

## BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: Amendment of Rules 25-25.003 )	DOCKET NO. 900121-PU
and 25-25.023, F.A.C., pertaining to )	
Definitions and Vendors and Suppliers )	ORDER NO. 22889
and Adoption of Rule 25-25.030, F.A.C., )	
pertaining to Leases for Real Property. )	ISSUED: 5/4/90
)	

NOTICE OF RULEMAKING

NOTICE is hereby given that the Commission, pursuant to section 120.54, Florida Statutes, has initiated rulemaking to amend Rules 25-25.003 and 25-25.023, F.A.C., relating to Definitions and Vendors and Suppliers, and adoption of Rule 25-25.030, F.A.C., relating to Leases for Real Property.

The attached Notice of Rulemaking will appear in the May 11, 1990, edition of the Florida Administrative Weekly. If requested, a hearing will be held at the following time and place:

2:00 p.m., Friday, June 8, 1990  
 Room 122, Fletcher Building  
 101 East Gaines Street  
 Tallahassee, Florida

Written requests for hearing and written comments or suggestions on the rules must be received by the Director, Division of Records and Reporting, Florida Public Service Commission, 101 East Gaines Street, Tallahassee, FL 32399, no later than June 1, 1990.

By Direction of the Florida Public Service Commission,  
 this 4th day of MAY, 1990.

  
 STEVE TRIBBLE, Director  
 Division of Records & Reporting

( S E A L )

CBM

4102G

DOCUMENT NUMBER-DATE

03880 MAY-4 1990

FPSC-RECORDS/REPORTING

ORDER NO. 22889  
 DOCKET NO. 900121-PU  
 PAGE 2

FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 900121-PU

RULE TITLE:	RULES NOS.:
Definitions	25-25.003
Vendors and Suppliers	25-25.023
Leases for Real Property	25-25.030

PURPOSE AND EFFECT: These rule revisions and the creation of a new rule would provide additional guidance on the Commission's purchasing and leasing practices.

SUMMARY: The proposed revisions expressly allow the Commission to obtain the research/consulting services of the National Association of Regulatory Utility Commissioners in the same manner as obtaining certain other governmental services. The revisions would make it discretionary as to whether the Commission -- upon a vendor's default -- would subject the vendor to certain measures. Finally, the creation of a new rule on the leasing of real property would allow the Commission to negotiate for such property in certain circumstances.

RULEMAKING AUTHORITY: 350.127(2), 120.53(1), F.S.

LAW IMPLEMENTED: 120.53(1), F.S.

SUMMARY OF THE ESTIMATE OF ECONOMIC IMPACT OF THESE RULES: The proposed revision to Rule 25-25.003, which includes research/consulting services as services not deemed as a "purchase" for the purpose of this rule does not have any quantifiable cost increases associated with it. The proposed

ORDER NO. 22889  
DOCKET NO. 900121-PU  
PAGE 3

revision to the General Purchasing Rule, Rule 25-25.023, F.A.C., on Defaults may save the Commission administrative costs associated with the processing of contracts in default. Also, the creation of a leasing rule, Rule 25-25.030, and the addition of "real property" to the "commodity" definition in Rule 25-25.003 give the Commission the benefit of additional options besides the policy of emulating the Department of General Services bidding process for real property leases. The proposed rule revisions relate to internal administrative procedures and should not directly impact external parties. The rules should not have an impact on small businesses, although the revision to the Default rule might encourage some small businesses to bid on Commission contracts due to the decreased risks of default penalties. The impact on competition is probably minimal. There is no expected impact on employment.

WRITTEN COMMENTS OR SUGGESTIONS ON THE PROPOSED RULE MAY BE SUBMITTED TO THE FPSC, DIVISION OF RECORDS AND REPORTING, WITHIN 21 DAYS OF THE DATE OF THIS NOTICE FOR INCLUSION IN THE RECORD OF THE PROCEEDING. IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE HELD AT THE DATE AND PLACE SHOWN BELOW:

TIME AND DATE: 2:00 P.M., June 8, 1990

PLACE: Room 122, 101 East Gaines Street, Tallahassee, Florida.

THE PERSON TO BE CONTACTED REGARDING THESE RULES AND THE ECONOMIC IMPACT STATEMENT IS: Director of Appeals, Florida Public Service Commission, 101 East Gaines Street, Tallahassee, Florida 32399

ORDER NO. 22889  
DOCKET NO. 900121-PU  
PAGE 4

THE FULL TEXT OF THE RULES IS:

25-25.003 Definitions. The following definitions shall apply in these rules:

- (1) "Commission" means the Florida Public Service Commission.
- (2) "Agency Head," for purposes of these rules, means the Executive Director of the Commission or the Director's designee, who shall be authorized to approve and execute contracts for goods, equipment and services to be rendered to the Commission.
- (3) "A purchase" means the acquisition by contracting in any manner, whether by rent, lease, lease/purchase or installment sales contract which may provide for the payment of interest on unpaid portions of the purchase price, or outright purchase, from a source of supply for either commodities or contractual services. Within the meaning of this definition, the following are deemed not to be purchases of commodities or services:
  - (a) Transfer, sale or exchange of personal property or services between governmental agencies including contractual services as herein defined;
  - (b) Commodities purchased for resale except Class B printing;
  - (c) Utilities;
  - (d) Public communications, i.e., telephone, telegraph;
  - (e) Legal services including attorneys, paralegals, expert witnesses, and court reporters, artistic services, academic program reviews, or lectures by individuals, and auditing services, and research/consulting services rendered by the

ORDER NO. 22889  
DOCKET NO. 900121-PU  
PAGE 5

National Association of Regulatory Utility Commissioners;

(f) Postage;

(g) Transportation of persons; and

(h) Employee moving expenses when arranged for according to state personnel rules and procedures prescribed by the Commission.

(4) "Commodity" means any of the various supplies, materials, goods, merchandise, Class B printing, equipment, real property, and other personal property purchased, leased, or otherwise contracted for by the Commission.

(5) "Contractual services" means the rendering of a contractor's time and effort without the furnishing of commodities. Any contract providing for the acquisition of both services and commodities is deemed to be a contract for the acquisition of commodities. Consultants reports for use within state government shall not be considered a commodity.

(6) "Formal Invitation to Bid" means a solicitation for sealed bids specifically defining the commodity or service sought, with the title, date and hour of the public bid opening designated. It shall include printed instructions prescribing all conditions for bidding and provide for a manual signature of an authorized representative and be distributed to all prospective offerors at the same time.

(7) "Formal bid" means a bid submitted in response to and in accordance with a formal Invitation to Bid. It shall bear the manual signature of the vendor's authorized representative.

ORDER NO. 22889  
DOCKET NO. 900121-PU  
PAGE 6

(3) "Formal request for proposal for contractual services" means a written request, with the manual signature of an authorized representative and with the title, date and hour of the public opening designated, for a sealed proposal for the service(s) sought. Such requests shall contain the most definitive specifications possible, including applicable laws and rules, statement of work, proposal instructions, work detail analysis and evaluation criteria.

(9) "Formal proposal for contractual services" means a proposal submitted in response to and in accordance with a formal request for proposal for contractual services. It shall bear the manual signature of the offering contractor's authorized representative.

(10) "Informal bid" means either a written or oral quotation not requiring a public opening at a specific time and date. Written evidence of oral quotations shall be maintained by the Commission.

(11) "Informal proposal for contractual services" means a written agreement proposed for services, the price of which does not exceed the threshold amount provided in Rule 25-25.0061(1) for Category One and does not require a public opening at a specific time and date.

(12) "Printing" means commercial printing services and shall include any mechanical process whereby ink is transferred to paper or other materials.

ORDER NO. 22889  
DOCKET NO. 900121-PU  
PAGE 7

(13) "Class B printing" means that portion of printing (other than Class A legislative printing) which may be circulated to and/or used by the general public or governmental entities other than the State of Florida.

(14) "Printed material" means any book, pamphlet, brochure, report, form, stationery, label, tag, card or other product of printing which is purchased by the Commission.

(15) "Competitive bids" means two or more valid responses to a bid invitation.

(16) "Valid response" means a responsible offer in full compliance with the bid/proposal specifications and conditions.

(17) "Emergency purchase" means a purchase necessitated by a sudden unexpected turn of events (e.g., acts of God, riots, fires, floods, accidents or any circumstances or causes beyond the control of the Commission in the normal conduct of its business) where the delay incident to competitive bidding would be detrimental to the interests of the Commission or the State.

(18) "Single source purchase" means the purchase of a commodity or contractual service that is available from only one source.

(19) "Identical (tie) bids/proposals" means two or more bids/proposals which are equal with respect to price, quality, and service.

(20) "Mutuality of management" means two or more firms that are mutually owned or managed submitting bids in response to bid

ORDER NO. 22889  
DOCKET NO. 900121-PU  
PAGE 8

invitations. Only the low bidder among such firms may be considered in determining an award.

(21) "Notice of decision" means the Commission's notice to vendors or other interested persons of its decision or intended decision concerning a bid solicitation or a contract award. Such notice shall contain the statement: "Failure to file a protest within the time prescribed in Section 120.53(5), Florida Statutes, shall constitute a waiver of proceedings under Chapter 120, Florida Statutes". Notices concerning bid/proposal solicitations shall be sent by United States mail or by hand delivery. Notices of intended contract awards, including rejection of some or all of bids/proposals received, may be given by posting the bid/proposal tabulations where the bids/proposals were opened or by certified United States mail, return receipt requested, whichever is specified in the bid solicitation or the request for proposal.

(a) Issuance of a written notice of award or a purchase order shall establish a contract between the Commission and the supplier on the terms, conditions and prices specified in the Invitation to Bid and the supplier's bid response.

(b) Execution of a contract representing final agreement for services shall establish a contract between the Commission and the contractor for contractual services not acquired under the provision of (a) above.

(22) "Contract" means all types of bids, agreements or purchase orders, regardless of what they may be called, executed by the



ORDER NO. 22889  
DOCKET NO. 900121-PU  
PAGE 9

Commission for the procurement or disposal of commodities, services or construction.

(23) "Contractual Services Administrator" means the Chief of the Bureau of Management Studies of the Division of Auditing and Financial Analysis.

(24) "Contract amendment" means a written modification of an existing contract, for valid consideration, mutually agreed to by all parties to the contract and signed by individuals vested with the legal authority to bind the parties they represent.

(25) "Contractor" means any person or firm having a contract with the Commission or with the State of Florida Department of General Services.

Specific Authority: 350.127(2), 120.53(1), F.S.

Law Implemented: 120.53(1), F.S.

History: New 4/12/83, formerly 25-25.03, Amended 12/24/86,  
Amended

25-25.023 Vendors and Suppliers.

(1) Vendor Files. The Commission shall maintain a file for the purpose of bid solicitations of those firms doing business with the state on a repetitive basis for the purchase of commodities or contractual services in excess of the threshold amount provided in Rule 25-25.0061(1) for Category One per purchase. The file may consist in whole or in part of such firms that are registered with the Division of Purchasing of the Department of General Services to do business with the State, and may be limited to such firms,

ORDER NO. 22839  
DOCKET NO. 900121-PU  
PAGE 10

in the discretion of the Commission. A vendor who is not registered to do business with the State and who desires to be included in the Commission's vendor file may file an informal application with the Central Purchasing Office for the purpose. The application shall contain the following minimum information:

- (a) Complete business name and address by which bids are to be solicited;
- (b) Name of any mutually owned or controlled firm;
- (c) Type of business, such as distributor, dealer (wholesale or retail), jobber, or manufacturer;
- (d) Whether business is an individual, partnership, or corporation;
- (e) If business is a corporation, certification of compliance with Chapter 607, Florida Statutes;
- (f) A description, including location, of the business facility from which commodities or services are to be supplied;
- (g) Experience in sales to governmental agencies;
- (h) Number of employees, indicating separately the number of employees in Florida;
- (i) Annual sales volume;
- (j) Current financial statement; and
- (k) Full description of each commodity or service offered, including results of any reasonably current testing of commodities by a governmental or independent testing facility.

ORDER NO. 22889  
DOCKET NO. 900121-PU  
PAGE 11

(2) Within 3 months of receipt of an application from a non-registered vendor - applicant, the Commission will conduct an investigation and notify the applicant that it is accepted or rejected for inclusion in the vendor file. Reasons for rejection shall be clearly stated in the notice and may include, but not be limited to undesirable business practices such as non-performance and consistent failure to respond to bid invitations. The reasonably current removal of a vendor from the mailing lists of the Division of Purchasing shall be a cause for rejection. The investigation of an applicant shall not incur any expense to the Commission other than normal salaries and employee expenses for authorized full time positions. Any applicant whose application has been rejected may seek remedy as provided by Rule 25-25.021 of these rules for persons aggrieved by the bid solicitation and contract award process.

(3) Removal from vendor files and mailing lists. The Commission may remove vendors and suppliers from its vendor files or mailing lists on reasonable grounds. Reasonable ground for such removal may include but shall not be limited to:

(a) Consistent failure to respond to bid invitations (3 consecutive instances);

(b) Failure to perform according to contract provisions;

(c) Conviction in a court of law of any criminal offense in connection with the conduct of business;

ORDER NO. 22889  
DOCKET NO. 900121-PU  
PAGE 12

(d) Clear and convincing evidence of a violation of any federal or state anti-trust law based on the submission of bids or proposals, or the awarding of contracts; and

(e) Removal from its mailing list by the Division of Purchasing.

The Commission shall remove from its vendor files and mailing lists any vendor or supplier whom evidence clearly indicates has attempted to give any Commission employee a gratuity of any kind for the purpose of influencing a recommendation or decision in connection with any part of the Commission's purchasing activity. The Commission shall promptly notify the Division of Purchasing of the removal of any person or firm from vendor files and mailing lists in order that notice of such action might be disseminated to other state agencies that may be affected by it.

(4) Default. A contractor who fails to perform according to contract terms and conditions shall be notified by certified mail, return receipt requested, of the nature of the failure to perform and to correct the failure immediately. If the failure is not corrected within 10 days after receipt of the notice, a notice shall be issued by certified mail, return receipt requested, that the contractor is in default and that the Commission may ~~shall~~ reprocure the commodities or services subject to the contract. The defaulting contractor may be required to ~~shall~~ reimburse the Commission for all reprocurement costs and for the monetary difference between the cost of substitute commodities or services and the contract price for such commodities or services.

ORDER NO. 22889  
DOCKET NO. 900121-PU  
PAGE 13

Reprocurement may be accomplished by attempting to contract with the second lowest bidder, then the next lowest bidder, sequentially, until a bidder willing to perform at acceptable pricing under the bid conditions is found. The Commission may elect to rebid or to purchase on the open market, as may appear to be in its best interest. Default may shall be a cause for removing a contractor from the Commission's vendor files and mailing lists. All Commission default actions may shall be promptly reported to the Division of Purchasing for dissemination to other state agencies. The provisions of these rules shall not limit or preclude the Commission's remedies at law in cases of default.

Specific Authority: 350.127(2), 120.53(1), F.S.

Law Implemented: 120.53(1), F.S.

History: New 4/12/83, formerly 25-25.23, Amended 12/24/86,  
Amended

25-25.030 Leases for Real Property.

(1) The agency head may utilize the Florida Department of General Services' standard leasing forms and procedures developed for executive branch agencies. In the event an emergency need exists or if suitable and comparable space can be leased at an annual cost per square foot which is less than either: (a) the average annual cost per square foot of existing leases (in the same county) for all other agencies which were competitively bid pursuant to Chapter 13M-1, F.A.C., of the Department of General

ORDER NO. 22889  
DOCKET NO. 900121-PU  
PAGE 14

Services' rules, or (b) the current rental rate charged by the Department of General Services for state buildings which are a part of the Florida Facilities Pool, or (c) 90% of the Department of General Services' most recently published maximum rental rate for the zone and category of services furnished, the agency head may informally negotiate without advertising or soliciting competitive bids/proposals.

(2) If the term of a negotiated lease (including options to renew), extends beyond the current terms for existing leases of other agencies which were competitively bid pursuant to Chapter 13M-1, F.A.C., of the Department of General Services' rules, the rental rate for subsequent years shall not increase at an annual rate which exceeds the average annual increase per square foot for the latest three-year period covered by leases of other agencies in the same county which were competitively bid. All leases shall contain "right-to-terminate" and "subject to availability of funds" clauses. Each lease shall be approved by the agency head, and a copy shall be filed with the Department of General Services.

Specific Authority: 350.127(2), 120.53(1), F.S.

Law Implemented: 120.53(1), F.S.

History: New.

NAME OF PERSON ORIGINATING PROPOSED RULES: James Ward

NAME OF SUPERVISOR OR PERSON(S) WHO APPROVED THE PROPOSED RULES:  
Florida Public Service Commission

DATE PROPOSED RULES APPROVED: May 1, 1990

ORDER NO. 22889  
DOCKET NO. 900121-PU  
PAGE 15

If any person decides to appeal any decision of the Commission with respect to any matter considered at the rulemaking hearing, if held, a record of the hearing is necessary. The appellant must ensure that a verbatim record, including testimony and evidence forming the basis of the appeal is made. The Commission usually makes a verbatim record of rulemaking hearings.