- (g) For the purposes of interpreting this regulation, ¶the total value of the contract shall be the purchase price for the initial term, plus all renewal costs. For the avoidance of doubt the total value shall not limit other recoverable damages.

- (14) **Authority to Suspend or Debar a Business.** The Chief Procurement Officer shall remove a business from the University's authorized 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)~~(a) Failure to make timely delivery or fully comply with the pricing, terms, conditions, or specifications, on any one contract or purchase order;

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

~~(d)~~(c) Failure to comply with the University's Supplier Code of Conduct

~~(e)~~(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.

~~(f)~~(e) Bankruptcy.

~~(g)~~(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 Chief Procurement Officer.

~~(h)~~(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) 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 supplier, except in case of a documented emergency. The notification shall also provide that should the supplier fail to perform within the time provided, that: It will be in default; it will be removed from the University's supplier and competitive solicitation lists; and the University will re-procure the commodity or service from another source, which will obligate the supplier to pay all re- procurement costs and costs for cover.
- (b) Unless the supplier corrects its failure to perform within the time provided, or unless the University determines based on its own investigation that the supplier's failure is legally excusable, the supplier shall be found in default and issued a second notice stating the reasons the 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 supplier that the supplier has been removed from the 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 supplier also shall be advised of the right to protest and shall follow the protest procedures provided BOG Regulation 18.002.
- (c) The Chief Procurement Officer shall determine the method for re-

procurement of these defaulted commodities or contractual services as in the best interests of the University ~~require~~.

- (d) The University may issue a ~~second competitive solicitation~~ re-procurement or purchase on the open market if a substantially similar procurement is not accomplished under (c) above. Until such time as the supplier reimburses the University for all re-procurement and cover costs, the defaulting 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 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~~ competitive 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.

(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 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 Proposals 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, principal investigator, club, organization or other budget entity assigned a departmental account by the University.
- (j) Extension. An increase in the time allowed for the current 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 Services 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 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 negotiations.
- (n) Minority Business Enterprise. A business concern as defined in s. 288.703(3) 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 Chief Procurement Officer 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-purchase 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. 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) Respondent. 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, response 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 supplier or Respondent. Individuals or businesses that possess the ability to perform successfully under the terms and conditions of the proposed purchase.
- (aa) Responsive response. A response from a responsible Respondent 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 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 Respondents 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) Supplier. A person or business that has received a duly executed purchase order or purchase order and contract from the University.

Specific Authority BOG Regulation 1.001(3) (j), (7) (b) Law Implemented 112.313, 283.33, 672.719, 1004.22(7) FS. History--New 1-5-81, Formally 6C2-2.15, 6C2-2.015 Amended 11-4-87, 6-11-91, 12-21-93, 10-20-99, 3-17-03, 9-19-2008, 6-25-2010, 3-7-2014, 10-9-2015, 6-7-2017,
