

Florida Gulf Coast University Board of Trustees
April 21, 2009

SUBJECT: Regulation: FGCU-PR6.016 Purchase of Commodities or Contractual Services

PROPOSED BOARD ACTION

Approve revision to University regulation.

BACKGROUND INFORMATION

The language in the existing regulation was last modified in 2008. This revision will delete all reference to the Florida Administrative Code, and delete extraneous information not pertinent to FGCU regarding 501(c) (3) provision of the Internal Revenue Code, Medicaid services, and prescriptive assistive devices.

Supporting Documentation Included: Notice and Regulation Purchase of Commodities or Contractual Services (FGCU-PR6.016)

Prepared by: Director of Procurement Services Maryan Egan

Legal Review by: General Counsel Vee Leonard (March 19, 2009)

Submitted by: Vice President for Administrative Services and Finance Joe Shepard

FLORIDA GULF COAST UNIVERSITY

NOTICE OF REGULATORY ACTION

March 19, 2009

REGULATION TITLE:

Purchase of Commodities or Contractual Services

REGULATION NO.:

FGCU-PR6.016

SUMMARY:

This regulation addresses procurement practices within the University.

FULL TEXT:

The full text of the regulation being proposed is attached and can also be found at <http://www.fgcu.edu/generalcounsel/promulgation.asp>

LAW IMPLEMENTED:

§§1001.74(2), 1010.04, F.S.

UNIVERSITY OFFICIAL INITIATING THE PROPOSED REVISED REGULATION:

Maryan Egan, Director of Procurement Services

UNIVERSITY OFFICIAL APPROVING THE PROPOSED REGULATION:

Dr. Joseph Shepard, Vice President for Administrative Services and Finance

PERSON TO BE CONTACTED REGARDING THE PROPOSED NEW REGULATION:

Diane St. John, Administrative Assistant, dstjohn@fgcu.edu; (239) 590-1101 (Phone), (239) 590-7470 (Facsimile); 10501 FGCU Blvd. South, Fort Myers, FL 33965-6565

ANY COMMENTS REGARDING THE PROPOSED NEW REGULATION SHOULD BE SUBMITTED IN WRITING ON OR BEFORE APRIL 3, 2009 BY 5:00 P.M. THE COMMENTS MUST IDENTIFY THE REGULATION ON WHICH YOU ARE COMMENTING.

THIS NOTICE WAS POSTED ON THE FGCU WEBSITE ON MARCH 19, 2009.



REGULATION: FGCU-PR6.016

Purchase of Commodities

or Contractual Services

*Effective
Date of
Regulation:*

01/15/08

- (1) Purchase of Private Attorney Services. Written approval from the Attorney General is not required for private attorney services acquired by the University.
- (2) 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:
 - a. Physical damage on vehicles and boats;
 - b. Inland marine on property owned, leased, or loaned to or by the University;
 - c. Building and property damage;
 - d. Equipment losses due to theft;
 - e. Equipment subject to transportation;
 - f. Loss of rental income;
 - g. Commercial general liability insurance for scientific equipment;
 - h. Excess general liability coverage;
 - i. Camps insurance.

All insurance purchased for property damage shall have a minimum of a \$1,000 deductible.

- (3) Purchases from Minority Business Enterprises. The University is an equal opportunity institution and promotes procurement participation and contract award with Minority Business Enterprises ("MBEs"). MBEs should have a fair and equal opportunity to compete for dollars spent by the University to procure commodities and contractual services. Competition ensures that prices are competitive and that a broad vendor base is available. The University will use good faith efforts to ensure that MBE vendors are aware of procurement and contract opportunities.
- (4) 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 vendor list

PURCHASE OF COMMODITIES OR CONTRACTUAL SERVICES

for a period of 36 months from the date of being added to the convicted vendor list.

(5) Purchasing actions that are not subject to the competitive solicitation process include:

- a. Emergency Purchases. When the President or designee determines, in writing, that the delay due to the competitive solicitation process threatens the health or safety of person(s) or animal(s), the protection or continuance of a vital University function or the preservation or protection of property, the University will proceed with the procurement of commodities or contractual services without a competitive solicitation. The emergency purchase shall be limited to the purchase of the type of items and quantities or for a time period sufficient to meet the threat and shall not be used to meet long-term requirements.
- b. Sole Source Purchases. Commodities or contractual services ~~available from a single source of supply will~~ may be exempted from a competitive solicitation process when it is determined that there is only one source for the required service or commodity.
- c. Purchases from competitively solicited contracts and negotiated annual price agreements established by other governmental entities, other Universities in the State University System, or other independent colleges and universities are not subject to further competitive solicitation.
- d. Commodities to be incorporated into any public works project (~~as that term is defined in Rule 12A-1.094, F.A.C.~~) which are procured by the University as a direct owner purchase are not subject to any further competitive solicitation.

(6) Commodities and contractual services that are not subject to the competitive solicitation process include:

- a. Artistic services;
- b. Academic program reviews;
- c. Lectures;
- d. Auditing and accounting services;
- e. Legal ~~and lobbyist~~ services, including attorney, paralegal, expert witness, appraisal, arbitrator or mediator services;
- f. Health services involving examination, diagnosis, treatment, prevention, medical consultation or administration. ~~Prescriptive assistive devices for medical, developmental or vocational rehabilitation including, but not limited to prosthetics, orthotics, 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.~~

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- ~~g. Services provided to persons with mental or physical disabilities by not-for-profit corporations organized under the provisions of Section 501(c)(3) of the Internal Revenue Code or services governed by the provisions of the Office of Management and Budget Circular A-122;~~
 - ~~h. Medicaid services delivered to an eligible Medicaid recipient by a health care provider who has not previously applied for and received a Medicaid provider number from the Department of Children and Family Services. This exception will be valid for a period not to exceed 90 days after the date of delivery to the Medicaid recipient and shall not be renewed;~~
 - ~~i. Family placement services;~~
 - ~~j.g.~~ Training and education services;
 - ~~k.h.~~ Advertising;
 - ~~l.i.~~ Contractual services or commodities provided by other governmental entities;
 - ~~m.j.~~ Conferences, workshops, programs or events that are offered to the general public for which fees have been collected to pay all associated expenses;
 - ~~n.k.~~ Conferences, workshops, programs or events that are required by a grant to be purchased, attended, held or organized;
 - ~~o.l.~~ Purchases from firms or individuals that are prescribed by state or federal law or required by a granting agency;
 - ~~p.m.~~ Regulated utilities and government franchised services;
 - ~~q.n.~~ Regulated public communications, except long distance telecommunication services or facilities;
 - ~~r.o.~~ Extension of an existing contract;
 - ~~s.p.~~ Renewal of an existing contract if the terms of the contract specify renewal option(s);
 - ~~t.q.~~ Purchases for resale;
 - ~~u.r.~~ Contractual services or commodities provided by a direct support organization;
 - ~~v.s.~~ Training, programming and other services available from the owner or licensor of copyrighted software or its designated provider of such services;
 - ~~w.t.~~ Purchases of materials, supplies, equipment or services for research purposes when the Director of Sponsored Research or designee certifies in writing that, in a particular instance, it is necessary for the efficient or expeditious prosecution of a research project;
 - u. Leases of space by the University for 5,000 square feet or less in a privately-owned building.
- (7) Participants in Contract Awards Not Subject to Competitive Solicitations.
- a. No person or firm who receives a contract to perform a feasibility study for potential implementation of a subsequent contract, participates in the

PURCHASE OF COMMODITIES OR CONTRACTUAL SERVICES

drafting of a competitive solicitation, or develops a program for future implementation shall be eligible to contract with the respective University dealing with the specific subject matter.

- b. The individuals taking part in the development or selection of criteria for evaluation, the evaluation process and the contract award in any purchase shall be independent of, and have no conflict of interest in, the entities evaluated and selected.

Specific Authority:

§§ 1001.74(42), 1010.04 FS.

Law Implemented:

§§ 1001.74(52), ~~(17), (29), 1001.75(5)~~, 1010.04 FS.

History:

New 9-30-99, Amended 7-10-03, 1-15-08.

Effective Date of Regulation:

January 15, 2008