

CHAPTER 6C-18 ADMINISTRATION OF PURCHASING PROGRAM

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6C-18.030 Statement of Intent.

It is the intent of the State University System to acquire quality goods and services within reasonable or required time frames, while promoting fair and open competition in the public procurement process. The process will 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 bid on State University System contracts is a privilege, not a right.

Specific Authority 240.209(1), (3)(r) FS. Law Implemented 240.205(6), 240.227(12) FS. History—New 1-13-99.

6C-18.035 Definitions.

(1) 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, photography, graphic arts, craft arts, industrial design, costume design, fashion design, motion pictures, television, radio or tape and sound recording or in any other related field.

(2) Chancellor – The chief administrative officer of the Board of Regents.

(3) 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 Institution. “Commodity” also includes interest on deferred-payment contracts entered into by the Institution for the purchase of other commodities. Printing of publications shall be considered a commodity when let upon contract in accordance with Section 283.33, F.S.

(4) Competitive Bid/Proposal – The response submitted to an Invitation to Bid or a Request for Proposal by responsive and qualified bidders or offerors.

(5) Competitive Negotiation – The establishment of a contract through deliberation, discussion or conference on the specifications, terms and conditions of a proposed agreement.

(6) Competitive Solicitation – An Invitation to Bid, Request for Proposal or Invitation to Negotiate to competitively select a contractor.

(7) Contractor/Vendor – A person or firm who contracts to sell commodities or contractual services to Institutions.

(8) 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 for the construction, renovation, repair or demolition of facilities entered into pursuant to Chapter 255, F.S.

(9) Extension – An increase in the time allowed for the contract period due to circumstances for which neither party is at fault.

(10) Independent Contractor – A person or firm who provides a service to an Institution, but does not have any employment or other relationship or connection with that Institution, except as provided in s. 112.313, F.S.

(11) Institution – A term used to refer to the individual units defined in Section 240.2011, F.S., as the Board of Regents or the individual universities named therein. Each institution is individually granted all rights, privileges and authority established under this rule.

(12) 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 bids are sought.

(13) Invitation to Negotiate – An invitation extended to prospective contractors by an Institution, 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.

(14) Minority Business Enterprise – A business concern as defined in s. 288.703(2), F.S.

(15) President – The chief administrative officer of a university, responsible for the operation and administration of the university.

(16) 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.

(17) Purchase – An acquisition of commodities or services obtained by contract, whether by rent, lease, installment- or lease-purchase or outright purchase.

(18) Purchases for Resale – The purchase of commodities or contractual services acquired for the purpose of selling them for the benefit of the Institution.

(19) Renewal – Contracting with the same contractor for an additional period of time after the initial contract term, provided the original terms of the agreement specify an option to renew.

(20) 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.

(21) Responsive and Qualified Bidder or Offeror – A contractor/vendor who has submitted a bid or proposal that conforms in all material respects to a competitive solicitation.

(22) Term Contract – An indefinite quantity contract for the purchase of commodities or contractual services during a prescribed period of time.

Specific Authority 240.209(1),(3)(r) FS. Law Implemented 112.313, 240.2011, 240.205(6), 240.227(12), 255, 283.33, 288.703(2) FS. History– New 1-13-99.

6C-18.040 Purchasing Authority of the Institutions.

The Chancellor and each university president shall establish a system of coordinated, uniform procurement policies, procedures, and practices to be used in acquiring commodities and contractual services, as follows:

(1) Developing purchasing procedures in furtherance of this rule. The purchasing procedures may be developed and published as Institutional administrative procedures or rules consistent with Chapter 120, F.S.

(2) Canvassing sources of supply and contracting for the purchase or lease of all commodities and contractual services for the Institution, 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.

(3) Removing any contractor from the Institution's competitive vendor list that fails to fulfill any of its duties specified in a contract with the Institution(s) and to reinstate any such contractor when satisfied that further instances of default will not occur.

(4) Planning and coordinating purchases in volume and negotiating and executing agreements and contracts for commodities and contractual services under which the Institution may make purchases.

(5) Developing 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.

(6) Evaluating and approving contracts let by the Federal Government, other states, political subdivisions, 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 Institution, to make purchases under contracts let by such other entities.

(7) Electing as an alternative to any provision in s. 120.57(3)(c), F.S., to proceed with a bid solicitation or contract award process when it is set forth, in writing, that the particular facts and circumstances which demonstrate that the delay due to staying the solicitation or contract award process would be detrimental to the interests of the Institution. After the award of contract resulting from a competitive solicitation in which a timely protest was received and in which the Institution did not prevail, the contract may be canceled and rewarded to the prevailing party.

(8) Awarding contracts for commodities and contractual services to multiple suppliers, if it is determined to be in the best interest of the Institution. Such awards may be on an Institutional, regional or State University System-wide basis and the contracts may be for multiple years.

(9) Rejecting or canceling any or all competitive solicitations when determined to be in the best interest of the Institution.

(10) Delegating any and all of the above authority, powers and duties to the appropriate employee within the Institution.

Specific Authority 240.209(1), (3)(r) FS. Law Implemented 120, 240.205(6), 240.227(12) FS. History—New 1-13-99.

6C-18.045 Competitive Solicitations Required.

(1) All contracts for the purchase of commodities or contractual services exceeding \$25,000 shall be awarded pursuant to a competitive solicitation, unless otherwise authorized by Rule 6C-18.050, F.A.C.

(2) When only one response is received to a competitive solicitation for commodities or contractual services exceeding \$25,000, the Institution may review the solicitation responses to determine if a second call for a competitive solicitation is in the best interest of the Institution. If it is determined that a second call would not serve a useful purpose, the Institution may proceed with the acquisition.

(3) When multiple responses that are equal in all respects are received to a competitive solicitation, the Institution may give preference to responses that include minority business enterprise participation, 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.

(4) The purchase of commodities and contractual services shall not be divided to avoid the requirement of competitive solicitation.

Specific Authority 240.209(1), (3)(r) FS. Law Implemented 240.205(6), 240.227(12) FS. History—New 1-13-99.

6C-18.050 Purchase of Commodities or Contractual Services.

(1) Purchase of Products with Recycled Content. Each Institution 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 Institution.

(3) Purchase of Insurance. Each Institution shall have the authority to purchase insurance as deemed necessary and appropriate for the operation and educational mission of the Institution. Examples of insurance coverages that may be acquired by the Institution include:

- (a) Physical damage on vehicles and boats;
- (b) Inland marine on property owned, leased, or loaned to or by the Institution;
- (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.

(4) Purchase of Printing. Printing shall be purchased in accordance with Chapter 283, F.S.

(5) Purchases from Minority Business Enterprises.

(a) Each Institution shall establish procedures to encourage and promote the use of minority business enterprises. The procedures may include: developing an outreach program to increase minority business enterprise participation in contracting; reserving contracts for competitive solicitation only among minority business enterprises; establishing monetary goals based on prior year expenditures by percentages, percentage ranges, geographic location, the university's mission, or any other reasonable method; developing an annual utilization plan; developing a system to record statistical data on monetary transactions with state-certified and non-state certified minority business enterprises; reporting statistical data on expenditures with certified minority business enterprises to the Governor and Cabinet, the President of the Senate, and the Speaker of the House of Representatives on or before February 1 of each year. The development of a minority business enterprise program shall be based on the recommendations in the most recent disparity study.

(b) Certification of minority business enterprises may be by state or local governmental entities. For those minority business enterprises certified by local governmental entities, the Institutions will be responsible for reviewing the certification process for assurance of minority status.

(6) Purchases from Contractors Convicted of Public Entity Crimes. An Institution 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.

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

(a) Emergency Purchases. When the Chancellor, a president or his/her designee determines, 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 Institution, the Institution may proceed with the procurement of commodities or contractual services without a competitive solicitation.

(b) Sole Source Purchases. Commodities or contractual services available from a single source may be exempted from the competitive solicitation process.

(c) Purchases from Contracts and Negotiated Annual Price Agreements established by the State of Florida, other governmental entities, other Institutions in the State University System, or other independent colleges and universities are not subject to further competitive solicitation.

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

(a) Artistic services;

(b) Academic reviews;

(c) Lectures;

(d) Auditing 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, 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;

(g) Services provided to persons with mental or physical disabilities by not-for-profit corporations organized under the provisions of s. 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) Training and education services;

(k) Advertising;

(l) Services or commodities provided by governmental agencies, another Institution in the State University System or other independent colleges and universities;

(m) Continuing education events or programs that are offered to the general public for which fees have been 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;

(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 the Annual Certification List developed by each Institution;

(t) Purchases for resale.

(9) 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 drafting of a competitive solicitation, or develops a program for future implementation shall be eligible to contract with the respective Institution 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 and may be required to so attest in writing.

Specific Authority 240.209(1), (3)(r) FS. Law Implemented 240.205(6), 240.227(12), 283 FS. History—New 1-13-99.

6C-18.055 Bonds.

(1) Solicitation Security. A certified, cashier's or treasurer's check, bank draft or bid bond may be required as a condition for participating in a competitive solicitation.

(2) Payment and Performance Bonds.

(a) Any contractor contracting with an Institution to provide commodities or commodities which include installation may be required to furnish a payment and performance bond, with good and sufficient securities, to the Institution prior to the issuance of the contract.

(b) Any contractor contracting with an Institution for the construction, renovation, demolition or repair of a building shall be required to furnish a payment and performance bond, with good and sufficient securities, to the Institution before beginning work on the project. The bonding requirements shall be in accordance with Chapter 255, F.S.

(c) A contractor shall promptly make payments to all contractors or subcontractors supplying labor, materials and supplies used in the performance of the contract, in accordance with Chapter 255, F.S.

(d) When a payment and performance bond is not required for construction, renovation, demolition or repair projects under \$200,000, up to ten percent of the contract or invoice amount(s) may be retained until the project has been properly inspected and certified as complete.

(e) The bond or security must be in an amount equal to 100% of the response submitted to the competitive solicitation.

(3) Solicitation Protest Bond. Any contractor that files an action pursuant to s. 120.57(3)(b), F.S., protesting a decision or intended decision pertaining to a solicitation, shall at the time of filing of the formal protest, post with the Institution, a bond payable to the Institution in an amount equal to: 10% of the estimated value of the protestor's bid or proposal; 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 Institution may 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.

Specific Authority 240.209(1), (3)(r) FS. Law Implemented 120.57(3)(b), 240.205(6), 240.227(12), 255 FS. History—New 1-13-99.

6C-18.060 Contracts.

(1) Contracts for commodities or contractual services shall consist of a purchase order or bilateral agreement signed by the chief administrative officer of the Institution or designee prior to goods or services being rendered by the contractor.

(2) 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 performance and obligation to pay under this contract is contingent upon an annual appropriation by the Legislature."

(3) Extension of a contract shall be for a period not to exceed 12 months, shall be in writing, shall be signed by both parties, and shall be subject to the same terms and conditions set forth in the initial contract. There shall be only one extension of a contract.

(4) A contract may be renewed on a yearly basis for a period of up to 2 years after the initial contract term or for a period of no longer than the term of the original contract, whichever period is longer. 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 competitive solicitation. All contract renewals are subject to sufficient annual appropriations.

(5) When any commodity contract requires deferred payments and the payment of interest, such contract may be submitted to the State of Florida Comptroller for the purpose of preaudit review and approval prior to acceptance by the Institution. The Chancellor and each university president shall have the authority to enter into deferred payment agreements utilizing the State of Florida Comptroller's Consolidated Equipment Financing Program. No agreement shall establish a debt of the state or shall be a pledge of the faith and credit of the state; nor shall any agreement be a liability or obligation of the state except from appropriated funds.

(6) In order to promote cost-effective procurement of commodities and contractual services, an Institution may enter into contracts that limit the liability of a vendor consistent with Section 672.719, F.S.

Specific Authority 240.209(1), (3)(r) FS. Law Implemented 240.205(6), 240.227(12), 672.719 FS. History—New 1-13-99.

6C-18.065 Standard of Conduct.

It shall be a breach of ethical standards for any employee of an Institution 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 an Institution a gratuity of any kind, form or type to influence the development of a contract or potential contract for commodities or services.

Specific Authority 240.209(1), (3)(r) FS. Law Implemented 240.205(6), 240.227(12) FS. History—New 1-13-99.

6C-18.070 Purchase of Motor Vehicles.

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

(2) Each Institution shall have the authority to:

(a) Establish standard classes of motor vehicles to be leased, purchased or used by Institutional personnel;

(b) Obtain the most effective and efficient use of motor vehicles for state purposes;

(c) Establish and operate facilities for the acquisition, disposal, operation, maintenance, repair, storage, control and regulation of Institution-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 Institutional personnel and adequately meet the requirements of the Institution.

(d) Contract for specialized maintenance services.

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

Specific Authority 240.209(1), (3)(r) FS. Law Implemented 240.205(6), 240.227(12) FS. History—New 1-13-99.