

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

DATE: August 10, 2009

REGULATION NUMBER AND TITLE: 14.0055, Certification and Competitive Selection for Construction Management Services

SUMMARY: The 2009 legislative session yielded Senate Bill 2666, which made changes to various components of the construction program language. The bill increased the threshold for individual projects under a construction contract, from \$1 million to \$2 million.

The proposed regulation amendment makes the necessary changes to reflect the aforementioned change and provides enhanced clarity to the existing language.

The proposed language was developed in conjunction with university staff. No adverse impact has been identified by adoption of these regulations.

FULL TEXT OF THE REGULATION IS INCLUDED WITH THIS NOTICE.

AUTHORITY TO AMEND 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 AMENDMENT TO THE REGULATION: Chris Kinsley, Director, Finance & Facilities

COMMENTS REGARDING THE PROPOSED AMENDMENT 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:

Finance & Facilities, Board of Governors, State University System, 325 W. Gaines Street, Suite 1652, Tallahassee, Florida 32399, (850) 245-9607 (phone), (850) 245-9611 (fax), or Chris.Kinsley@flbog.edu.

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

(1) In connection with a construction project with a cost estimated to exceed \$2,000,000, the ~~The~~ president may waive the requirements of Regulation 14.021, and permit negotiation of a contract for construction management services, or the president may waive the requirements of Regulation 14.005 and 14.021, and permit negotiation of a contract for design-build services in accordance with Regulation 14.007 in cases determined to be in the best interest of the State. The requirements of Regulation 14.021 do not apply to continuing contracts for construction management services.

(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, two of which must have demonstrable experience in the selection of professional architectural or engineering services or education in construction, engineering, architecture or other related discipline and shall be comprised of the following:~~

For any services required which have been publicly announced as provided in BOG Regulation 14.004, including construction management services or design-build the president shall appoint a Selection Committee to make recommendations. Those appointed by the president shall serve throughout the selection process. The Committee shall consist of at least three members, two of which must have demonstrable experience in the selection of construction management and/or professional architectural or engineering services or education in construction, engineering, architecture or other related discipline and shall be comprised of the following:

- (a) At least one facilities professional from the University Facilities Office or Physical Plant office;
- (b) One facilities professional who is not required to be a current University Facilities or Physical Plant employee
- (c) One or more additional members, based on the special needs of the project, if required. The university may add one student as a non-voting member of the selection committee.

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

(7) For construction management projects, the Committee shall conduct discussions with, and may require public presentation by, no fewer than three firms applicants regarding their qualifications, approach to the project, and ability to furnish the required services. For a project having fewer than three applicant firms, the Committee shall conduct discussions with each firm applicant. The Committee shall rate each firm applicant on the basis of the point scale identified, and where possible, shall recommend to the president for approval no less than three firms 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 Regulation 14.005, for selection of architects/engineers, and in Regulation 14.0055, for selection of construction managers, and shall follow the selection process described for construction managers.

(b) For proposal-based selections, the Committee shall review all design-build proposals. The Committee shall rate each firm applicant on the basis of the point scale identified. The Committee shall request formal design-build proposals and shall conduct interviews with no fewer than three and no more than six firms applicants. For a project having fewer than three firms applicants, the Committee shall request formal design-build proposals from each firm applicant. Firms 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.

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

(9) For construction management projects, the president shall notify each firm applicant interviewed according to subsection Regulation 14.0055(7), of the president's action. For design-build projects, the president shall notify each interviewed firm applicant of the president's action. Any protest shall be filed in accordance with Regulation 14.023.

(10) After approval by the president, the president shall negotiate a contract in accordance with Regulation 14.007.

Authority: Section 7(d), Art. IX, Fla. Const., History-Formerly 6C-14.0055, 10-17-89, Amended 9-15-91, 6-5-96, 1-13-99, 11-20-08.