

**FLORIDA BOARD OF GOVERNORS
NOTICE OF PROPOSED NEW REGULATION**

DATE: June 23, 2023

REGULATION NUMBER AND TITLE: 14.006, Educational Facilities Contracting and Construction Techniques

SUMMARY:

Senate Bill 7026 was signed into law in May 2023. The bill requires the Board of Governors to develop regulations relating to procedures for contracting for professional services and fixed capital outlay projects no later than October 1, 2023. The new Regulation 14.006 is proposed for adoption pursuant to this provision in SB 7026.

The draft language for Regulation 14.006 borrows from Section 1013.45, Florida Statutes, but omits the references therein to sections 287.055 and 255.103, Florida Statutes. The proposed regulation reiterates university boards of trustees' responsibility for prescribing the procurement process, as cited in current statute, while enhancing university control and latitude in negotiating and contracting for professional services and fixed capital outlay projects.

FULL TEXT OF THE REGULATION IS INCLUDED WITH THIS NOTICE.

AUTHORITY TO PROPOSE REGULATION(S): Section 7(d), Art. IX, Fla. Const.; BOG Regulation Development Procedure dated March 23, 2006.

THE BOARD OF GOVERNORS' OFFICIAL INITIATING THE PROPOSED REGULATION: Kevin Pichard, Director, Finance and Facilities

COMMENTS REGARDING THE PROPOSED REGULATION SHOULD BE SUBMITTED WITHIN 14 DAYS OF THE DATE OF THIS NOTICE TO THE CONTACT PERSON IDENTIFIED BELOW. The comments must identify the regulation on which you are commenting:

General Counsel, Board of Governors, State University System, 200 W. College Avenue, Suite 216, Tallahassee, Florida 32301, (850) 245-0466 (phone), (850) 245-9685 (fax), or generalcounsel@flbog.edu.

14.006 Educational Facilities Contracting and Construction Techniques

(1) University boards of trustees (board) may employ procedures to contract for professional services and contractors for the planning, design, and construction of new facilities, or for additions, remodeling, renovation, maintenance, or repairs to existing facilities, that include, but are limited to:

(a) Competitive bids.

(b) Design-build.

(c) Selecting a construction management entity, pursuant to a competitive procurement process prescribed by the board, that would be responsible for all scheduling and coordination in both design and construction phases and is generally responsible for the successful, timely, and economical completion of the construction project. The construction management entity must consist of or contract with licensed or registered professionals for the specific fields or areas of construction to be performed. At the option of the board, the construction management entity, after having been selected, may be required to offer a guaranteed maximum price and/or a guaranteed completion date; in which case, the construction management entity must secure an appropriate surety bond pursuant to section 255.05, Florida Statutes, and must hold construction subcontracts. The criteria for selecting a construction management entity shall not unfairly penalize an entity that has relevant experience in the delivery of construction projects of similar size and complexity by methods of delivery other than construction management.

(d) Selecting a program management entity, pursuant to a competitive procurement process prescribed by the board, that would act as the agent of the board and would be responsible for schedule control, cost control, and coordination in providing or procuring planning, design, and construction services. The program management entity must consist of or contract with licensed or registered professionals for the specific areas of design or construction to be performed. The program management entity may retain necessary design professionals selected under the process prescribed by the board. At the option of the board, the program management entity, after having been selected, may be required to offer a guaranteed maximum price and/or a guaranteed completion date, in which case the program management entity must secure an appropriate surety bond pursuant to section 255.05, Florida Statutes, and must hold design and construction subcontracts. The criteria for selecting a program management entity shall not unfairly penalize an entity that has relevant experience in the delivery of construction programs of similar size and complexity by methods of delivery other than program management.

(e) Day-labor contracts not exceeding \$400,000 for construction, renovation, remodeling, maintenance or repairs of existing facilities. Beginning January 2024, this amount will be reviewed every three years using the Consumer Price Index for

All Urban Consumers (CPI-U), to determine if an adjustment should be recommended regarding the amount.

(2) For the purposes of this section, “day-labor contract” means a project constructed using persons employed directly by a board or by contracted labor.

(3) Contractors, design-build firms, contract management entities, program management entities, or any other person under contract to construct facilities or major additions to facilities may use any construction techniques allowed by contract and not prohibited by law, including, but not limited to, those techniques known as fast-track construction scheduling, use of components, and systems building process.

(4) Except as otherwise provided in Board regulation and section 481.229, Florida Statutes, the services of a registered architect must be used for the development of plans for the erection, enlargement, or alteration of any educational facility. The services of a registered architect are not required for a minor renovation project for which the construction cost is less than \$150,000 or for the placement or hookup of relocatable educational facilities that conform with standards adopted under section 1013.37, Florida Statutes. However, university boards must provide compliance with building code requirements and ensure that these structures are adequately anchored for wind resistance as required by law.

(5) This regulation is effective October 1, 2023.

Authority: Section 7(d), Art. IX, Fla. Const., History – Adopted xx-xx-23.