

CHAPTER 6C-14 ADMINISTRATION OF CONSTRUCTION PROGRAM

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6C-14.002 Definitions.

(1) "Professional Services" means those services within the scope of the practice of architecture, professional engineering, or registered land surveying as defined by the Laws of Florida or those performed by any architect, landscape architect, professional engineer or registered land surveyor in connection with professional employment or practice or other professional services that may be required.

(2) "Construction Management Services" means those services whereby the construction manager is selected pursuant to Rule 6C-14.0055, F.A.C., to provide consulting services during the design phase; and management and contractual responsibility for the total construction project under a negotiated fee and guaranteed maximum price construction contracting method. A fee is negotiated for profit, overhead and direct management costs. Trade contracts are awarded by the construction manager based on competitive bids received in response to invitations to bid issued by the construction manager. A guaranteed maximum price is provided by the construction manager, and the total price paid to the construction manager is either the fee plus the actual cost or the guaranteed maximum price, whichever is less.

(3) "Design-Build Services" means those services whereby one single legal entity selected pursuant to Rule 6C-14.0055, F.A.C., is responsible for design and construction services under one contract. Where such services are within the scope of practice of architecture, or professional engineering as defined by the laws of the State, they are to be performed by a registered architect or professional engineer, and where those services are within the scope of construction contracting as defined by the laws of the State for construction, they are to be performed by a certified or registered contractor as applicable according to Florida Statute.

(4) "Project" means that fixed capital outlay construction project, study or planning activity described in the Public Notice including:

- (a) Individual facilities;
- (b) Grouping of substantially similar facilities, rehabilitation and/or renovation activities; or
- (c) Grouping of minor facilities, rehabilitation and/or renovation activities.

(5) "Construction budget" shall mean that amount which is announced after the deadline for the receipt of bids, but prior to the opening of bids.

(6) A "Campus Service Agreement" is a contract entered into in accordance with this Chapter between the university and a firm whereby the firm provides professional services for projects of a specified nature for a specific period of time under a continuing contract as defined in Section 287.055, Florida Statutes.

(7) "Guaranteed Maximum Price" means the fixed amount in a negotiated contract within which the construction will be achieved. It includes both the fee and construction cost.

(8) "Minority Business Enterprise" (MBE) is any legal entity as defined in Section 288.703, Florida Statutes.

(9) "Chancellor" means the Chancellor of the State University System, or designee.

(10) "President" means the university president, or designee.

(11) "The University Facilities Office" means any office at a university with authority for design and construction administration.

Specific Authority 240.209(1), (3)(p), (q) FS. Law Implemented 240.209(1), (3)(p), (q), 255.29, 287.055, 288.703 FS. History—New 12-30-79, Amended 8-11-85, Formerly 6C-14.02, Amended 4-8-86, 1-24-89, 10-17-89, 1-13-99.

6C-14.0025 Action Required Prior to Capital Outlay Appropriation.

(1) No new construction or remodeling project exceeding \$500,000 shall be requested by a university for inclusion on the priority list without being recommended in an educational plant survey as prescribed in Chapter 235, Florida Statutes.

(2) The university is responsible for the preparation of the building program and shall submit it to the Chancellor for approval. The program shall be consistent with the university academic and facilities master plan, and shall include the project budget and the building codes applicable to the project.

(3) The Chancellor shall have the responsibility for building program review and approval, modification, or disapproval, to assure compatibility with the institution's approved mission statement, master plan, and with space utilization criteria described in Chapter 6A-2, F.A.C. Building programs and budgets approved by the Chancellor shall serve as the basic planning documents for development of plans and specifications for construction.

(4) Proposals for fixed capital outlay projects to be funded by Capital Improvement Fees or Building Fees shall be prepared by the university. Each proposed project shall be approved by the university president after consultation with the student government association. For the purpose of this rule, "consultation" is defined as an ongoing dialogue with the student body president prior to developing the university proposal. An attachment containing any objections and alternatives, and stating that both the university president and the student government association have reviewed the project proposals, shall be included in the proposal.

Specific Authority 240.209(1), (3)(p), (q), 240.295(3) FS. Law Implemented 216.182, 240.209(1), (3)(p), (q), 240.295(1), (3) FS. History—New 1-24-89, Amended 1-13-99.

6C-14.004 Public Announcement and Qualification Procedure.

(1) The university shall publish an announcement in the "Florida Administrative Weekly" published by the Department of State, Division of Elections, Tallahassee, Florida 32399, available by subscription, when the following services are required:

(a) Professional services for each project which exceeds the threshold amount provided in Section 287.017, Florida Statutes, for Category Five, which is not being designed by either the Campus Service Architect/Engineer or by university forces;

(b) Continuing professional services or construction management services under a Campus Service Agreement;

(c) Professional services for development of design criteria for design-build projects. (The firm selected to develop the design criteria package shall not be eligible to render services under the Design-Build Contract);

(d) Construction management services; or,

(e) Design-build services.

(2) The announcement shall provide a general description of the project(s) and the selection process.

Specific Authority 240.209(1), (3)(p), (q), 287.055(3) FS. Law Implemented 240.209(1), (3)(p), (q), 255.29, 287.055 FS. History—New 12-30-79, Amended 8-11-85, Formerly 6C-14.04, Amended 1-24-89, 10-17-89, 1-13-99.

6C-14.005 Certification and Competitive Selection of Architects/Engineers.

(1) A Certification and Selection Committee appointed by the president shall serve throughout the selection process for a Campus Service Architect/Engineer, or for any project exceeding the threshold amount provided in Section 287.017, Florida Statutes, for Category Five, which is being designed neither by the Campus Service Architect/Engineer nor by university staff. The Committee shall consist of at least three members and no more than five members and shall be comprised of the following:

(a) Three representatives of the University Facilities Office or physical plant office;

(b) Up to two additional members, based on the special needs of the project.

(2) For all selections, the Certification and Selection Committee shall determine the eligibility under Florida law of each firm to perform the services required for each project. Each firm determined to be eligible to provide the services for the project will be so certified by the Committee and shall be qualified for consideration as provided in this Chapter.

(3) The Certification and Selection Committee shall evaluate professional qualifications statements by all eligible professional firms applying. The Committee shall consider the experience of professional personnel; past performance; ability to meet time and budget requirements; minority business certification status; location; and recent, current and projected workloads of the firms. The Committee shall conduct discussions with, and may require public presentation by, no fewer than three firms, where possible, regarding their qualifications, approach to the project, and ability to furnish the required services. For projects having three or fewer applicants, the Committee shall conduct discussions with each applicant firm. The Committee shall also consider the volume of

work previously awarded to the firm by the State University System, with the object of effecting an equitable distribution of contracts among qualified firms, provided that such distribution does not violate the principle of selection of the most highly qualified firms. The Committee shall rank the firms in the order of those most highly qualified to perform the required service, and where possible, shall recommend to the president for approval no less than three firms in the Committee's order of ranking. The university shall notify all interviewed firms of the approved selection.

(4) After approval by the president, the president shall negotiate a contract.

Specific Authority 240.209(1), (3)(p), (q), 287.055(3)(d) FS. Law Implemented 240.205(6), 240.209(1), (3)(p), (q), 287.055 FS. History—New 12-30-79, Formerly 6C-14.05, Amended 7-22-87, 1-24-89, 5-17-95, 1-13-99.

6C-14.0055 Certification and Competitive Selection for Construction Management Services and Design-Build Services.

(1) The president may waive the requirements of Rule 6C-14.021, F.A.C., and permit negotiation of a contract for construction management services, or the president may waive the requirements of Rules 6C-14.005 and 6C-14.021, F.A.C., and permit negotiation of a contract for design-build services in accordance with Rule 6C-14.007, F.A.C., in cases determined to be in the best interest of the State.

(2) In determining when it is in the best interest of the State to use construction management, the president shall consider:

(a) Whether the size of the project is sufficiently large and/or complex to require major emphasis on the qualification of the contractor to have specific expertise in performing highly specialized cost estimating, value engineering, and scheduling during the design process with continuity of construction management through both the design and construction phases;

(b) Whether the initial construction funding is appropriated and construction is begun with the expectation of substantial appropriations in subsequent years, thereby making it advantageous to retain a single contractor for the duration of the project;

(c) Whether the project is an alteration of an occupied facility which requires working around or relocating occupants while keeping the facility fully operational; or,

(d) Whether the project is a repair or renovation where the conditions requiring correction cannot be determined and specified without extensive contractor involvement in the removal and examination process during the design phase.

(e) Whether the timely completion of the project is critical to the university's ability to repay debt service or to meet grant obligations.

(3) In determining when it is in the best interest of the State to use the design-build process, the president shall consider:

(a) Whether the need for the facility is significant enough to require a substantial reduction of normal delivery time, requiring an overlap of design and construction phases;

(b) Whether the design and construction of the facility requires minimal interface with the users; or

(c) Whether the project is performance-based and requires the development of a plan for life cycle cost savings and a design solution which will accomplish the savings.

(4) A Certification and Selection Committee appointed by the president shall serve throughout the selection process. The Committee shall consist of at least three members and no more than five members and shall be comprised of the following:

(a) Three representatives of the University Facilities Office or physical plant office;

(b) Up to two additional members based on the special needs of the project.

(5) The project architect/engineer or the Design Criteria Consultant may attend the selection meetings in an advisory capacity, at the Committee's discretion.

(6) The Certification and Selection Committee shall determine the eligibility under Florida law of each applicant to perform the services required for the project. Each applicant determined to be eligible to provide the services for the project will be so certified by the Committee and shall be qualified for consideration as provided in this Rule. The Certification and Selection Committee shall evaluate the qualifications of all responsive applicants.

(7) For construction management projects, the Committee shall conduct discussions with, and may require public presentation by, no fewer than three applicants regarding their qualifications, approach to the project, and ability to furnish the required services. For a project having three or fewer applicants, the Committee shall conduct discussions with each applicant. The Committee shall rate each applicant on the basis of the point scale identified, and where possible, shall recommend to the president for approval no less than three applicants in the Committee's order of ranking.

(8) Design-build entities shall be selected either on the basis of qualifications or on the basis of formal design-build proposals.

(a) For qualifications-based selections, the Committee shall consider the criteria outlined in Rule 6C-14.005, F.A.C., for selection of architects/engineers, and in Rule 6C-14.0055, F.A.C., for selection of construction managers, and shall follow the selection process described for construction managers.

(b) For proposal-based selections, the Committee shall request formal design-build proposals and conduct interviews with no fewer than three and no more than six applicants. For a project having three or fewer applicants, the Committee shall request formal design-build proposals from each applicant.

Applicants may be instructed to submit their design-build proposals in such a way as to maintain their anonymity. The design-build proposals shall be reviewed by the Design Criteria Consultant, who shall provide the Committee with an evaluation of code, structure, engineered systems, life-cycle cost implications, and compliance with design criteria.

The Committee shall review all design-build proposals and interview each submitting applicant. The Committee shall rate each applicant on the basis of the point scale identified.

(c) Under either selection process, the Committee shall recommend three applicants, where possible, in priority order to the president.

(9) For construction management projects, the president shall notify each applicant interviewed according to subsection 6C-14.0055(7), F.A.C., of the president's action. For design-build projects, the president shall notify each interviewed applicant of the president's action. Any protest shall be filed in accordance with Chapter 120, Florida Statutes.

(10) After approval by the president, the president shall negotiate a contract in accordance with Rule 6C-14.007, F.A.C.

Specific Authority 240.209(1), (3)(r) FS. Law Implemented 240.209(1) FS. History—New 10-17-89, Amended 9-15-91, 6-5-96, 1-13-99.

6C-14.007 Competitive Negotiation.

(1) The president shall negotiate a contract with the approved firm in the following manner:

(a) For professional services, the contract shall be negotiated using the State University System approved fee schedule for individual projects or maximum hourly rates for Campus Service Agreements and design criteria agreements. The fee schedule to be used shall be negotiated based on the level of complexity and the scope of the services required, and shall be based on historic fee data. The basic fee schedule shall relate the fees to the complexity and size of the project and provide a basis for negotiation of a fair, competitive and reasonable fee for the services to be provided.

(b) For construction management services and for design-build services selected based on qualifications, the contract shall be negotiated to provide for preconstruction fees based on hourly rates, and construction related services to include profit, overhead, direct management costs, and establishing a guaranteed maximum price.

(c) For design-build services selected based on a design-build proposal, the contract shall be negotiated based on the design-build proposal, to provide for a guaranteed maximum price for all professional services and construction costs which shall include reimbursable costs plus fees for design, project management, overhead and profit.

(2) Should the president be unable to negotiate a satisfactory contract with the firm considered to be the most qualified at a price the president determines to be fair, competitive and reasonable, the president shall terminate negotiations with that firm. The president shall then undertake negotiations with the second most qualified firm. Failing accord with the second most qualified firm, the president shall terminate negotiations with that firm and shall then undertake negotiations with the third most qualified firm.

(3) Should the president be unable to negotiate a satisfactory contract with any of the selected firms, additional firms may be selected in accordance with Rule 6C-14.005, F.A.C., or negotiations may be reinstated following the original order of priority. Negotiations may, in the president's sole discretion, continue in accordance with this Chapter until an agreement is reached.

Specific Authority 240.209(1), (3)(p), (q), 287.055 FS. Law Implemented 240.209(1), (3)(p), (q), 287.055 FS. History—New 12-30-79, Amended 8-18-80, Formerly 6C-14.07, Amended 7-22-87, 1-24-89, 10-17-89, 5-17-95, 1-13-99.

6C-14.018 Contracting Authority for Construction Contracts.

(1) Each construction project shall be issued for receipt of bids and awarded as provided under Rule 6C-14.021(5), F.A.C. Where bids are within the budget, the president may sign the construction contract in behalf of the Board.

(2) Where bids exceed the established project budget, all bids may be rejected and the project may be bid again. If a contract may be awarded by using contingency funds from the project budget, or by increasing the total project budget, the president may, if determined to be in the best interest of the State, award the contract, subject to budget amendment.

Specific Authority 240.209(1), (3)(p), (r) FS. Law Implemented 240.205(6), 240.209(1), (3)(p), 240.227(12) FS. History—New 12-30-79, Amended 9-28-81, 8-11-85, Formerly 6C-14.18, Amended 1-24-89, 6-5-96, 1-13-99.

6C-14.020 University Supervision of Construction Program.

(1) The university shall be responsible for the administration of all projects.

(2) The University Facilities Office is responsible for liaison with the project architect/engineer for the duration of the project. The president shall review all plans for program compliance and ensure that any deviations from the approved building program are corrected. Where deviations from the approved program are desired in the planning process, the president shall be responsible for preparing and obtaining approval of the amendment to the building program before further development of the plans. During the design and construction of a project, the university is the enforcing agency for the requirements of codes and statutes.

(3) The president shall provide the necessary liaison in the preparation of all change orders and shall approve or disapprove change order proposals not affecting the approved program of the project in accordance with guidelines developed by the Chancellor. Where change orders cause the authorized budget to be exceeded, the change order shall be subject to prior budget amendment. Where change orders are outside the scope of the approved program, the change order shall be subject to prior program approval by the Chancellor.

(4) The president shall ascertain that all projects comply with all applicable codes and standards. Prior to the president placing an advertisement for bids, the president shall submit completed construction documents to the State Fire Marshal's Office for review and approval.

(5) For the use of the Certification and Selection Committee in evaluation of past performance, each architectural or engineering firm under contract shall be evaluated no less than annually while under contract. When completed, a copy of the rating shall be distributed to the rated firm with instructions regarding the appeal process. Any rating may be appealed within 30 days of the rating date by the rated firm. In the event of appeal, the rating shall be reviewed in the manner set forth in subsections 6C-14.022(2) and (4), F.A.C., of these rules, for appeals of disqualification of contractors.

Specific Authority 240.209(1), (3)(p), (q), (r) FS. Law Implemented 240.209(1), (3)(p), (q), 255.25(5), 287.055(3)(d) FS. History—New 12-30-79, Amended 8-11-85, Formerly 6C-14.20, Amended 4-8-86, 1-24-89, 11-28-90, 6-5-96, 1-13-99.

6C-14.021 Procedures for Construction Contract Bidding and Award.

(1) The president shall be responsible for the advertisement of all projects in accordance with Section 255.0525, Florida Statutes. All announcements will include information necessary for firms to submit a bid proposal on the project.

(2) In order to be eligible to submit a bid proposal, a firm must, at the time of receipt of bids:

(a) Hold the required applicable state contractor license in good standing where the project falls within the provisions of Chapter 489, Florida Statutes;

(b) Hold a current and active Florida corporate charter in accordance with Chapter 607, Florida Statutes, if the bidder is a corporation. If the bidder is an out-of-state corporation, it must hold a current and active foreign qualification authorization to do business in the State of Florida;

(c) Not be disqualified at the time of bid submittal through disqualification procedures described in Rule 6C-14.022, F.A.C.;

(d) Meet any special prequalification requirements set forth in the bid documents; and

(e) Not have been convicted of a public entity crime within 36 months prior to the date for receipt of bids.

(3) The lowest responsible and responsive bidder, as determined by the university, must submit the following items within seven calendar days following the bid opening date:

(a) Proof of compliance with subsection 6C-14.021(2), F.A.C.;

(b) Proof of insurance in effect which equals or exceeds the limits required by the project specifications;

(c) A Letter of Intent from a surety company which meets the standards set forth in the project specifications and is authorized to do business in the State of Florida; and

(d) Proof of compliance with any special requirements which are set forth in the bid documents, and which were not required to be submitted with the bid proposal.

(4) Any items so required by the project specifications shall be submitted with the bid proposal.

(5) Projects will be publicly bid in accordance with the provisions in the bid documents. Except for informalities which may be waived by the president a bid which is incomplete or not in conformance with the requirements of the bid documents shall be determined to be non-responsive and shall be rejected. Award of contract will be made to the firm determined to be responsible and qualified in accordance with the bid documents which submits the lowest priced proposal for the work except that if it is in the best interest of the State, any bids may be rejected, or all bids may be rejected and the project may be bid again.

(6) The president may waive the requirements of Rule 6C-14.021, F.A.C. and permit negotiation of the construction contract with a qualified firm in documented cases of valid public emergencies.

(7) When determined to be in the best interest of the State and reduction in the price of the lowest responsible and responsive bidder is necessary to provide for an award of a construction contract within the construction budget, the president may negotiate the construction contract or modification of the contract, including the specifications, with that bidder. Negotiations may be terminated and all bids may be rejected at any point in the negotiation process. The award of a negotiated contract will be made by the president.

Specific Authority 240.209(1), (3)(p), (r) FS. Law Implemented 240.205(6), 240.209(1), (3)(p), 255.29 FS. History—New 12-30-79, Amended 5-25-81, 8-11-85, Formerly 6C-14.21, Amended 4-8-86, 1-24-89, 4-10-90, 6-5-96, 1-13-99.

6C-14.022 Disqualification Procedures.

(1) The president will review the performance of each construction firm under contract. The president will record poor or inadequate performances, deficient management resulting in project delay, poor quality workmanship, and non-fulfillment of contractors MBE plan. The president will review all circumstances surrounding instances of poor performance and the quality of workmanship and may initiate disqualification proceedings for any firm determined to be deficient.

(2) The president shall notify the firm under review and give it an opportunity to submit written evidence. As deemed appropriate, the president may convene a disqualification committee. If the president finds probable cause to warrant disqualification, the president shall so notify the contractor in accordance with Chapter 120, Florida Statutes. The notification shall set forth specifically the grounds for disqualification and the contractor's right to request a hearing in accordance with Chapter 120, Florida Statutes. The firm may, within fourteen (14) days of receipt of notification of disqualification, file a written request for hearing. If such a request is not timely filed, the president will make a final ruling on the matter in its original form. If a request for hearing is made, the matter will be handled in accordance with Chapter 120, Florida Statutes.

Specific Authority 240.209(1), (3)(p), (q) FS. Law Implemented 120.57, 120.60, 240.209(1), (3)(p), (q), 287.094 FS. History—New 5-25-81, Amended 8-11-85, Formerly 6C-14.22, Amended 4-8-86, 1-24-89, 1-13-99.

6C-14.023 Notice and Protest Procedures.

(1) Notification.

(a) Bid Solicitation – The university shall provide notice of any information relating to a bid solicitation by advertising for bids or by distribution of bidding documents.

(b) Contract Award – The notice of a decision on contract award or bid rejection shall be given by certified United States mail, return receipt requested, to each bidder.

(2) Protest.

(a) Any qualified bidder who is adversely affected by the university's decision may file a written notice of protest within 72 hours after receipt of the notice. The protesting firm must reduce its complaint to written petition and file it with the president within ten (10) days from registration of the original complaint. If the bid documents require the posting of a bond with the protest as provided by Section 255.0516, Florida Statutes, the bond shall be included with the protest.

(b) Failure to file a notice of protest or the written petition shall constitute a waiver of the right to protest proceedings.

(3) Upon receipt of the formal written petition filed in accordance with paragraph 6C-14.023(2)(a), F.A.C., the president shall delay the execution of the contract until the protest is resolved by mutual agreement between the parties or by final presidential action, unless the president shall make a finding and declares that such delay would cause serious danger to the public health, safety or welfare.

(4) Petitions involving disputed issues of material fact shall be referred for hearing in accordance with Section 120.57(1), Florida Statutes, except that in instances where the firm filing the protest waives its right to a formal hearing and requests an informal hearing pursuant to Section 120.57(2), Florida Statutes, such a request may be granted. For those cases having no disputes of material fact, the president may designate a hearing officer to conduct a hearing pursuant to Section 120.57(2), Florida Statutes. At the conclusion of the informal hearing, the hearing officer shall submit a written recommended order to the president. The president shall then issue a preliminary order for final action and notify the firm of such order. The preliminary order of the president shall be final, unless the firm under consideration takes exception to such order; in which event, it may file with the president such exceptions within twenty-one (21) days receipt of notice of the preliminary order. At the end of the period for filing exceptions, the president will review the preliminary order and any exceptions that have been filed, and will render the final order. The decision of the president is final.

Specific Authority 240.209(1), (3)(p), (r) FS. Law Implemented 120.57, 240.209(1), (3)(p), 255.0516 FS. History—New 5-25-81, Amended 8-11-85, Formerly 6C-14.23, Amended 6-5-96, 1-13-99.