



Item: BF: A-4

Tuesday, November 14, 2023

SUBJECT: CONTRACTING FOR DESIGN AND CONSTRUCTION SERVICES POLICY

PROPOSED BOARD ACTION

Approval of a new University Policy on Contracting for Design and Construction Services.

BACKGROUND INFORMATION

Senate Bill 7026 was signed into law in May 2023. The new bill expands the powers and duties of the Florida Board of Governors (BOG) to include the development of regulations relating to university contracting procedures for certain professional services and fixed capital outlay projects. In connection with many revisions to BOG Chapter 14 Construction Program Regulations, BOG Regulations 14.006 and 14.008 were adopted last month (October of 2023) and authorize university boards of trustees' to prescribe procurement processes and parameters in negotiating and contracting for these professional services and fixed capital outlay projects, thereby enhancing university control and latitude over such processes.

The proposed policy establishes a framework for the selection, consideration and contracting for design and construction services ("DCS Services") at the University and delegates further details in these processes and parameters to be developed by the Vice President of Administrative Affairs or designee (collectively, the "VPAA"). Highlights of the proposed policy include the following:

- Authorizes various procedures to select and contract for DCS Services, which include, but are not limited to competitive bids, design-build, construction management entities, program management entities, and day labor contracts.
- Authorizes negotiation with multiple entities for the guaranteed maximum price and/or guaranteed completion date during the competitive procurement process.
- Authorizes negotiations for the selection of professional services (architects, professional engineers, or registered land surveyors) using the Department of Management Services (DMS) approved fee schedule as a guideline for individual projects or maximum hourly rates, based on the level of complexity and the scope of the services required, and historic fee data.
- Authorizes the VPAA to appoint a selection committee to make recommendations for DCS Services which have been publicly announced as provided in BOG Regulation 14.007, which committee shall consist of at least three members, the majority of which have demonstrable

experience in the selection of professional services firms or education in construction, engineering, architecture, or other related discipline, and be comprised of at least one facilities professional from the University Facilities Management Office; one facilities professional who is not required to be a current University Facilities Management Office; and additional members, based on the special needs of the project, as prescribed by the VPAA.

- Authorizes the VPAA to determine eligibility under Florida law of each firm proposing to provide DCS Services.
- Authorizes the selection committee to evaluate eligible firms pursuant to the procurement parameters as determined for each particular project by the VPAA, that may include, but are not limited to, the experience and qualifications of the firms; price, cost or fees; approach to the project; past performance; ability to meet time and budget requirements; location; and recent, current and projected workloads.
- Authorizes the selection of additional firms, the rejection of all proposals, or the initiation of a new selection process in accordance with the competitive procurement process prescribed in the policy or otherwise by the VPAA if the University is unable to negotiate a satisfactory contract with any of the selected firms.

IMPLEMENTATION PLAN/DATE

Upon approval by the Board of Trustees, the effective date of the new policy will apply retroactively to October 1, 2023.

FISCAL IMPLICATIONS

The new policy will allow financial considerations in the selection process that were not previously authorized.

Supporting Documentation: Contracting for Design and Construction Services Policy

Presented by: Mr. David Kian, General Counsel & VP, Legal Affairs

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Office of the President
University Policy

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| SUBJECT: Contracting for Design and Construction Services | Effective Date: 10-1-23 | Policy Number: 4.2.7 | |
| | Supersedes: New | Page 1 | Of 5 |
| | Responsible Authority: Vice President, Administrative Affairs | | |

APPLICABILITY/ACCOUNTABILITY:

This policy is applicable to the selection, considerations, and contracting for Design and Construction Services for University facilities. To the extent any existing policies, guidelines, processes, or other matters within the University conflict with any provisions herein or other applicable authorities, those items shall automatically be amended for consistency with this policy and such authorities.

POLICY STATEMENT:

The University may employ procedures to contract for professional services and contractors for the planning, design, and construction of new facilities, or for additions, remodeling, renovation, maintenance, or repairs to existing facilities (“Design and Construction Services”), that include, but are not limited to competitive bids, design-build, construction management entities, program management entities, and day labor contracts, as more specifically set forth herein. Amendments to this policy shall require the approval of the University Board of Trustees as required by Florida Board of Governors (BOG) Regulations [14.006](#) and [14.008](#).

DEFINITIONS:

This policy adopts by incorporation the construction program definitions set forth in BOG Regulation [14.001](#).

PROCEDURES:

1. Construction Management Entities
 - a. When selecting a construction management entity that would be responsible for all scheduling and coordination in both design and construction phases and is generally responsible for the successful, timely, and economical completion of the construction project, the entity must consist of or contract with

licensed or registered professionals for the specific fields or areas of construction to be performed.

b. The construction management entity shall be selected through a competitive procurement process as prescribed herein and as otherwise prescribed by the Vice President of Administrative Affairs or designee (collectively, the "VPAA"). The criteria for selecting a construction management entity shall not unfairly penalize an entity that has relevant experience in the delivery of construction projects of similar size and complexity by methods of delivery other than construction management.

c. The construction management entity, after having been selected, may be required to offer a guaranteed maximum price and/or a guaranteed completion date; in which case, the construction management entity must secure an appropriate surety bond pursuant to section 255.05, Florida Statutes, and must hold construction subcontracts.

d. With respect to the guaranteed maximum price and/or guaranteed completion date, the University may negotiate, simultaneously or otherwise, with the selected construction management entity, as well as any other construction management entities that were short-listed during the competitive procurement process.

2. Program Management Entities

a. When selecting a program management entity that would act as the agent of the University and would be responsible for schedule control, cost control, and coordination in providing or procuring planning, design, and construction services, the program management entity must consist of or contract with licensed or registered professionals for the specific areas of design or construction to be performed. The program management entity may retain necessary design professionals as prescribed by the VPAA.

b. The program management entity shall be selected through a competitive procurement process as prescribed herein and as otherwise prescribed by the VPAA. The criteria for selecting a program management entity shall not unfairly penalize an entity that has relevant experience in the delivery of construction programs of similar size and complexity by methods of delivery other than program management.

c. The program management entity, after having been selected, may be required to offer a guaranteed maximum price and/or a guaranteed completion date, in which case the program management entity must secure an appropriate surety bond pursuant to section 255.05, Florida Statutes, and must hold design and construction subcontracts.

d. With respect to the guaranteed maximum price and/or guaranteed completion date, the University may negotiate, simultaneously or otherwise, with the selected program management entity, as well as any other program

management entities that were short-listed during the competitive procurement process.

3. Day-Labor Contracts. Day-labor contracts, as defined by the BOG, shall be administered by the VPAA in accordance with BOG requirements.
4. Construction Techniques. Contractors, design-build firms, contract management entities, program management entities, or any other person under contract to construct facilities or major additions to facilities may use any construction techniques allowed by contract and not prohibited by law, including, but not limited to, those techniques known as fast-track construction scheduling, use of components, and systems building process.
5. Registered Architects. Except as otherwise provided in BOG regulation and section 481.229, Florida Statutes, the services of a registered architect must be used for the development of plans for the erection, enlargement, or alteration of any educational facility. The services of a registered architect are not required for a minor renovation project for which the construction cost is less than \$150,000 or for the placement or hookup of relocatable educational facilities that conform with standards adopted under section 1013.37, Florida Statutes. Compliance with building code requirements and assurances that these structures are adequately anchored for wind resistance are necessary as required by law.
6. Professional Services. For Professional Services (architects, professional engineers, or registered land surveyors), the contract may be negotiated using the Department of Management Services (DMS) approved fee schedule as a guideline for individual projects or maximum hourly rates. The fee schedule to be used shall be negotiated based on the level of complexity and the scope of the services required, and shall be based on historic fee data. The basic fee schedule shall relate the fees to the complexity and size of the project and provide a guideline for negotiation of a fair, competitive and reasonable fee for the services to be provided.
7. Construction Direct Purchase Program. Commodities to be incorporated into any public work, which are procured by the University in accordance with the requirements of the University's direct purchase program, are not subject to any further competitive solicitation. "Public work" is defined as projects for public use or enjoyment, financed and owned by the government, in which private persons undertake the obligation to do a specific piece of work that involves installing tangible personal property in such a manner that it becomes a part of a public facility, including land, improvement to land, building, structure, or other fixed site and related infrastructure thereon owned or operated by a governmental entity where governmental or public activities are conducted. The term "public work" is not restricted to the repair, alteration, improvement, or construction of real property and fixed works, although such projects are included within the term.
8. Competitive Selection and Negotiation.
 - a. For any services required which have been publicly announced as provided in BOG Regulation 14.007, including, but not limited to, professional services, continuing contracts, construction management services or design-build, the

VPAA shall appoint a selection committee to make recommendations. Those appointed shall serve throughout the selection process.

b. The Committee should consist of at least three members, the majority of which have demonstrable experience in the selection of professional services firms or education in construction, engineering, architecture, or other related discipline, and comprised as follows:

1. At least one facilities professional from the University Facilities Management Office;
2. One facilities professional who is not required to be a current University Facilities Management Office; and
3. Additional members, based on the special needs of the project, as prescribed by the VPAA.

c. Prior to each selection, the VPAA shall determine the eligibility under Florida law of each firm to perform the services required.

d. The selection committee shall evaluate eligible firms applying pursuant to the procurement parameters as determined for each particular project by the VPAA, that may include, but are not limited to, the experience and qualifications of the firms; price, cost or fees; approach to the project; past performance; ability to meet time and budget requirements; location; and recent, current and projected workloads.

e. For construction management services and for design-build services selected based on qualifications, the contract shall be negotiated to provide for preconstruction fees based on hourly rates, and construction related services to include profit, overhead, direct management costs, and establishing a guaranteed maximum price.

f. For design-build services selected based on a design-build proposal, the contract shall be negotiated based on the design-build proposal, to provide for a guaranteed maximum price for all professional services and construction costs which shall include reimbursable costs plus fees for design, project management, overhead and profit.

g. Committee proceedings will be open to the public as and when required by law.

h. Should the University be unable to negotiate a satisfactory contract with any of the selected firms, additional firms may be selected, all proposals may be rejected, or a new selection process may be initiated at the University's discretion and in accordance with the competitive procurement process prescribed herein or otherwise by the VPAA.

i. The notice and protest procedures set forth in BOG 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.

INITIATING AUTHORITY: Vice President, Administrative Affairs

POLICY APPROVAL
(For use by the Office of the President)

Policy Number: 4.2.7

Initiating Authority

Signature: _____ Date: _____
Name: _____

Policies and Procedures

Review Committee Chair

Signature: _____ Date: _____
Name: _____

President

Signature: _____ Date: _____
Name: _____

Board of Trustees Chair

Signature: _____ Date: _____
Name: _____

Executed signature pages are available in the Office of Compliance

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