



## FGCU REGULATION 6.025

*Effective Date  
of Regulation*

### Procurement

*January 14, 2020*

#### A. PROCUREMENT AUTHORITY OF THE UNIVERSITY

The President has delegated authority to the Director of Procurement Services to serve as the central procurement officer for the University and has the duty to:

1. Remove any contractor from the University's competitive vendor list that fails to fulfill any of its duties specified in a contract with the University and to reinstate any such contractor when satisfied that further instances of default will not occur.
2. 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.
3. Evaluate, approve, and utilize contracts that are entered into after a public and open competitive solicitation 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 let by such other entities. 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 (5%) savings on existing contract prices.
4. 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 made on a university, regional, or State University System-wide basis and the contracts may be for multiple years.
5. Reject or cancel any or all competitive solicitations when determined to be in the best interests of the University.
6. Bar any vendor from doing business with the University for demonstrated cause, including previous unsatisfactory performance.
7. Prohibit University employees and University direct support organization employees (if applicable) participating on a procurement selection committee for commodities or services from soliciting donations from responding vendors during the selection process, except for donations or other benefits expressly stated in the procurement document.

8. Permit the extension(s) of a contract, entered into as a result of a competitive solicitation, for up to twelve (12) months or until completion of the competitive solicitation and award process or protest, whichever is longer.
9. Permit the renewal(s) of a contract, entered into as a result of a competitive solicitation, for a period that may not exceed five (5) years or twice the term of the original contract, whichever is longer. This provision is not intended to apply to existing contracts entered into prior to January 1, 2017, including any specified renewal period(s) may continue in accordance with the existing contract terms.

## **B. COMPETITIVE SOLICITATION THRESHOLD**

1. All purchase orders or contracts for the procurement of commodities or contractual services exceeding \$75,000 shall be awarded pursuant to a competitive solicitation, unless otherwise permitted.
2. When only one (1) response to a competitive solicitation for commodities or contractual services exceeding seventy-five thousand dollars (\$75,000) annually is received, the University may review the solicitation response to determine if a second call for a competitive solicitation is in the best interest of the University. If it is determined that a second call would not serve a useful purpose, then the University may proceed with the acquisition. The University retains the right to reject or cancel any or all competitive solicitations where it is deemed to be in the best interest of the University.
3. The purchase of commodities and contractual services shall not be divided to avoid the requirement of competitive solicitation.

## **C. PREFERENCES FOR FLORIDA-BASED VENDORS**

1. Preferences for Personal Property

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

- a. If the responsible and responsive vendor that submits the lowest bid, the most advantageous proposal, or the best value reply is one whose principal place of business is outside of Florida and is in a state or political subdivision thereof that grants a preference for the same purchase to a vendor in such state or political subdivision, as applicable, then the University shall grant the same preference to the responsible and responsive Resident Vendor with the lowest bid received pursuant to an invitation to bid, the most advantageous proposal received pursuant to a request for proposal, or the best value reply received pursuant to an invitation to negotiate.

- b. With respect to invitations to bid, if the lowest responsible and responsive bid is from a vendor whose principal place of business is in a state that does not grant a preference for the purchase to a vendor in such state, then the University shall grant a preference in the amount of five percent (5%) to the lowest responsible and responsive Resident Vendor.
- c. For vendors whose principal place of business is outside of Florida, such vendors must, at the time of submitting its bid, proposal, or reply, provide a written opinion from a licensed attorney in its state specifying:
  - 1) The preferences(s) granted by the state or political subdivision, as applicable under the laws of that state to vendors whose principal place of business is in that state or political subdivision; and
  - 2) How the preference is calculated.

The failure to submit the written opinion may be waived as non-material if all vendors responding to the solicitation have principal places of business outside of Florida.

- d. The vendor's principal place of business, as represented by the vendor in its bid or reply, may be relied upon by the University without further inquiry. If the University determines that a vendor has misrepresented its principal place of business, the vendor's bid, proposal or reply shall be rejected.
  - e. For the purpose of section C.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 procures printed materials by competitive solicitation pursuant to section B. of this Regulation, a preference shall be provided to Resident Vendors as follows:

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

### 3. Method of Calculating Five Percent (5%) Preference

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

### 4. Determining a Vendor's Principal Place of Business

A vendor's principal place of business is determined as follows:

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

### 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.

## **D. EXCEPTIONAL PURCHASES**

### 1. Purchase of Products with Recycled Content

The University may establish a program to encourage the purchase and use of products and materials with recycled content and postconsumer recovered material.

### 2. Purchase of Private Attorney Services

Written approval from the Attorney General is not required for private attorney services acquired by the University.

### 3. Purchase of Insurance

The University shall have the authority to purchase insurance as deemed necessary and appropriate for the operation and educational mission of the University. All insurance purchased for property damage shall have a minimum of one thousand dollars (\$1,000) deductible. 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.
4. Purchase of Printing

If the University determines that it is in its best interests to purchase printed materials through a competitive solicitation process, the preference provision in section C.2 above shall apply.

#### **E. 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 for a period of thirty-six (36) months from the date of being added to the convicted vendor list.

#### **F. COMPETITIVE SOLICITATION EXCEPTIONS**

The following types of purchasing actions and commodities and contractual services purchases are not subject to the competitive solicitation process:

##### **1. Emergency Purchases**

When the President, or designee, determine, in writing, that the delay due to the competitive solicitation process is an immediate danger to the public health or safety or the welfare of the University, including University tangible and intangible assets; or would otherwise cause significant injury or harm not in the best interest of the University, the University may proceed with the procurement of commodities or contractual services without a competitive solicitation.

## 2. Sole Source Purchases

Commodities or contractual services available from a single source may be exempted from the competitive solicitation process.

3. Purchases from competitively solicited contracts and negotiated annual price agreements established by the State of Florida, other governmental entities, other Universities in the State University System, or other independent colleges and universities are not subject to further competitive solicitation.
4. The following listed commodities and services are not subject to competitive solicitation:
  - a. Artistic Services;
  - b. Academic program reviews;
  - c. Lectures;
  - d. Auditing and accounting services;
  - e. Legal 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, wheelchairs, and other related equipment and supplies, provided they are purchased on the basis of an established fee schedule or by a method that ensures the best price, taking into consideration the needs of the client;
  - 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 ninety (90) days after the date of delivery to the Medicaid recipient and shall not be renewed;
  - i. Family placement services;
  - j. Training and education services;

- k. Advertising, except for media placement services;
- l. Services or commodities provided by other governmental agencies, another university in the State University System, direct support organizations of the University, political subdivision, or other independent colleges and universities;
- m. Programs, conferences workshops, continuing education events, or other University programs that are offered to the general public for which fees are collected to pay all expenses associated with the event or program;
- n. Purchases from firms or individuals that are prescribed by state or federal law, or specified by a granting agency;
- o. Regulated utilities and government franchised services;
- p. Regulated public communications, except long distance telecommunication services or facilities;
- q. Extension of an existing contract;
- r. Renewal of an existing contract if the terms of the contract specify renewal option(s);
- s. Purchases from an annual certification list developed by the University if available;
- t. Purchases for resale;
- u. Accounting services;
- v. 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;
- w. Implementation/programming/training services available from owner of copyrighted software or its contracted vendor;
- x. Purchases of materials, supplies, equipment, or services for instructional or sponsored research purposes when a director of sponsored research, or designee, certifies that, in a particular instance, it is necessary for the efficient or expeditious prosecution of a research project in accordance with sponsored research procedures or to attain the instructional objective.

## **G. VENDORS EXCLUDED FROM COMPETITION**

In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of

work, invitations to bid, request for proposals and invitations to negotiate shall be excluded from competing for such procurements.

## **H. STANDARD OF CONDUCT**

1. It shall be a breach of ethical standards for any employee of the University to accept, solicit, or agree to accept a gift or gratuity of any kind, form, or type in connection with any contract for commodities or services.
2. It shall be a breach of ethical standards for any potential contractor to offer a University employee a gift or gratuity of any kind, form, or type to influence the development of a contract or potential contract for commodities or services.
3. The individuals taking part in the development or selection of criteria for evaluation, the evaluation process, and the contract award in any procurement shall be independent of, and have no conflict of interest in, the entities evaluated and selected.

### *Authority*

*Section 287.057, Florida Statutes*

*BOG Regulation 1.001, University Board of Trustees Powers and Duties*

*BOG Regulation 18.001, Procurement Regulation*

### *History of Regulation*

*New 01/14/20*

*Approved by Florida Gulf Coast University Board of Trustees*

*January 14, 2020*