

FLORIDA BOARD OF GOVERNORS
NOTICE OF PROPOSED REGULATION AMENDMENT

DATE: September 17, 2013

REGULATION NUMBER AND TITLE: 14.023, Notice and Protest Procedures

SUMMARY: The proposed revision removes previous notification and protest language and identifies Board of Governors Regulation 18.002 Notice and Protest Procedure, as the governing regulation for all competitive solicitations relating to the procurement of goods and services for the construction of university capital improvement projects. The proposed language was developed by Board staff and later recommended by university attorneys and finance and facilities personnel. No adverse impact has been identified by adoption of these regulations.

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:

Chris Kinsley, 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, 325 W. Gaines Street, Suite 1614, Tallahassee, Florida 32399, (850) 245-0466 (phone), (850) 245-9685 (fax), or generalcounsel@flbog.edu.

14.023 Notice and Protest Procedures

The notice and protest procedures set forth in Board of Governors Regulation 18.002 shall be applicable to all competitive solicitations relating to the procurement of goods and services for the construction of university capital improvement projects.

~~(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 either electronic posting or 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 with the president. 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 Regulation 14.023(2)(a), 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 a quasi-judicial hearing. The president may designate an administrative law judge to conduct a hearing in accordance with university procedures. At the conclusion of the hearing, an administrative law judge 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 of 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. Appellate review of the final order shall be in accordance with the requirements of Rule 9.190 (b) (3), Florida Rules of Appellate Procedure.~~

Authority: Section 7(d), Art. IX, Fla. Const., History – Formerly 6C-14.023, 5-25-81, Amended 8-11-85, 6-5-96, 1-13-99, Amended and Renumbered as 14.023, 3-27-08.