

NOTICE OF PROPOSED REGULATION AMENDMENT

Date: May 13, 2024

REGULATION TITLE:

REGULATION NO.:

Construction; Evaluations of Professional Services Providers,
Design-Builders, Construction Managers and Contractors;
Disqualification Procedure 3.074

SUMMARY: The Florida Legislature directed the BOG to adopt regulations to govern construction activities and related contracting procedures. To comply with those new BOG regulations, the University proposes to amend Regulation 3.074 and repeal Regulations 3.070, 3.071, 3.072, 3.073, 3.075 and 3.076. The relevant content of the repealed regulations will be incorporated into Regulation 3.074 and related policies that can be found at <https://policy.ufl.edu/>.

AUTHORITY: BOG Regulation 1.001, 14.008 and 18.001

COMMENTS CONCERNING THE PROPOSED REGULATION 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.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED REGULATION AMENDMENT IS: Stephanie Fisher, Executive Assistant II, 123 Tigert Hall, Post Office Box 113125, University of Florida, Gainesville, Florida 32611, 352-392-1358 office, 352-392-4387 facsimile, regulations@ufl.edu.

NAME OF PERSON WHO APPROVED THE PROPOSED REGULATION AMENDMENT: David Kratzer, Senior Vice President – Construction, Facilities and Auxiliary

THE FULL TEXT OF THE PROPOSED REGULATION AMENDMENT IS ATTACHED TO THIS NOTICE.

REGULATIONS OF THE
UNIVERSITY OF FLORIDA

3.074 Construction; Evaluations of Professional Services Providers ~~(including Architects and Engineers)~~, Design ~~/~~ Builders, Construction Managers and Contractors; Disqualification Procedure.

~~(1) — For purposes of this regulation, major project means a project the construction cost of which is in excess of Two Million and No/100 Dollars \$2,000,000.00, and minor project means a project the construction cost of which is Two Million and No/100 \$2,000,000.00 or less.~~

(1) Definitions.

(a) Construction Services – Contractual services provided in connection with a pre-construction, maintenance, repair, alteration, remodeling, renovation, construction, or demolition project.

(b) Contract – A Project Contract or a Continuing Contract.

(c) Continuing Contract – A contract with a Vendor to provide Professional Services or Construction Services as and when requested by the University for one or more projects that may arise during the term of the contract.

(d) Evaluator – The President or President’s designee conducting an evaluation under this Regulation.

(e) Professional Services – Architectural, engineering, surveying, commissioning agent, or other professional services provided in connection with a planning, design, or construction project.

(f) Project Contract – A contract with a Vendor to provide Professional Services or

Construction Services for the project(s) described therein.

(g) Vendor – A contractor, an engineer, architect, surveyor, or other professional services provider, a design-builder, or a construction manager who provides, as applicable, Professional Services or Construction Services to the University.

~~(2) Professional service providers under contract for a major project or a minor project which is not under a continuing contract~~Commencing two (2) months after the effective date of a Project Contract, the Vendor will be evaluated by the University Evaluator on a project-by-project basis as follows:

(a) once per calendar year, ~~in September~~on a staggered schedule established by the Evaluator, during the Project Contract term;

(b) upon completion of a project; and

(c) at any time, the University determines there has been a material change in the quality of the ~~firm's~~Vendor's performance occurring during the Project Contract term.

~~(3) Professional service providers under continuing contracts with the University~~Commencing two (2) months after the effective date of a Continuing Contract, the Vendor will be evaluated by the University Evaluator on all projects performed during the Continuing Contract term ~~as follows:– These evaluations will occur:~~

(a) once per calendar year, ~~in September~~on a staggered schedule established by the Evaluator, during the Continuing Contract term;~~–and~~

(b) upon completion of a project valued at more than Two Million and 00/100 Dollars (\$2,000,000); and

(c) at any time; the University determines there has been a material change in the quality of the Vendor's performance during the Continuing Contract term.

~~(4) — In conducting evaluations under subsection (2) and (3) of this Regulation, the University Evaluator will utilize the online Architect/Engineer Evaluation Form which can be obtained from the Facilities Planning and Construction website at www.facilities.ufl.edu. If, when procuring professional services, the University, in accordance with University of Florida Regulation 3.070, considered any additional criteria not set forth in the University's standard form professional qualifications statement, the University shall also evaluate the professional service provider's performance in those areas. evaluation system maintained by the University, as modified from time to time, and will consider any additional performance criteria that the Evaluator deems applicable to type of Vendor or project. In evaluating a Vendor, the Evaluator will consider such factors as present and historical quality of performance, adherence to project timeline and budget, and relationships with consultants, laborers, subcontractors, and suppliers (if any). Where appropriate, the Evaluator will permit a Vendor who is being evaluated to submit written documentation directly related to the Vendor's performance of the applicable Professional Services or Construction Services. The University may, but need not, convene a disqualification committee to evaluate Vendor performance.~~

~~(4) — Construction managers under contract for a major project or a minor project which is not a continuing contract will be evaluated by the University on the schedule set forth in subsection (2) above for evaluating firms and individuals providing professional services on major projects and minor projects which are not continuing contracts. Construction managers under continuing contracts will be evaluated by the University on the schedule set forth in subsection (2) above for evaluating firms and individuals providing professional services under continuing contracts. In conducting evaluations of construction managers, the University will utilize the online Construction Manager Evaluation Form which can be obtained from the~~

Facilities Planning and Construction website at www.facilities.ufl.edu.

~~————(5)—— Design/Builders under contract for a major project or a minor project which is not a continuing contract will be evaluated by the University on the schedule set forth in subsection (2) above for evaluating firms and individuals providing professional services on major projects and minor projects which are not continuing contracts. Design/Builders under continuing contracts will be evaluated by the University on the schedule set forth in subsection (3) above for evaluating firms and individuals providing professional services under continuing contracts. In conducting evaluations of design/builders, the University will utilize the applicable portions of the evaluation forms used in evaluating providers of professional services and in evaluating construction managers.~~

~~————(6)—— Contractors under contract with the University to provide either major or minor projects will be evaluated by the University on the schedule set forth in subsection (2) above for evaluating firms and individuals providing professional services under contract for major projects or minor projects which are not under continuing contracts. In conducting evaluations of general contractors, the University will consider all known instances of poor or inadequate performance, deficient management resulting in project delay, poor quality workmanship, and late payments to laborers, subcontractors and suppliers with whom the contractor has a direct contract and where there is no bona fide contract dispute between the contractor and such laborers, subcontractors and suppliers.~~

~~————(7)—— In order to be evaluated, a firm must have been under contract for at least two (2) months at the time of the evaluation.~~

~~(8)(5)~~ Firms Vendors will be provided with a copy of each completed evaluation form and may appeal the evaluation in accordance with Chapter 120, Fla. Stat Florida Statutes. If a

Vendor does not timely appeal an evaluation, the evaluation will be final.

(9)(6) The University may utilize the information gathered in its evaluation(s) to evaluate a ~~firm's~~ Vendor's qualifications to provide Professional Services or Construction Sservices on future University ~~construction~~ projects and to decide whether a ~~firm~~ Vendor should be disqualified from providing Professional Services or Construction Sservices at the University in the future.

(10)(7) If the University determines, whether through the evaluation process or otherwise, that any ~~of the firms or individuals providing professional services, construction managers or contractors that it has engaged to perform professional or construction services are~~ Vendor is not providing satisfactory Professional Services or Construction Servicesservice to the University, the ~~President or President's designee~~ Evaluator will carefully review all facts and circumstances surrounding ~~such the~~ unsatisfactory Professional Services or Construction Servicesservice and determine whether there is sufficient cause to warrant disqualification from participation on future University projects. Without limitation of the foregoing, legal action between the University and the ~~firm or individual providing professional services, the construction manager or the contractor relating to services or work performed by the firm or individual providing professional services, construction manager or the contractor which~~ Vendor that has commenced or is imminent shall constitute automatic grounds to entitle the ~~Evaluator~~ President to disqualify the ~~Vendor~~ firm from ~~performing providing~~ future Professional Services or Construction Sservices ~~at to~~ the University or to temporarily suspend the ~~Vendor's~~ firm or individual's right to ~~perform provide~~ future Professional Services or Construction Sservices ~~to at~~ the University. The disqualification shall continue until the University is satisfied that the Professional Services or Construction Sservices of such ~~firm or individual providing professional services, the~~

~~construction manager or the contractor~~Vendor will be, at least, satisfactory to the University. The ~~President or designee~~Evaluator shall so notify the ~~firm or individual providing professional services, the construction manager or the contractor~~Vendor of the disqualification. The notice shall set forth specifically the grounds for disqualification and the right of the disqualified ~~firm or individual providing professional services, construction manager or contractor~~Vendor to request a hearing in accordance with Chapter 120, ~~Fla. Stats.,~~ Florida Statutes. If a Vendor does not timely request a hearing, the disqualification will be final.

Authority: BOG Regulation 1.001, 14.008 and 18.001.

History: New 6-3-03, Formerly 6C1-3.074, Amended 6-8-12, .

NOTICE OF PROPOSED REPEAL OF REGULATIONS

Date: May 13, 2024

REGULATION TITLE:	REGULATION NO.:
Construction; Acquisition of Professional and Design/Build Services	3.070
Construction; Acquisition of Construction Management Services	3.071
Construction; Construction Contract Bidding and Award (Contractor)	3.072
Construction; Bid Protests (Contractor Only)	3.073
Construction; Procedures for Payment under Unbonded Construction Projects	3.075
Construction; Procedures to Contract for Construction Service	3.076

SUMMARY: The Florida Legislature directed the BOG to adopt regulations to govern construction activities and related contracting procedures. To comply with those new BOG regulations, the University proposes to amend Regulation 3.074 and repeal Regulations 3.070, 3.071, 3.072, 3.073, 3.075 and 3.076. The relevant content of the repealed regulations will be incorporated into Regulation 3.074 and related policies that can be found at <https://policy.ufl.edu/>.

AUTHORITY: BOG Regulation 1.001

COMMENTS CONCERNING THE PROPOSED REPEAL OF THESE REGULATIONS 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.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED REPEAL OF THESE REGULATIONS IS: Stephanie Fisher, Executive Assistant II, 123 Tigert Hall, Post Office Box 113125, University of Florida, Gainesville, Florida 32611, 352-392-1358 office, 352-392-4387 facsimile, regulations@ufl.edu.

NAME OF PERSON WHO APPROVED THE PROPOSED REPEAL OF THESE REGULATIONS: David Kratzer, Senior Vice President – Construction, Facilities and Auxiliary

THE FULL TEXT OF THE REGULATIONS TO BE REPEALED ARE ATTACHED TO THIS NOTICE.

~~REGULATIONS OF THE
UNIVERSITY OF FLORIDA~~

~~3.070 Construction; Acquisition of Professional and Design/Build Services.~~

~~(1) Professional Services.~~

~~(a) Professional Qualifications Statement. The University uses a standard professional qualifications statement, Professional Qualifications Supplement Form PQS-AE-001, Revised June 26, 2002, incorporated herein by reference, when acquiring professional services, including professional services procured under continuing contracts, which must be competitively procured in accordance with Section 287.055, Florida Statutes. The Professional Qualifications Supplement Form can be obtained from the Office of Facilities Planning and Construction, 232 Stadium, University of Florida. If there are special requirements for a project, the University will evaluate additional criteria to determine whether the applicants possess the expertise and experience necessary to perform the services being procured.~~

~~(b) Compensation. The compensation paid for professional services shall be fair, competitive and reasonable. To determine a fair, competitive and reasonable compensation, compensation shall be negotiated based on the University's approved fee schedule, if appropriate for the type of professional services being procured, the level of complexity and the scope of the services required, and the type of the project.~~

~~(c) For purposes of this rule and all other University construction rules, professional services and continuing contracts shall have the meanings set forth in Section 287.055(2), Florida Statutes.~~

~~(2) Design/Build Services.~~

~~———— (a) ——— Selection Process. Design-build services which must be competitively procured in accordance with Section 287.055, Florida Statutes, shall be acquired through a competitive proposal selection process or through a qualifications-based selection process.~~

~~———— 1. ——— When using a qualifications-based selection process, the University shall use a standard professional qualifications statement, Professional Qualification Supplement Form PQS-AE-001, Revised June 26, 2002, incorporated herein by reference. The standard professional qualifications statement can be obtained from the Office of Facilities Planning and Construction, 232 Stadium, University of Florida.~~

~~———— 2. ——— When using a proposal-based selection process, the University shall request formal design-build proposals and conduct interviews with no fewer than three (3) and no more than six (6) applicants. Applicants may submit their design-build proposals in such a way as to maintain their anonymity.~~

~~———— Specific Authority: 1001.74(4) FS.~~

~~———— Law Implemented: 287.055, 1001.74(28), 1001.75(5), 1013.45 FS.~~

~~———— History: New 6-3-03, Formerly 6C1-3.070, Amended 7-10-23 (technical changes only).~~

~~REGULATIONS OF THE
UNIVERSITY OF FLORIDA~~

~~3.071 Construction; Acquisition of Construction Management Services~~

~~(1) — Professional Qualifications Statement. The University uses a standard-qualifications statement, Construction Manager Qualifications Supplement Form QS-CM-001, Revised June 26, 2002, incorporated herein by reference, when acquiring construction management services, including construction management services procured under continuing contracts, which must be competitively procured in accordance with Section 287.055, Florida Statutes. The Construction Manager Qualifications Supplement form can be obtained from the Office of Facilities Planning and Construction, 232 Stadium, University of Florida. If there are special requirements for a project, the University will evaluate additional criteria to determine whether the applicants possess the expertise and experience necessary to perform the services being procured.~~

~~(2) — Compensation. The compensation paid shall be fair, competitive and reasonable, to provide for profit, overhead, and direct management costs plus actual costs, not to exceed a guaranteed maximum price, as applicable, depending on the nature and extent of the construction management services being provided.~~

~~Specific Authority 1001.74(4) FS.~~

~~Law Implemented 287.055, 1001.74(28), 1001.75(5), 1013.45 FS.~~

~~History: New 6-3-03. Formerly 6C1-3.071, Amended 7-10-23 (technical changes only)~~

~~REGULATIONS OF THE
UNIVERSITY OF FLORIDA~~

~~3.072 Construction; Construction Contract Bidding and Award (Contractor)~~

~~(1) — In order to be eligible to submit a bid proposal, a firm must, at the time of the University's receipt of bids:~~

~~(a) — Hold the required applicable state contractor license in good standing when the project falls within the provisions of Chapter 489, Fla. Stat.;~~

~~(b) — If a corporation, limited liability company, partnership or other legal entity, be legally constituted and in good standing in the State of Florida or, if not domiciled in Florida, hold a current and active foreign qualification authorization to do business in the State of Florida;~~

~~(c) — Not be disqualified at the time of bid submittal through the disqualification procedures described in Regulation 3.074;~~

~~(d) — Meet any special prequalification requirements set forth in the bid documents;~~

~~(e) — Not have been convicted of a public entity crime within thirty six (36) months prior to the date for receipt of bids; and~~

~~(2) — Prequalification.~~

~~(a) — On construction projects with special requirements, the University will require that a firm meet special prequalification requirements or conditions in the bid documents.~~

~~(b) — On construction projects that require a contractor with specific expertise and experience, a firm must also meet any additional prequalification criteria required by the University relating to such matters as demonstrated performance of similar work of similar~~

~~size and complexity, experience and qualifications of proposed staff and the possession or availability of facilities or equipment needed in the performance of the work.~~

~~(c) — The deadline for the submittal of prequalification data shall be the same as the deadline for the submission of bids, unless the University determines it is necessary for such prequalification data to be submitted on a date earlier than the deadline for submission of bids. In those instances, bids will only be accepted from those potential bidders who have prequalified in accordance with this section and the terms of the bidding documents.~~

~~(3) — Within seven (7) calendar days following the bid opening date, the lowest responsible and responsive bidder, as determined by the University, must also provide:~~

~~(a) — proof of satisfaction with the foregoing requirements;~~

~~(b) — a letter of intent from a surety company that meets the standards set forth in the project specifications; and~~

~~(c) — proof of insurance which equals or exceeds the insurance required for the project. In the event the lowest responsible and responsive bidder is unable to provide any of the above documentation, such bidder shall be declared unqualified and the bid shall be awarded to the next lowest responsible and responsive bidder.~~

~~(4) — Except for informalities which under the law the President of the University is allowed to waive, a bid that is incomplete or not in conformance with the requirements of the bid documents shall be determined to be non-responsive and shall be rejected. The bid shall be awarded to the firm determined to be responsible and qualified in accordance with the bid documents and which submits the lowest priced proposal for the work.~~

~~(5) — If it is in the best interest of the University, all bids may be rejected and the~~

~~project may be bid again.~~

~~(6) In documented cases of emergency, the requirements of this regulation can be waived and the President or President's designee can permit negotiation with a qualified firm.~~

~~(7) When it is determined to be in the best interest of the University to reduce the price of the lowest responsible and responsive bidder to provide for an award within or closer to the construction budget, the President or designee shall negotiate the construction contract, including the specifications, with that bidder. Negotiations may be terminated and all bids may be rejected at any point in the negotiation process. The award of a negotiated contract will be made by the President.~~

~~(8) During the procurement process, the University shall also follow, when applicable, the provisions contained in Regulation 3.020.~~

~~Authority: BOG Regulations 1.001.~~

~~History: New 6-3-03, Amended 7-19-05, 3-23-18 (technical changes only).~~

~~REGULATIONS OF THE
UNIVERSITY OF FLORIDA~~

~~3.073 Construction; Bid Protests (Contractor Only)~~

~~(1) — A contractor filing a protest pursuant to Section 120.57(3)(b), Florida Statutes, shall post a bond in an amount equal to:~~

~~(a) — Twenty five thousand dollars (\$25,000.00) or two percent (2%) of the lowest accepted bid, whichever is greater, for projects valued over \$500,000.00.~~

~~(b) — Five percent (5%) of the lowest accepted bid for all other projects.~~

~~(2) — The bond shall be conditioned upon payment of all costs and fees that may be adjudged against the protestor in the administrative hearing. The bond must be filed no later than the time of filing of the formal protest. Failure of the protesting contractor to file the required bond within the time set forth herein shall result in an automatic dismissal of the protest.~~

~~Authority: BOG Regulation 1.001.~~

~~History: New 6-3-03. Formerly 6C1-3.073; Amended 3-23-18 (technical changes only).~~

~~REGULATIONS OF THE
UNIVERSITY OF FLORIDA~~

~~3.075 Construction; Procedures for Payment under Unbonded Construction Projects.~~

~~(1) — On all construction projects where a performance and payment bond is not required to be provided, the following procedures shall be followed to ensure that laborers, materialmen and subcontractors performing work on University projects receive the payments due to them from the contractor:~~

~~(a) — The contractor, before beginning work or within two workdays thereafter, shall post in a conspicuous place on the project site the following notice:~~

~~“Notice is hereby made to all those concerned and affected that
_____(Contractor’s Name) is performing
_____(Project Name), _____(Project
Number) at _____(Location). All parties
furnishing labor and/or materials to said project are to provide such
writing by certified mail to the University within twenty days of
first providing such labor and/or materials. Send notices to
_____(Address of Facilities
Office).”~~

~~(b) — Parties furnishing labor and/or materials on University projects should provide written notice of the same to the University by certified mail within twenty (20) days of first providing such labor and/or materials. Notice should be sent to the facilities office whose address is provided in the project site notice.~~

~~(c) — In each pay request submitted by the contractor to the University, the contractor shall certify that all items and amounts shown on the face of the pay request are correct and that all just and lawful bills against contractor and his subcontractors for labor, materials, and equipment employed in the performance of the work have been paid in full in accordance with their terms and conditions.~~

~~(d) — Throughout the project, the University will retain an amount equal to ten percent (10%) of the amount of each pay request submitted by the contractor and approved by the University. In the event of payment default by the contractor, such retainage shall be utilized to pay claims as described in subsection (2) hereof.~~

~~(e) — The University will not pay the retainage to the contractor until all of the following, in addition to any other requirements of the contract, have occurred:~~

~~1. — the project architect/engineer or other person designated by the University for that purpose has issued a written certificate that the project has been constructed in accordance with the approved plans, specifications and approved change orders;~~

~~2. — the University has accepted the project; and~~

~~3. — the contractor has supplied the University with written, signed and sealed statements that identify the project name and number and that state no claims against the contractor (final release of lien) from all laborers, materialmen and subcontractors, as defined in Section 713.01, Fla. Stat., who have provided written notice to the University that they have provided labor or materials on the project or have notified the University of nonpayment by the contractor.~~

~~(2) — In case of default in payment by the contractor, the laborer, materialmen and subcontractors, as defined in Section 713.01, Fla. Stat. making claims for unpaid bills, will be~~

~~paid from the ten percent (10%) retainage on a pro rata basis. To determine a claimant's pro rata share, the sum of all claims made will be divided into each individual claim thereby deriving a percentage value for each claim. Then, the total retainage for the project will be multiplied by the claim's percentage value and the resulting quotient shall be the pro rata share of the retainage to be paid to a claimant, not to exceed the amount of the claim.~~

~~(3) — Failure to file written notice with the University in the manner provided in paragraph (1)(b) or in the event of a payment default by the contractor no later than thirty (30) days after substantial completion of the project shall constitute a waiver of any rights in the ten percent (10%) retainage.~~

~~(4) — The University shall not be liable to any laborer, materialman or subcontractor for any amounts greater than the pro rata share as determined under subsection (2).~~

~~(5) — All contractors shall pay the undisputed amounts owed for labor and/or materials to all laborers, materialmen and subcontractors within the time provided in Section 255.071, Fla. Stat.~~

~~(6) — For purposes of this rule, "contractor" shall have the same meaning as ascribed thereto in Section 713.01, Fla. Stat.~~

~~Authority: BOG Regulation 1.001.~~

~~History: New 12-31-03; Formerly 6C1-3.075; Amended 3-23-18 (technical changes only).~~

~~REGULATIONS OF THE
UNIVERSITY OF FLORIDA~~

~~3.076 Construction; Procedures to Contract for Construction Service.~~

~~(1) The University may employ, without limitation, the following procedures when contracting for construction services:~~

~~(a) Competitive bids;~~

~~(b) Best Value bids;~~

~~(c) Design build;~~

~~(d) Construction management;~~

~~(e) Program management; and~~

~~(f) Day labor contracts not exceeding \$200,000.~~

~~(2) For purposes hereof, "best value" means awarding the bid to the firm determined to possess the best combination of price and qualifications. The quotient obtained by dividing each firm's bid amount by the score it receives from an evaluation committee for its qualifications represents the best combination of price and qualifications, with the project being awarded to the firm with the lowest score.~~

~~Authority: BOG Regulation 1.001.~~

~~History: New 7-19-05, Formerly 6C1-3.076, Amended 03-23-18.~~