

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

DATE: July 1, 2024

REGULATION NUMBER AND TITLE: 14.001, Construction Program Definitions

SUMMARY: House Bill 149, signed by the Governor on May 28, 2024, amends sections 255.103 and 287.055, Florida Statutes, increasing the maximum dollar amount for continuing contracts for construction projects and professional services from \$4 million to \$7.5 million. It further stipulated that the new \$7.5 million 'maximum' will be adjusted annually by the Department of Management Services beginning July 1, 2025 based on the consumer price index. Board Regulation 14.001 is proposed to be amended to reflect the changes in Statute pursuant to HB 149.

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, Assistant Vice Chancellor, 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, Tallahassee, Florida 32399, (850) 245-0466 (phone), (850) 245-9685 (fax), or generalcounsel@flbog.edu.

14.001 Construction Program Definitions

- (1) Board of Trustees - the university board of trustees, or designee.
- (2) Chancellor - the Chancellor of the State University System, or designee.
- (3) Construction budget - the amount which is announced after the deadline for the receipt of bids, but prior to the opening of bids.
- (4) Construction Management Services - those services whereby the construction manager is selected pursuant to Regulation 14.006, 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.
- (5) Continuing Contract for Construction Management Services - a contract with a construction manager for work during a defined time period on construction projects described by type, which may or may not be identified at the time of entering into the contract. There is no limit on the total value of the continuing contract, but ~~no single~~each individual project under the contract may ~~not~~ exceed ~~\$4 million~~\$7.5 million; said amount allowed for each individual project to be adjusted annually by the Department of Management Service beginning July 1, 2025 and published on its website.
- (6) Continuing Contract for Professional Services - also referred to as 'Campus Service Agreements', means a contract between a university and a firm whereby the firm provides Professional Services to the university for projects in which the estimated construction cost of each individual project under the contract does not exceed ~~\$4 million~~\$7.5 million; said amount allowed for each individual project to be adjusted annually by the Department of Management Services beginning July 1, 2025 and published on its website, for study activity if the fee for professional services for each individual study under the contract does not exceed \$500,000, or for work of a specified nature as outlined in the contract required by the university, with the contract being for a fixed term or with no time limitation except that the contract must provide a termination clause.
- (7) Critical Need – capital needs that require immediate action to restore a facility to normal operation, stop accelerated deterioration, or correct a cited safety hazard, especially those conditions that potentially impact an entire campus or pose a risk to health and safety.
- (8) Deferred Maintenance and Repairs – Maintenance and Repair activities not performed when they should have been or scheduled to be due to a lack of resources (e.g., funding, labor, time) or other management action. As such, the needed repairs/maintenance are not performed and deferred to a later date. This

includes preventive maintenance and/or repairs needed to preserve or maintain the asset, and failure to perform it leads to asset deterioration and, ultimately, asset impairment.

(9) Deferred Capital Replacement and Renewal – postponing the replacement of infrastructure and/or building systems (e.g. roofing systems, HVAC, boilers, chillers, sprinkler systems, etc.) after they have reached their mechanical life expectancy based on the manufacturer’s stated timeline or that of industry standard, whichever is longer.

(10) Design-Build Services - those services whereby one single legal entity selected, pursuant to Regulation 14.006, 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 law, 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 law for construction, they are to be performed by a certified or registered contractor as applicable according to Florida Statute.

(11) Education & General Facility – also referred to as “E&G Facility”, means a facility that is constructed or acquired primarily for the educational instructional program of the university in accordance with sections 1013.01 and 1013.31, Florida Statutes, and includes Ancillary Plant as statutorily defined.

(12) Fixed Capital Outlay Projects – also referred to as ‘FCO Projects’, means the construction, acquisition, remodeling, renovation, or demolition of fixed assets or real property (land, land improvements, buildings including appurtenances, fixtures and equipment) with an expected useful life of 20 years or more, and in excess of \$100,000 or the university’s dollar value capitalization threshold for the subject asset classes.

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

(14) Maintenance and Repair - the upkeep of university facilities, site and site improvements; including but not limited to, roof or roofing replacement short of complete replacement of membrane or structure; repainting of interior or exterior surfaces; resurfacing of floors; repair or replacement of glass; repair of hardware, furniture, equipment, electrical fixtures, and plumbing fixtures; and repair or resurfacing of parking lots, roads, and walkways are all examples of the types of expenses that could be charged to either.

(15) Minor Facility – an Educational & General (E&G) Facility that does not exceed \$2,000,000 in total project cost and 10,000 gross square feet in size.

(16) President - the university president, or designee.

(17) Professional Services - those services within the scope of the practice of architecture, professional engineering, or registered land surveying, as defined by

law, or those performed by any architect, professional engineer, landscape architect, or registered land surveyor in connection with professional employment or practice or other professional services that may be required.

(18) Project - that Fixed Capital Outlay construction project, study, or planning activity described in the public notice in accordance with regulation 14.007, 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.

(19) Projected Maintenance and Repairs – a current and long term forecast of routine maintenance and repairs, both scheduled and unscheduled, necessary to maintain a building/facility's functionality and aesthetics as well as help sustain its value and useful life. This includes, by reference, items in s. 1013.01, F.S. for "Maintenance and repair".

(20) Projected Capital Replacement and Renewal – a current and long term forecast of capital needs over a predetermined period, representing the addition of a permanent, durable change or the restoration of an aspect of an asset/facility that will enhance the overall value, increase its useful life and/or adapt it to a new use. Generally, this would include activities described in "Remodeling" and "Renovation", as defined.

(21) Public Education Capital Outlay Project – a Fixed Capital Outlay Project that has received legislative appropriation and is built, installed, or established to serve primarily the educational instructional program of the universities.

(22) Remodeling - the changing of existing facilities by rearrangement of spaces and their use and includes, but is not limited to, the conversion of two classrooms to a science laboratory or the conversion of a closed plan arrangement to an open plan configuration.

(23) Renovation - the rejuvenating or upgrading of existing facilities by installation or replacement of materials and equipment and includes, but is not limited to, interior or exterior reconditioning of facilities and spaces; air-conditioning, heating, or ventilating equipment; fire alarm systems; emergency lighting; electrical systems; and complete roofing or roof replacement, including replacement of membrane or structure; and upgrades and replacement of campus infrastructure, including, but not limited to roads, water, sewer, gas, steam, chilled water loops, and electrical systems.

(24) University Facilities Office - any office at a university with authority for design and construction administration.

Authority: Section 7(d), Art. IX, Fla. Const., History—Replaces Formerly 6C-14.002, Amended 1-13-99, Amended and Renumbered as 14.002, 3-27-08, Amended 9-24-09, Amended and Renumbered as 14.001 5-5-20, Amended 3-30-22, 09-08-23.

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