

**THE FLORIDA POLYTECHNIC UNIVERSITY BOARD OF TRUSTEES
NOTICE OF PROPOSED REGULATION AMENDMENT**

REGULATION NUMBER AND TITLE: FPU-8.001 Procurement.

SUMMARY OF THE REGULATION: This regulation is being revised in conformity with a revision to the Board of Governors regulation that suggests universities use shared initiatives contracts as much as practical, requires justification documentation for the use of piggybacking, and further defines auditing services. It further clarifies the existing University requirement that contracts for all legal services be approved by the Office of the General Counsel and updates the requirement regarding sufficient appropriations for multiyear contracts.

TEXT OF REGULATION: The full text of the Proposed Revised Regulation can be viewed below and on the Florida Polytechnic University website, at <https://floridapoly.edu/university-notices.php>. If you would like a copy of the Proposed Regulation, please contact Sherri Pavlik, Executive Assistant to the VP and General Counsel at (863) 874-8412.

AUTHORITY: Board of Governors Regulations 1.001(7), 18.001, 18.002, and 18.003.

NAME OF PERSON INITIATING PROPOSED REGULATION: Gina DeJulio, VP and General Counsel.

ANY PERSON SEEKING TO COMMENT ON THE PROPOSED REGULATION MUST SUBMIT COMMENTS IN WRITING TO THE CONTACT PERSON LISTED BELOW. ALL WRITTEN COMMENTS MUST BE RECEIVED BY THE CONTACT PERSON WITHIN 14 CALENDAR DAYS OF THE DATE OF PUBLICATION OF THIS NOTICE.

THE CONTACT PERSON REGARDING THIS REGULATION IS: Sherri Pavlik, Executive Assistant to the VP and General Counsel at 4700 Research way, Lakeland, Florida 33805, Email: spavlik@floridapoly.edu, Phone: (863) 874-8412, Fax: (863) 874-8711.

DATE OF PUBLICATION: March 30, 2021

THE FULL TEXT OF THE PROPOSED REGULATION IS PROVIDED BELOW:

THE FLORIDA POLYTECHNIC UNIVERSITY BOARD OF TRUSTEES

FPU-8.001 Procurement.

(1) **Statement of Intent.** These Procurement regulations are supplemental to Chapter 18 of the Florida Board of Governors regulations (“Board of Governors Purchasing regulations”). It is the intent of Florida Polytechnic University (the “University”) to acquire quality goods and services within reasonable or required time frames, while promoting fair and open competition in the public procurement process. Responsible purchasing officials shall be protected from improper pressures of external political or business interests. The process shall reduce the appearance and opportunity for favoritism, ensure that contracts are awarded equitably and economically, and establish effective management oversight in the acquisition of commodities and contractual services, in order to preserve the integrity of public purchasing and contracting. The opportunity to respond to competitive solicitations and enter into contracts with the University is a privilege, not a right.

(2) **Definitions.**

- (a) **Commodity** - Any of the various 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.
- (b) **Competitive Response** - The response submitted to an Invitation to Bid, Invitation to Negotiate, or a Request for Proposal by a responsive and qualified bidder or offeror.
- (c) **Competitive Solicitation** - An Invitation to Bid, Request for Proposals or Invitation to Negotiate to competitively select a contractor/vendor.
- (d) **Contractor/Vendor/Supplier** - A person or firm who sells commodities or contractual services to the University.
- (e) **Contractual Service** - The rendering by a contractor of its time and effort rather than the furnishing of 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 or demolition of facilities.
- (f) **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, except as permitted by Florida law.
- (g) **Invitation to Bid** - A written solicitation for competitive bids with the title, date, and hour of the public bid opening designated and the commodity, group of commodities or services defined, for which competitive responses are sought.
- (h) **Invitation to Negotiate** - An invitation extended to prospective contractor/vendors 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. Cost may or may not be a consideration in the initial stages of negotiating.

~~(i) **President** – The chief executive officer of the University or chief operating officer, responsible for its operation and administration.~~

~~(j) **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.~~

~~(k) **Purchase** - An acquisition of commodities and/or services obtained by purchase order or contract whether by rent, lease, installment- purchase or lease-purchase, outright purchase, or license.~~

~~(l) **Renewal** - Contracting with the same contractor/vendor for an additional period of time after the initial contract term, provided the original terms of the agreement specify an option to renew.~~

~~(m) **Request for Proposal** - A written solicitation for competitive proposals for commodities or contractual services with the title, date, and hour of the public opening designated. The request for proposal may be used when the scope of work is not clearly defined.~~

~~(n) **Responsive and Qualified Bidder or Offeror** - A contractor/vendor who has submitted a competitive response that conforms in all material respects to a competitive solicitation.~~

(3) Procurement Department Duties. The University Board of Trustees has authority to establish a system of coordinated procurement policies, procedures, and practices to be used in acquiring commodities and contractual services required by the University. The Procurement Department (the “Procurement Department”) has the duty to:

(a) Canvass sources of supply and contracting for the purchase or lease of all commodities and contractual services for the University, in any manner, including purchase by installment- or lease-purchase contracts. Installment- or lease- purchase contracts may provide for the payment of interest on unpaid portions of the purchase price.

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

(c) Plan and coordinate purchases in volume and negotiate and execute agreements and contracts for commodities and contractual services under which the University may make purchases.

(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) Where practical and available, implement the use of existing State University System (SUS) Shared Initiatives contracts unless the Assistant Vice President of Procurement and Auxiliary Enterprises or designee documents that such use is not in the best interest of the university.

~~(e) Evaluate and approve contracts that are entered into after a public and open competitive solicitation by any State of Florida agency, ~~or~~ department, Florida state college or university, 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 let by such other entities. The Procurement Department must maintain appropriate justification for the use of services contract adoption and -shall review existing consortia and cooperative contracts 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.

(~~g~~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 State University System-wide basis and the contracts may be for multiple years.

(~~g~~h) Reject or cancel any or all competitive solicitations when determined to be in the best interest of the University.

(~~h~~i) Bar any contractor/vendor from doing business with the University for demonstrated cause, including previous unsatisfactory performance.

(~~i~~j) Prohibit University employees and University direct-support organization employees participating on a procurement selection committee for commodities or services from soliciting donations from responding contractor/vendors during the selection process, except for donations or other benefits expressly stated in the procurement document.

(4) **Employee and Contractor/Vendor Standard of Conduct.** It shall be a breach of ethical standards for any University employee to accept, agree to accept, or solicit 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/vendor to offer a University 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.

(5) **Competitive Solicitations Threshold.** All contracts entered into by the University for the purchase of commodities or contractual services exceeding \$75,000 shall be awarded pursuant to a public and open competitive solicitation, unless otherwise authorized herein or in the Board of Governors Purchasing regulations.

(6) **Notice of Decision or Intended Decision.** A notice of decision or intended decision concerning a solicitation, contract award, or sole source purchase shall be electronically posted on the Procurement Department website.

(7) **Preferences for Florida-Based Contractors/Vendors.** The University will provide preferences to Florida-based contractors/vendors for contracts for personal property and printing in accordance with Florida Board of Governors Purchasing regulations.

(8) **Tie Responses.** When multiple responses that are equal in all respects are received to a competitive solicitation, the University will give preference to responses that include commodities manufactured in the state, Florida businesses, businesses with a drug-free workplace program, or foreign manufacturers located in the state to determine the contract

award, or, if these conditions do not exist or are the equivalent between two or more responses, will use toss of the coin.

(9) **Extension Errors.** In the case of extension errors in quotes or competitive responses, the unit price will prevail.

(10) **Withdrawal of Competitive Response.** A contractor/vendor may withdraw his or her competitive response in writing if done within seventy-two (72) hours of the competitive response/bid opening, if the competitive response is clearly erroneous, and if the competitive response is withdrawn prior to final award or the purchase order being issued, whichever comes sooner.

(11) **Exceptional Purchases.** The University has the following exceptional purchases:

(a) **Purchase of Private Attorney Services.** Written approval from the Attorney General is not required for private attorney services acquired by the University but must be approved by the Office of the General Counsel.

(b) **Purchase of Insurance.** The University may 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. Camps insurance
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

(c) **Purchase of Products with Recycled Content.**

(d) **Purchase of Printing.** University purchases of printing are not subject to Florida Statutes Chapter 283. However, if the University decides to purchase printed materials through a competitive solicitation process, the preference provision in the Board of Governors Purchasing regulations shall apply.

(12) **Types of Purchases Not Subject to the Competitive Solicitation Process.** Purchasing actions that are not subject to the competitive solicitation process include those types of purchases that are enumerated in the Florida Board of Governors Purchasing regulations or Florida Statutes and commodities to be incorporated into any public work (as that term is defined in Fla. Admin. Code R. 12A-1.094) which are procured by the University in accordance with the requirements of the University's direct purchase program.

(13) **Purchases from small and disadvantaged business enterprises.** The University is an equal opportunity institution and encourages procurement contracting with small and disadvantaged businesses which includes minority business enterprises.

(14) **Purchases from Contractors/Vendors 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 vendor list for a period of 36 months from the date of being added to the convicted vendor list. No federal funds may be used to pay any party who is listed on the federal excluded parties list system.

(15) **Contractors/Vendors Excluded from Competition.** In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, invitations to bid and/or requests for proposals shall be excluded from competing for such procurements.

(16) **University Employees Involved in the Competitive Solicitation Process.** All persons taking part in the development or selection of criteria for evaluation, the evaluation process, and the contract award process in any purchase shall follow all relevant portions of the State of Florida Code of Ethics for Public Employees, Chapter 112, Part 3, Florida Statutes, and the University's regulation on outside activities.

(17) **Bonds.** The University may require solicitation security as a condition for a contractor/vendor's participation in a competitive solicitation and/or payment and performance bonds. An entity protesting a decision or intended decision pertaining to a competitive solicitation must post a solicitation protest bond. Requirements related to solicitation security, payment and performance bonds, and solicitation protest bonds must be in accordance with Board of Governors Purchasing regulations.

(18) **Contracts.**

(a) **Form of Contract.** Contracts for commodities or contractual services or licenses shall consist of a purchase order or bilateral agreement signed by the President or designee prior to or within thirty (30) days of the goods or services being rendered by the contractor/vendor. This provision does not apply to appropriate Expense Card (University issued procurement card) purchases that are made in accordance with applicable policies and procedures.

(b) **Annual Appropriation.** 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 agreement~~ is contingent upon ~~upon an annual appropriation by the Legislature~~ sufficient appropriation by the Florida Legislature and other entities' allowance of the University to use such funds."

(c) **Extension.** Extension of a contract shall be for a period not to exceed 12 months or until completion of the competitive solicitation and award or protest, whichever is longer, shall be in writing, shall be signed by both parties, and shall be subject to the same terms and conditions set forth in the original contract. There shall be only one extension of a contract.

(d) **Renewal.** A contract may contain provisions for renewal(s). -A contract entered into as a result of a competitive solicitation may be renewed for a period that may not exceed 5 years or twice the term of the original contract, whichever is longer.- This provision is not intended to apply retroactively; existing contracts entered into prior to January 1, 2017, that included any specified renewal period(s) may continue in accordance with the

existing contract terms. If the commodity or contractual service is purchased as a result of a competitive solicitation, the cost of any contemplated renewal must be included in the solicitation response. All contract renewals are subject to sufficient annual appropriations.

(e) **Deferred Payment.** The President has the authority to enter into deferred payment agreements utilizing the State of Florida Controller's Consolidated Equipment Financing Program. When a commodity contract requires deferred payments and the payment of interest under that program, the contract will be submitted to the State of Florida Controller for the purpose of pre-audit review and approval prior to acceptance by the University. No 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) **Limitation of Liability.** In order to promote cost-effective procurement of commodities and contractual services, the University may enter into contracts that limit the liability of a contractor/vendor consistent with Florida Statutes section 672.719.

(g) **Value of Contract.** The total value of a contract shall be the purchase price for the initial term of the contract plus all costs for the contemplated renewal terms.

(19) Purchase of Motor Vehicles.

(a) The term "motor vehicle" includes any automobile, truck, watercraft or other vehicle designed primarily for transporting persons, and construction vehicles or farm equipment.

(b) 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 state 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.

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

(20) Workday.

(a) Effective October 1, 2015, Workday, the University's Enterprise Resource Planning (ERP) system, is the mechanism used for creating requisitions and issuing purchase orders.

(b) The Procurement Department must approve, in Workday, all requisitions and approve or issue all purchase orders on behalf of the University.

(21) Procedures

(a) The procedures necessary to initiate this regulation are supported by the business processes located at the following locations:

1. Purchasing Manual (Procurement Website)

2. Expense Card Manual (Procurement Website)
3. Workday Business Processes (Workday)
 - i. Login to Workday
 - ii. Select “Poly Workday Job Aids”
 - iii. Refer to “Procurement” Job Aids

Authority: FBOG regulations 1.001(7), 18.001, 18.002, and 18.003.

History--New 8.28.13; Amended: 3.1.18; 5.XX.21

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