

**FLORIDA ATLANTIC UNIVERSITY
NOTICE OF PROPOSED REGULATION AMENDMENT**

Date: June 1, 2015

REGULATION TITLE AND NUMBER: Leasing of Off-Campus Facilities (6.010).

SUMMARY: FAU Regulation 6.010 implements the delegated authority received by the Board of Governors regarding the leasing of off-campus facilities. The proposed amendments update the regulation to reflect current Board of Governors requirements and remove out-of-date references and administrative practices in effect under the Board of Regents. The competitive solicitation requirement for the lease of off-campus space has been updated to 5,000 square feet (formerly 2,000 square feet). Exceptions to the competitive solicitation requirement and the measurement of leased space are governed by Board of Governors Regulation 17.001.

FULL TEXT OF THE REGULATION: The full text of the proposed regulation is attached below to this Notice. The full text of the existing regulation is posted on FAU's website at www.fau.edu/regulations. In addition, the full text of the proposed regulation and current regulation are available upon request to the Office of the General Counsel, which can be contacted at (561) 297-3007 or GeneralCounsel@fau.edu.

AUTHORITY TO AMEND THE REGULATION: Article IX of the Florida Constitution and the Board of Governors Regulation Development Procedure dated July 21, 2005.

UNIVERSITY OFFICIAL INITIATING THE REGULATION AMENDMENT:
David Kian, Vice President & General Counsel

COMMENTS CONCERNING THE PROPOSED REGULATION AMENDMENT SHOULD BE SUBMITTED WITHIN 14 DAYS OF THE DATE OF THIS NOTICE TO THE CONTACT PERSON IDENTIFIED BELOW. In response, the University may solicit additional written comments, schedule a public hearing, withdraw or modify the proposed regulation amendment in whole or in part after notice, or proceed with adopting the regulation amendment. The comments must identify the regulation(s) on which you are commenting:

THE PERSON TO BE CONTACTED REGARDING THE AMENDMENT/REPEAL OF REGULATIONS IS: David L. Kian, General Counsel, Office of the General Counsel, 777 Glades Road, Boca Raton, Florida, 33431, (561) 297-3007 (phone), (561) 297-2787 (fax), GeneralCounsel@fau.edu.

FLORIDA ATLANTIC UNIVERSITY

Regulation -6.010 Leasing of Off-Campus Facilities.

(1) **Purpose.** The purpose of this ~~chapter-regulation~~ is to implement the delegated authority received by the ~~Board of Governors State University System~~ in accordance with Board of Governors Regulation 17.001.

~~Section 1001.75, F.S., with respect to those leasing functions and duties heretofore performed by the Department of General Services in accordance with Sections 255.248, 255.249, and 255.25, F.S.~~

~~(2) Definitions.~~ For the purpose of this chapter, each of these words shall have the following meaning:

~~(a) Lease—The contract instrument or agreement required to lease a building or any part thereof.~~

~~(b) Privately Owned—Any building not owned by a governmental agency.~~

~~(c) Nominal Consideration—Consideration of \$10.00 or less for the term of the lease.~~

~~(d) State Owned Building—Any facility owned by the state regardless of use or control.~~

~~(e) State University System Standard Method of Space Measurement—As specified in the HEGIS Facilities Inventory and Classifications Manual. (Refer to BOR Rule 6C-17.012, F.A.C.)~~

(23) Lease Certifications, Approvals, and Execution.

~~(a) Before leasing a building or any part thereof, for other than nominal or no consideration, lease terms and conditions shall be reviewed as to form and legality by the University Attorney General Counsel's office and approved by the in accordance with University Regulation 6.002 President. The University President shall execute all leases. Prior approval is not required for leases of less than 21 days or for nominal consideration or no consideration.~~

~~(b) Nothing in this chapter shall be interpreted as circumventing the provisions of Section 255.21, F.S., as it relates to facilities for the handicapped.~~

~~(4) Standard Lease Form. The University adopts the Department of General Services Standard Lease Agreement form as its form for purposes of this chapter.~~

(53) Fire Code Compliance in Leased Space.

~~(a) Any privately-owned-seetor building to be leased by the University shall comply with the fire safety standards of the State Building Code.~~

~~(b) Before construction or renovation of any state-leased building is commenced, the University shall ascertain that the proposed construction or renovation plan complies with the fire safety standards of the State Building Code.~~

~~(c) Whenever the University determines that a construction or renovation plan is not in compliance with such fire safety standards, the University may issue an order to cease all construction or renovation activities until compliance is obtained, except those activities required to achieve such compliance.~~

~~(d) The cost of modifications or renovations made for the purpose of bringing lease~~

~~property into compliance with fire safety standards shall normally be borne by the lessor.~~

~~(64) **Leases of 2,000 Square Feet or More** Competitive Solicitation.~~

~~(a) The University shall not enter into a lease for 25,000 square feet or more of space in a privately-owned building except upon advertisement for and receipt of competitive bids or proposals as determined by the University in accordance with BOG Regulation 17.001 and award to the lowest bid meeting the specifications. The University shall not enter into, within any 12-month period, more than one lease for space of a total of 2,000 square feet or more in the same privately owned facility or complex except upon the solicitation of competitive bids.~~

~~(b) Competitive bidding shall not be required for leases of space as set forth in BOG Regulation 17.001. The University President shall have delegated authority to certify in writing if the leasing of an educational facility in an affiliated research and development park is in the best interests of the University and the exemption from competitive bid requirements is not detrimental to the state pursuant to BOG Regulation 17.001(2)(a)5.~~

~~(5) **Space Measurement.** The measurement of leased space shall be based on the method of measurement used by the State University System for gross square feet as described in the current Physical Facilities Space File.~~

~~of 2,000 or more square feet in a privately owned building where such leases:~~

- ~~1. Are renewals of existing leases;~~
- ~~2. Have a term of less than 21 consecutive days;~~
- ~~3. Are for nominal or no consideration;~~
- ~~4. Are for the purpose of providing care and living space for persons; or~~
- ~~5. Are extensions of an existing lease of 2,000 square feet or more, provided that such extensions are in the best interest of the state and are not for a period exceeding 11 months. If at the end of the period granted by the extension(s), the time of such extension(s) equal(s) 11 months, the University shall solicit competitive bids in accordance with this chapter.~~

~~(c) The University shall not enter into a lease for space of 2,000 or more feet in a privately owned building when suitable space is available in a state owned building located in the same geographic region unless it is determined by the University that lease of non-state property is in the best interest of the state.~~

~~(d) The University shall establish a rate it will pay for leased space based on average rental rates in the local area for facilities of use. These rental rate guidelines shall be used in evaluating lease decisions.~~

~~(e) Invitation for Proposals.~~

- ~~1. A public invitation for proposals will be publicized using newspaper advertisements and contact with owners, developers or realtors in the city or area in which space is desired.~~
- ~~2. Invitation shall set forth, but not be limited to the following:~~
 - ~~a. Approximate net square footage required;~~
 - ~~b. General area in which space must be located;~~
 - ~~c. Date space must be available; and~~
 - ~~d. Name and address of person where specifications may be obtained.~~

~~(f) Specifications.~~

- ~~1. Specifications shall be drawn by the University in general terms. They shall afford each prospective lessor, interested in submitting a proposal, knowledge of the University's space requirements. They shall not be structured to favor any specific location or lessor.~~
- ~~2. Specifications provided to prospective lessors should be set forth, but not be limited to, the following:
 - ~~a. Approximate net square footage required, to be measured in compliance with the State University System Standard Method of Space Measurement (refer to BOR Rule 6C-17.012, F.A.C.),~~
 - ~~b. An approximate floor plan of space needed showing partitioning and other physical requirements,~~
 - ~~c. General location of required space,~~
 - ~~d. Date space must be available,~~
 - ~~e. Term of lease with option to renew, if requested,~~
 - ~~f. Services required such as parking, dining and transportation requirements.~~~~
- ~~3. Specifications shall also set forth that the prospective lessor will agree to:
 - ~~a. Enter into a contract on the specified lease agreement form,~~
 - ~~b. Provide a scaled floor plan showing present configurations and measurements that equate to net rentable square footage offered,~~
 - ~~c. Comply with the requirement of Chapter 60D-1, F.A.C., Design Standards for Special Facilities for the Physically Disabled,~~
 - ~~d. Be an Equal Opportunity Employer,~~
 - ~~e. Provide Full Disclosure Statements of Ownership,~~
 - ~~f. Validate the proposal for a minimum of thirty (30) or more days following the public bid opening date,~~
 - ~~g. Provide a Life Cycle Analysis with proposal if space is for 20,000 or more square feet in any one structure with the understanding that the analysis shall be acceptable before an award can be made (Section 255.254, F.S.),~~
 - ~~h. Comply with the fire safety standards of the State Building Code,~~
 - ~~i. Ensure that any renovations required will comply with fire safety standards of the State Building Code before renovations are commenced (Section 255.25(5), F.S.), and~~
 - ~~j. Propose a rental rate per square foot per year that will include all renovations and other special requirements necessary to accommodate the program at the time of initial occupancy.~~~~
- ~~4. Specifications may provide that sealed proposals are to be submitted, in a titled envelope, to a designated individual by a specified closing time and date, at which time all proposals will be publicly opened.~~

~~(g) Proposals.~~

- ~~1. Proposals shall specifically respond but need not be limited to each item included in the specifications.~~
- ~~2. Each proposal shall be signed by the owner(s), corporate officers, or legal representative(s). The corporate, trade, or partnership name must be either stamped, written or typewritten, beside the actual signature(s). If the proposal is signed by an agent, written evidence of his authority must accompany the proposal. If a corporation foreign to the State of Florida is the owner, evidence of authority to conduct business in Florida shall be presented.~~

(h) Evaluation.

~~1. The University alone shall reserve the right to accept or reject any or all bids submitted and if necessary reinitiate procedures for soliciting competitive proposals.~~

~~2. The University in preparing specifications, shall develop weighted evaluation criteria. The criteria items most significant to the University's needs should bear the highest weight.~~

~~3. Documentation to support the selection shall be maintained and shall include but not be limited to the following:~~

~~a. A copy of all advertisements;~~

~~b. A copy of the proposal specifications;~~

~~c. A copy of all proposals received;~~

~~d. A synopsis of the University's findings for each proposal;~~

~~e. Selection shall be publicly announced by the University;~~

~~f. Lease preparation and approval—After the selection has been announced, a lease agreement shall be drafted by the University and executed, and~~

~~g. Disclosure Statements—Private Entities, Public Officials.~~

~~(i) A statement by the owner providing for full disclosure of the names and the extent of interest of the owners holding 4% or more interest in any privately owned property leased to the state or in the entity holding title to the property, shall be secured for all new leases, renewal leases, modifications to approved leases and the notification of renewal under an existing lease option.~~

~~(ii) A statement by the owner providing for full disclosure of the names of all public officials, agents, or employees holding any interest in any privately owned property leased to the state, or in the entity holding title to the property, and the nature and extent of their interest, shall be secured for all new leases, renewal leases, modifications to approved leases, and notifications of renewal under a lease option.~~

~~(iii) It is not necessary to make disclosure of any beneficial interest which is represented by stock in any corporation registered with the Securities and Exchange Commission or registered pursuant to Chapter 517, F.S., which stock is for sale to the general public. A statement certifying the registration shall be provided by the lessor.~~

~~(iv) It is not necessary to make disclosure under subsections 1. and 2. of any leasehold interest in property located outside the territorial boundaries of the United States.~~

~~(v) Each subsequent transaction pertaining to a lease for which a disclosure statement has been provided, may be accompanied by a lessor's affidavit that the previous disclosure statement submitted on (date to be provided) is still valid, if the interest held or individuals concerned has not changed.~~

Specific Authority--~~Florida Board of Governors Resolution dated January 7, 2003; Florida Board of Governors Regulation 17.001240.227(1) FS. Law Implemented 240.225, 255.248, 255.249, 255.25 FS. History--New 3-26-80, Formerly 6C5-6.10, Amended 11-11-87. Formerly 6C5-6.010. Amended - - .~~