

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Proposed repeal of Chapter 25-25, F.A.C., concerning purchasing procedures; proposed repeal of Rule 25-22.002, F.A.C., Agenda of Meetings; proposed repeal of Rules 25-22.100, 25-22.101, 25-22.1035, 25-22.104, 25-22.105, and 25-22.107, F.A.C., concerning management of records; and proposed repeal of Rule 25-22.033, F.A.C., Communications Between Commission Employees and Parties.

DOCKET NO. 20220127-PU *FOF A 9/13/22*
ORDER NO. PSC-2022-0319-NOR-PU
ISSUED: September 8, 2022

The following Commissioners participated in the disposition of this matter:

ANDREW GILES FAY, Chairman
ART GRAHAM
GARY F. CLARK
MIKE LA ROSA
GABRIELLA PASSIDOMO

NOTICE OF REPEAL OF RULES

BY THE COMMISSION:

NOTICE is hereby given that the Florida Public Service Commission, pursuant to Section 120.54, Florida Statutes, has repealed all of the rules in Chapter 25-25, Florida Administrative Code.

The rule repeals were filed with the Department of State on September 7, 2022, and will be effective on September 27, 2022. A copy of the rules as filed with the Department is attached to this Notice.

This docket is closed upon issuance of this Notice.

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By ORDER of the Florida Public Service Commission this 8th day of September, 2022.



ADAM J. TEITZMAN

Commission Clerk

Florida Public Service Commission

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Tallahassee, Florida 32399

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Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

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25-25.001 Purpose.

~~The purpose of these rules is to promote efficiency, economy and the conservation of energy in the purchase of commodities for the Commission; and to provide direction of contractual services procurement policies.~~

Rulemaking Authority 350.0603, 350.127(2) FS. Law Implemented 350.0603 FS. History--New 4-12-83, Formerly 25-25.01, Repealed

25-25.001 Purpose.

Rulemaking Authority 350.0603, 350.127(2) FS. Law Implemented 350.0603 FS. History--New 4-12-83, Formerly 25-25.01, Repealed

25-25.002 Intent.

~~As and when it appears to be to its advantage economically and administratively, the Commission shall, as a matter of policy, make recurring purchases of those commodities designated in the several contracts executed between the State of Florida Department of Management Services and the designated contractors therein, according to the terms of the applicable contracts in effect at the time of the purchases. All other purchases shall be made in accordance with these rules unless an administrative exception to the rules has been fully justified and approved by the Agency Head, as hereinafter provided.~~

Rulemaking Authority 350.0603, 350.127(2) FS. Law Implemented 350.0603 FS. History--New 4-12-83, Formerly 25-25.02, Repealed

25-25.002 Intent.

Rulemaking Authority 350.0603, 350.127(2) FS. Law Implemented 350.0603 FS. History--New 4-12-83, Formerly 25-25.02, Repealed

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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, court reporters, artistic services, academic program reviews, lectures by individuals, auditing services, and research/consulting services rendered by the 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

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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.

(8) "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 subsection 25-25.006(1), F.A.C., 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.

(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.

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(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 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), F.S., shall constitute a waiver of proceedings under Chapter 120, F.S." 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 paragraph (a) above.

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

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Division of Economic Regulation.

~~(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 Management Services.

Rulemaking Authority 350.0603, 350.127(2) FS. Law Implemented 350.0603 FS. History—New 4-12-83, Formerly 25-25.03, Amended 12-24-86, 8-15-90, Repealed

25-25.003 Definitions.

Rulemaking Authority 350.0603, 350.127(2) FS. Law Implemented 350.0603 FS. History—New 4-12-83, Formerly 25-25.03, Amended 12-24-86, 8-15-90, Repealed

25-25.004 Procurement Organization.

~~As the designated Agency Head for purposes of these rules, the Executive Director has the authority to approve and execute contracts for commodities and services to be rendered to the Commission. Such authority may be delegated by the Executive Director to an appropriate staff member.~~

Rulemaking Authority 350.0603, 350.127(2) FS. Law Implemented 350.0603, 350.127(3) FS. History—New 4-12-83, Formerly 25-25.04, Repealed

25-25.004 Procurement Organization.

Rulemaking Authority 350.0603, 350.127(2) FS. Law Implemented 350.0603, 350.127(3) FS. History—New 4-12-83, Formerly 25-25.04, Repealed

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25-25.005 Delegation of Authority.

The Division of Administrative and Information Technology Services shall serve as the Central Procurement Officer for the Commission and is hereby delegated the following duties and powers:

(1) To canvass all sources of supply and negotiate for the purchase, lease, rental, or acquisition by purchase order, contract or maintenance agreement of all commodities required by the Commission or any of its divisions or offices under competitive bidding or by contractual negotiations, in the manner hereinafter provided;

(2) To plan and coordinate purchases in volume and to negotiate contracts and execute purchase orders for recurring purchases of supplies and materials required by the Commission;

(3) To make purchases by adopting and using the statewide contracts in effect between the State of Florida Department of Management Services and the designated contractors therein when determined feasible by and in the best interest of the Commission;

(4) To prescribe the methods of securing bids or negotiating or awarding purchase orders within the Commission's Division of Administrative and Information Technology Services, Facilities Management and Purchasing Section;

(5) In the event no bids are received, to negotiate on the best terms and conditions;

(6) To establish standards, formulate specifications and determine the source of supply of any commodity requisitioned by any division or office of the Commission except as otherwise provided herein, and to set the maximum fair price that shall be paid for any commodity; provided, that this may be accomplished in coordination with the State Purchasing Office of the Department of Management Services and by adoption of those standards, specifications, and sources determined by the State Purchasing Office when determined feasible by and in the best interest of the Commission;

(7) To require that every division and office furnish information relative to its purchase requirements and to prescribe methods of requisitioning commodities and services; and

(8) To formulate operating procedures necessary to carry out the purpose of this section and to exercise supervision over the purchasing activity of the Division of Administrative and Information Technology Services, Facilities Management and Purchasing Section of the Commission.

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Formerly 25-25.05, Amended 12-24-86 Repealed

25-25.005 Delegation of Authority.

Rulemaking Authority 350.0603, 350.127(2) FS. Law Implemented 350.0603 FS. History—New 4-12-83,

Formerly 25-25.05, Amended 12-24-86 Repealed

25-25.006 Formal Bids Required.

~~(1) No purchase of commodities or services in excess of the threshold amount provided in subsection 25-25.0061(1), F.A.C., for Category One shall be made without attempting to secure two or more formal bids unless otherwise provided for herein.~~

~~(2) Nothing in these rules shall be construed as limiting the number of bids solicited, it being the intent of the Commission to secure as many competitive bids as are consistent with good purchasing practices.~~

~~*Rulemaking Authority 350.0603, 350.127(2) FS. Law Implemented 350.0603 FS. History—New 4-12-83,*~~

~~*Formerly 25-25.06, Amended 12-24-86 Repealed*~~

25-25.006 Formal Bids Required.

Rulemaking Authority 350.0603, 350.127(2) FS. Law Implemented 350.0603 FS. History—New 4-12-83,

Formerly 25-25.06, Amended 12-24-86 Repealed

25-25.007 Legal Advertisements.

~~All purchases in excess of the threshold amount provided in subsection 25-25.0061(1), F.A.C., for Category Two shall be advertised at least once in a newspaper of general circulation and/or in the Florida Administrative Register no less than ten calendar days prior to the bid opening. Nothing in this section shall be construed as limiting the frequency, lapse time, or number of newspapers in which the advertisement may appear; provided, however, that if the Agency Head should determine that the delay incident to such advertising procedure would be detrimental to the interest of the Commission and issues a certification accordingly, the advertising may be waived.~~

~~*Rulemaking Authority 350.0603, 350.127(2) FS. Law Implemented 350.0603 FS. History—New 4-12-83,*~~

~~*Formerly 25-25.07, Amended 12-24-86, Repealed*~~

25-25.007 Legal Advertisements.

Rulemaking Authority 350.0603, 350.127(2) FS. Law Implemented 350.0603 FS. History—New 4-12-83,

Formerly 25-25.07, Amended 12-24-86, Repealed

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25-25.008 Contracts for Class B Printing.

~~No general contract shall be let to cover Class B printing and each job so classified shall be let separately to the lowest responsible bidder. Such contract shall apply only to the work under consideration at the time of need. Contracts for printing shall be awarded only to printing firms. No such contract shall be awarded to any broker, agent or independent contractor to provide printing manufactured by other persons or firms.~~

Rulemaking Authority 350.0603, 350.127(2) FS. Law Implemented 350.0603 FS. History—New 4-12-83, Formerly 25-25.08, Amended 12-24-86, Repealed _____.

25-25.008 Contracts for Class B Printing.

Rulemaking Authority 350.0603, 350.127(2) FS. Law Implemented 350.0603 FS. History—New 4-12-83, Formerly 25-25.08, Amended 12-24-86, Repealed _____.

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25-25.009 Source Selection, Bid Openings and Contract Awards.

(1) Public Notice. Adequate public notice of invitations to bid shall be given sufficiently in advance of the bid openings to permit potential bidders to prepare and submit bids in a timely manner but in no event shall notice be less than 10 days. Notice shall include as a minimum the mailing or delivery of invitations to bid to two potential bidders on any bidder list, with normal practice being to allow notice to as many potential bidders as may be consistent under the circumstances with good purchasing practices. Notice may include publication in a newspaper of general circulation for a reasonable period prior to a bid opening.

(2) Bid Openings. Bids shall be opened in the public place and at the time designated in the invitations to bid. The amount of each bid and the name of each bidder shall be recorded. Such record and each bid thereon shall be open to public inspection. All formal bids submitted shall prominently display on the outside of the sealed container the notation "Sealed Bid." In the event any such bid is inadvertently opened in the course of mail handling and the contents are known only to the opener, the bid shall be immediately resealed and the notation "opened by mistake, contents not revealed," shall be placed prominently on the outside of the container, in the opener's own handwriting, and be followed by the opener's signature, and such bid shall not be disqualified solely on such grounds.

(3) Bid Evaluation. Bids shall be evaluated solely on requirements set forth in the Invitation to Bid, which may include criteria to determine acceptability such as inspection, testing for quality and workmanship, delivery, and suitability for a particular purpose. Those criteria that will affect the bid price and be considered in evaluation for award shall be objectively measured, such as all or none, discounts, transportation costs, and total or life cycle costs.

(4) Withdrawal of Bids, Cancellation of Awards. Correction or withdrawal of bids which are clearly erroneous before or after award or cancellation of awards or contracts, based on such bid mistakes, may be considered if written notification of such error is received by the Division of Administrative and Information Technology Services, Facilities Management and Purchasing Section in a timely manner under the circumstances. Any alterations or corrections appearing on bids when opened must have been initialed by the vendor's representative who made the change.

(5) Preference to Bidders within the State. Preference shall be given to bidders located within the State of Florida when awarding contracts, whenever commodities bid can be purchased at no greater expense than, and at a level of quality comparable to, those bid by a bidder located outside of the State of Florida.

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(6) Receipt of no competitive bids in the First Call for Bids on Commodities Exceeding the Threshold Amount Provided in subsection 25-25.0061(1), F.A.C., for Category One. When no competitive bids are received for the purchase of a commodity or group of commodities exceeding the Threshold Amount Provided in subsection 25-25.0061(1), F.A.C., for Category One in the first call for bids, the Division of Administrative and Information Technology Services, Facilities Management and Purchasing Section shall review the bid and the Invitation to Bid in order to determine the reasons, if any, why no competitive bids were received. If it is determined that an emergency exists or that the items sought are available only from a single source, the Agency Head shall make a certification in writing as to the conditions and circumstances and thereby authorize the Division of Administrative and Information Technology Services, Facilities Management and Purchasing Section to proceed with the purchase. Otherwise, a second call for bids will be issued. If no competitive bids are received in a second call for bids, the Division of Administrative and Information Technology Services, Facilities Management and Purchasing Section shall review the bid and the Invitation to Bid in order to determine the reasons, if any, why no competitive bids were received and, with the authorization of the Agency Head, may proceed with the purchase or, if the circumstances and conditions warrant, may issue another call for bids.

(7) Award. The purchase order or other written notice of award shall be sent with reasonable dispatch to the lowest responsible bidder whose bid meets the requirements and criteria set forth in the Invitation to Bid. Normally, in the purchase of commodities or services, the Commission's purchase order, and where applicable, the general and special conditions contained in the invitation to bid or request for proposal and the bidder's bid response, shall constitute the complete agreement between the Commission and the vendor/supplier and the latter's agreement will not be used. Nothing herein shall preclude Commission use of a separate contract document when the Commission deems a separate contract appropriate.

(8) Multi-Step Sealed Bidding. When it is determined by the Central Procurement Officer or Contractual Services Administrator to be impractical to initially prepare a purchase description to support an award based on price, an invitation for proposals may be issued requesting the submission of unpriced offers to be followed by an Invitation to Bid limited to those bidders whose offers have been qualified under the criteria set forth in the invitation for proposals.

(9) No Bid Response. In the event no bid is received in response to an Invitation to Bid, the Central

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Procurement Officer shall review the bidding procedure. If it is determined that the Invitation to Bid was issued reasonably and properly, the Division of Administrative and Information Technology Services, Facilities Management and Purchasing Section may proceed to purchase at the best terms and conditions available.

(10) Purchases Not to be Divided. No purchase shall be divided or subdivided in order to circumvent the competitive bid requirements of these rules.

(11) Conditions to be Included in Call for Bids/Proposals. All formal bid invitations and requests for proposals issued by the Commission shall include the Invitation to Bid/Bidder Acknowledgement form or the "Request for Proposal/Acknowledgement" form as prescribed and adopted by the Commission.

(12) Determination of the Best Bid. It shall be the sole responsibility of the Commission to determine the lowest responsible and responsive bidder. In any case where the Agency Head makes a determination to accept a bid other than the low bid meeting specifications, the reasons for such determination shall be fully documented.

(13) Right to Reject Bids; Cancellation of Invitation to Bid; Correction of Commodity Bids. The Commission reserves the right to reject any or all bids or proposals, and to cancel any Invitation to Bid, Request for Proposal, or other solicitation and such reservation shall be indicated in all advertising and bid invitations. The reasons for rejecting bids and cancelling solicitations shall be fully documented. The Commission reserves the right to waive minor irregularities in an otherwise valid bid. A minor irregularity is defined as a variation from the bid invitation terms and conditions which does not affect the price of the bid, give the bidder an unfair advantage over other bidders, or adversely impact the interests of the Commission. A bidder may not modify its bid after opening; however, calculation or typographical errors may be corrected by the Commission.

Rulemaking Authority 350.0603, 350.127(2) FS. Law Implemented 350.0603 FS. History--New 4-12-83, Formerly 25-25.09, Amended 12-24-86, 6-19-95, Repealed _____.

25-25.009 Source Selection, Bid Openings and Contract Awards.

Rulemaking Authority 350.0603, 350.127(2) FS. Law Implemented 350.0603 FS. History--New 4-12-83, Formerly 25-25.09, Amended 12-24-86, 6-19-95, Repealed _____.

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25-25.010 Single Source Procurement.

~~A purchase order or contract may be awarded for commodities or services without competitive bidding when the Agency Head determines and certifies in writing that there is only one source for the commodities or services.~~

~~Rulemaking Authority 350.0603, 350.127(2) FS. Law Implemented 350.0603 FS. History--New 4-12-83, Formerly 25-25.10, Repealed~~

25-25.010 Single Source Procurement.

~~Rulemaking Authority 350.0603, 350.127(2) FS. Law Implemented 350.0603 FS. History--New 4-12-83, Formerly 25-25.10, Repealed~~

25-25.011 Emergency Procurement.

~~A purchase order or contract may be awarded for commodities or services without competitive bidding when the Agency Head determines and certifies in writing under oath, that an emergency exists which constitutes a threat to the public health, safety or welfare, or when the delay incident to competitive bidding may be detrimental to the interests of the Commission. Emergency procurement shall be accomplished with such competition as may be prudent under the circumstances.~~

~~Rulemaking Authority 350.0603, 350.127(2) FS. Law Implemented 350.0603 FS. History--New 4-12-83, Formerly 25-25.11, Repealed~~

25-25.011 Emergency Procurement.

~~Rulemaking Authority 350.0603, 350.127(2) FS. Law Implemented 350.0603 FS. History--New 4-12-83, Formerly 25-25.11, Repealed~~

25-25.012 Responsibility of Bidders and Offerors.

~~The failure of a bidder or offeror to supply any information required in connection with an Invitation to Bid or a Request for Proposal may be cause for a determination of "No Valid Response" and may lead to disqualification of the bid or proposal.~~

~~Rulemaking Authority 350.0603, 350.127(2) FS. Law Implemented 350.0603 FS. History--New 4-12-83, Formerly 25-25.12, Repealed~~

25-25.012 Responsibility of Bidders and Offerors.

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Rulemaking Authority 350.0603, 350.127(2) FS. Law Implemented 350.0603 FS. History—New 4-12-83, Formerly 25-25.12, Repealed _____.

25-25.013 Multi-term Contracts.

~~A contract for commodities or services may be entered into for any period of time deemed to be in the best interest of the Commission provided the terms of the contract and conditions of renewal or extension, if any, are included in the solicitation and funds are available for the first fiscal period at the time of award. Payment and performance obligation for succeeding fiscal periods shall be subject to the availability of funds and no such contract or agreement shall be entered into unless it contains the stipulation, "subject to availability of funds." Should funds not be available in any succeeding fiscal period, such contract or agreement shall be cancelled on that ground at the beginning of such period and the contractor shall be paid only for commodities received or services used while the contract is in force.~~

Rulemaking Authority 350.0603, 350.127(2) FS. Law Implemented 350.0603 FS. History—New 4-12-83, Formerly 25-25.13, Repealed _____.

25-25.013 Multi-term Contracts.

Rulemaking Authority 350.0603, 350.127(2) FS. Law Implemented 350.0603 FS. History—New 4-12-83, Formerly 25-25.13, Repealed _____.

25-25.014 Cancellation Clause.

~~Any lease contract for commodities shall include a cancellation clause of 30, 60 or 90 days, as is determined to be in the best interest of the Commission. Any contract for services shall contain a provision for unilateral cancellation by the Commission for default in accordance with subsection 25-25.023(4), F.A.C., or for refusal by the contractor to allow public access to all materials made or received by the contractor in connection with the contract, subject to the provision of Chapter 119, F.S.~~

Rulemaking Authority 350.0603, 350.127(2) FS. Law Implemented 350.0603 FS. History—New 4-12-83, Formerly 25-25.14, Amended 12-24-86, Repealed _____.

25-25.014 Cancellation Clause.

Rulemaking Authority 350.0603, 350.127(2) FS. Law Implemented 350.0603 FS. History—New 4-12-83, Formerly 25-25.14, Amended 12-24-86, Repealed _____.

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25-25.015 Installment Sale and Purchase Contracts.

~~Installment sale and purchase contracts shall be accomplished on the form determined for the purpose by the Division of Administrative and Information Technology Services, which is hereby adopted, incorporated and published by reference for use by the Commission. The use of such contracts by the Commission shall be subject in each instance to preaudit review and prior approval by the State Comptroller.~~

~~Rulemaking Authority 350.0603, 350.127(2) FS. Law Implemented 350.0603 FS. History—New 4-12-83, Formerly 25-25.15, Repealed _____.~~

25-25.015 Installment Sale and Purchase Contracts.

~~Rulemaking Authority 350.0603, 350.127(2) FS. Law Implemented 350.0603 FS. History—New 4-12-83, Formerly 25-25.15, Repealed _____.~~

25-25.016 Exemptions from Competitive Bid Requirements.

~~(1) Purchases made according to state contracts, as provided in Rule 25-25.002, F.A.C., of these rules, or from the non-profit corporation established by Part II, Chapter 946, F.S., are exempt from the competitive bid requirements of these rules.~~

~~(2) When the Central Procurement Officer finds that commodities equivalent to those offered on state contracts can be purchased at less than state contract prices, such commodities may be purchased, without advertising, through the informal bid procedure defined in subsection 25-25.003(10), F.A.C. This procedure may be used regardless of commodity pricing but all such purchases must have prior approval of the Agency Head, or his designee, and be clearly designated as exceptions to the state contracts awarded by the Department of Management Services.~~

~~(3) Purchases made from the Federal General Services Administration contracts are exempt from the competitive bid requirements of these rules.~~

~~Rulemaking Authority 350.0603, 350.127(2) FS. Law Implemented 350.0603 FS. History—New 4-12-83, Formerly 25-25.16, Amended 12-24-86, 6-19-95, Repealed _____.~~

25-25.016 Exemptions from Competitive Bid Requirements.

~~Rulemaking Authority 350.0603, 350.127(2) FS. Law Implemented 350.0603 FS. History—New 4-12-83, Formerly 25-25.16, Amended 12-24-86, 6-19-95, Repealed _____.~~

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25-25.017 Bid Borrowing.

~~The practice of bid borrowing, or the use of another state agency's bid or proposal, is prohibited.~~

Rulemaking Authority 350.0603, 350.127(2) FS. Law Implemented 350.0603 FS. History—New 4-12-83, Formerly 25-25.17, Amended 12-24-86, Repealed _____.

25-25.017 Bid Borrowing.

Rulemaking Authority 350.0603, 350.127(2) FS. Law Implemented 350.0603 FS. History—New 4-12-83, Formerly 25-25.17, Amended 12-24-86, Repealed _____.

25-25.018 Use of the Terms “or equivalent” and “no substitute.”

~~When an Invitation to Bid includes in the specifications an identifiable brand name or process for comparison purposes, the term “or equivalent” shall be used immediately following such identification. The term “no substitute” shall not be used for the sole purpose of limiting competition or giving preferential treatment to a particular manufacturer.~~

Rulemaking Authority 350.0603, 350.127(2) FS. Law Implemented 350.0603 FS. History—New 4-12-83, Formerly 25-25.18, Repealed _____.

25-25.018 Use of the Terms “or equivalent” and “no substitute.”

Rulemaking Authority 350.0603, 350.127(2) FS. Law Implemented 350.0603 FS. History—New 4-12-83, Formerly 25-25.18, Repealed _____.

25-25.019 Purchases Not Requiring Formal Bids.

~~Purchases that do not exceed the threshold amount provided in subsection 25-25.0061(1), F.A.C., for Category One shall be made from two or more informal bids or proposals whenever practical.~~

Rulemaking Authority 350.0603, 350.127(2) FS. Law Implemented 350.0603 FS. History—New 4-12-83, Formerly 25-25.19, Amended 12-24-86, Repealed _____.

25-25.019 Purchases Not Requiring Formal Bids.

Rulemaking Authority 350.0603, 350.127(2) FS. Law Implemented 350.0603 FS. History—New 4-12-83, Formerly 25-25.19, Amended 12-24-86, Repealed _____.

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25-25.020 Determinations.

~~The determinations required by these rules with regard to competitive sealed bidding, withdrawals of bids, cancellations of awards, single source procurement, emergency procurement, cancellation of Invitations to Bid or Requests for Proposals, responsibility of bidders or offerors, and any other determination made by the Commission in the course of its purchasing activity shall be final and conclusive unless found by way of an appropriate proceeding to be erroneous, arbitrary or contrary to law.~~

Rulemaking Authority 350.0603, 350.127(2) FS. Law Implemented 350.0603 FS. History—New 4-12-83, Formerly 25-25.20, Repealed

25-25.020 Determinations.

Rulemaking Authority 350.0603, 350.127(2) FS. Law Implemented 350.0603 FS. History—New 4-12-83, Formerly 25-25.20, Repealed

25-25.021 Protest of Commission Decision.

~~(1) Any person adversely affected by a Commission decision or intended decision shall file a protest pursuant to Section 120.57(3), F.S.~~

~~(2) The Chairman of the Commission shall designate a Commissioner on a case by case basis to resolve protests filed pursuant to Section 120.57(3), F.S.~~

Rulemaking Authority 350.0603, 350.127(2) FS. Law Implemented 350.0603 FS. History—New 4-12-83, Formerly 25-25.21, Repealed

25-25.021 Protest of Commission Decision.

Rulemaking Authority 350.0603, 350.127(2) FS. Law Implemented 350.0603 FS. History—New 4-12-83, Formerly 25-25.21, Repealed

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25-25.022 Acquisition of Printing, Duplicating and Reproduction Equipment.

~~(1) All printing, duplicating and reproduction equipment acquired by the Commission shall be the most cost competitive, effective equipment capable of meeting the Commission's needs. In making its determination of equipment to be acquired the Commission shall consider factors which include but are not limited to:~~

~~(a) Actual and anticipated monthly printing, duplicating, or reproduction volumes;~~

~~(b) Proximity and availability of other similar equipment; and~~

~~(c) Actual and anticipated costs utilizing commercial printers compared to actual cost utilizing existing equipment together with anticipated cost of any proposed equipment.~~

~~(2) All such equipment shall be used only for the efficient and economical production of printed material directly related to business of the state.~~

~~(3) The Commission shall maintain cost records on all such equipment.~~

~~Rulemaking Authority 350.0603, 350.127(2) FS. Law Implemented 350.0603 FS. History--New 4-12-83, Formerly 25-25.22, Repealed _____.~~

25-25.022 Acquisition of Printing, Duplicating and Reproduction Equipment.

~~Rulemaking Authority 350.0603, 350.127(2) FS. Law Implemented 350.0603 FS. History--New 4-12-83, Formerly 25-25.22, Repealed _____.~~

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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 subsection 25-25.0061(1), F.A.C., for Category One per purchase. The file may consist in whole or in part of such firms that are registered with the State Purchasing Office of the Department of Management Services to do business with the State, and may be limited to such firms, 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 Division of Administrative and Information Technology Services, Facilities Management and Purchasing Section 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, F.S.;
- (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.

(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

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removal of a vendor from the mailing lists of the State Purchasing Office 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, F.A.C., 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;

(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 State Purchasing Office. 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 State Purchasing Office 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 shall reprocure the commodities or services subject to the contract. The defaulting contractor 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. 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

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~~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 shall be a cause for removing a contractor from the Commission's vendor files and mailing lists. All Commission default actions shall be promptly reported to the State Purchasing Office 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.~~

Rulemaking Authority 350.0603, 350.127(2) FS. Law Implemented 350.0603 FS. History—New 4-12-83, Formerly 25-25.23, Amended 12-24-86, Repealed _____.

25-25.023 Vendors and Suppliers.

Rulemaking Authority 350.0603, 350.127(2) FS. Law Implemented 350.0603 FS. History—New 4-12-83, Formerly 25-25.23, Amended 12-24-86, Repealed _____.

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25-25.024 Contractual Services.

(1) Competitive Bids on Purchases Exceeding the threshold amount provided in subsection 25-25.0061(1), F.A.C., for Category One – Unless an emergency exists or a service is available only from a single source or if State or Federal law prescribes with whom the agency must contract or if the rate of payment is so established, all purchases for contractual services, or for a group of individual contractual services, in excess of the threshold amount provided in subsection 25-25.0061(1), F.A.C., for Category One shall be made by formal competitive invitation to bid to the maximum extent practicable. The invitation to bid shall include a detailed description of the services sought, the date for submittal of bids, and all contractual terms and conditions applicable for the procurement of contractual services, including the criteria which shall include, but not be limited to, price, to be used in determining acceptability of the bid. If the Commission contemplates renewal of the contract it shall be so stated in the invitation to bid. No criteria may be used in determining acceptability of the bid that was not set forth in the invitation to bid. The contract shall be awarded with reasonable promptness by written notice to the responsive and responsible or qualified bidder who bids the lowest price. This bid must be determined in writing to meet the requirements and criteria set forth in the invitation to bid.

(2) Public Notice – All bid and proposal solicitations in excess of the threshold amount provided in subsection 25-25.0061(1), F.A.C., for Category Two shall be advertised at least once in the Florida Administrative Weekly and may also be noticed in newspapers of general circulation. The Commission shall give consideration to the complexity of the solicitation and give adequate notice which in no event will be less than twenty-eight (28) calendar days prior to the scheduled opening. Vendor lists of the appropriate class of vendors registered under Rule 25-25.023, F.A.C., may be solicited. These are minimum requirements and do not limit the Commission from additional notice. Public notice may be waived if the Agency Head determines in writing that an unusual problem exists so that the delay incident to advertising would be detrimental to the interest of the Commission.

(3) Request for Proposals (RFP). If the Agency Head determines that the use of competitive sealed bidding is not practicable, contractual services shall be procured by competitive sealed proposals. A request for proposals which includes a statement of the services sought and all contractual terms and conditions applicable to the procurement of contractual services, including the criteria, which shall include, but not be limited to price, to be used in determining acceptability of the proposal shall be issued. If the Commission contemplates renewal of the

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contract it shall be so stated in the request for proposals. To assure full understanding of and responsiveness to the solicitation requirements, discussions may be conducted with qualified offerors. Said offerors shall be accorded fair and equal treatment prior to the submittal date specified in the request for proposals with respect to any opportunity for discussion. The award shall be made to the responsive and responsible offeror whose proposal is determined in writing to be the most advantageous to the Commission, taking into consideration price and the other criteria set forth in the request for proposals. The contract file shall contain the basis on which the award is made.

Request for proposals may provide for discussions to be conducted by the Commission after proposals have been opened to allow clarification, provided adequate precautions are taken to treat each offer fairly and ensure that information gleaned from competing proposals are not disclosed among the offerors.

(4) Receipt and Opening of Bids and Proposals. It is the bidder's/proposer's responsibility to assure that its bid/proposal is delivered at the proper time and place of the bid opening. Bids/proposals which for any reason are not so delivered will not be considered, however, bids/proposals in the care, custody and control of the Commission at the time of the public opening will be opened and evaluated for award. Offers by telephone or telegraph are not acceptable.

Bids/proposals, upon receipt, shall be maintained unopened in a secure location until the opening time and date.

Bid/proposal opening shall be public at the date, time and location specified in the solicitation. The opening shall be conducted by an employee of the Commission and witnessed by at least one other employee of the Commission.

Bid/proposal tabulation sheets should be completed simultaneously with the public reading of prices received. Upon completion of the tabulation, a copy shall be made accessible for inspection by any interested party.

Unless an award is to be made at the opening, all present shall be advised that the reading of prices received does not imply or constitute an award.

After bids/proposals have been opened, the documents are to remain under the supervision of an employee of the Commission while being examined by any interested party.

(5) Receipt of One Bid or Proposal – If only one response to an invitation to bid or request for proposals is received, the Commission shall follow the procedures of subsection 25-25.009(6), F.A.C., with the Contractual Services Administrator providing the review and determination of the reason only one bid/proposal was received for

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contractual services.

(6) No Bid – In the event no bids or proposals are received in response to a bid solicitation or a RFP, the Commission may negotiate the best terms and conditions available.

(7) Contract Terms – Following Notice of Award, a contract shall be executed between the Agency Head and the vendor prior to the rendering of the contractual services except in the case of an emergency purchase. In the event an expansion or change of work, as described in an existing contract, becomes necessary in order for the Commission to obtain the results required by it, such work shall not begin until a contract amendment has been executed between the Agency Head and the contractor. At a minimum, the contract shall include:

(a) Scope of Services – If necessary, to be determined as provided in Commission subsection 25-25.009(8), F.A.C.;

(b) Description of Deliverables – A provision dividing the contract into units of deliverables, which shall include, but need not be limited to, reports, findings and drafts, that must be received and found acceptable, in writing, by the contract manager prior to payment;

(c) Schedule of Events – A provision specifying the criteria for receipt of deliverables and the interim and/or final dates by which such criteria must be met for completion of the contract;

(d) Funding-Out Clause – If a contract is to extend into a subsequent fiscal period, it shall contain the stipulation, “subject to availability of funds” in accordance with Commission Rule 25-25.013, F.A.C.;

(e) Travel Expense – A provision that billings for travel expenses be submitted in accordance with Section 112.061, F.S., at rates established by the Commission in accordance therewith;

(f) Cancellation clause – A provision for unilateral cancellation of the contract by the Commission in accordance with Commission Rule 25-25.014, F.A.C.;

(g) Billing – A provision that billing and the payment of charges be conditioned upon the satisfactory receipt of deliverables and that billing for all charges be in sufficient detail for proper auditing; and

(h) Renewal – Where applicable, a provision that the contract may be renewed on a yearly basis, by fiscal year, as provided in the invitation to bid or request for proposal, contingent upon satisfactory performance evaluations by the Commission and subject to the availability of funds.

(8) Contract File – The contract file shall include all pertinent information relating to the contract during the

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preparatory stages, including documentation supporting the decision to contract, a copy of the Invitation to Bid or request for proposals, documentation relating to the bid process, opening of bids/proposals, and evaluation and tabulation of bids, and determination and notice of award of contract.

~~In addition, the file should include the bidders list used for the mailing of bids or proposals, addendums to the bid, the bids of all bidders, literature and price lists submitted with the bid, a copy of the legal advertisements for bids or proposals, a copy of the requisition, a copy of the purchase order or contract and evaluation work sheets. The file should be retained in accordance with the Commission's Records Retention Schedule.~~

(9) Right of Rejection of Bids/Proposals – The Commission has the right to reject any or all bids or proposals and such reservation shall be included in all solicitations and advertisements.

Rulemaking Authority 350.0603, 350.127(2) FS. Law Implemented 350.0603 FS. History–New 4-12-83, Formerly 25-24.24, Amended 12-24-86, Repealed _____.

25-25.024 Contractual Services.

Rulemaking Authority 350.0603, 350.127(2) FS. Law Implemented 350.0603 FS. History–New 4-12-83, Formerly 25-24.24, Amended 12-24-86, Repealed _____.

25-25.025 Minority Business Companies.

~~(1) It is the policy of the Commission to encourage participation by minority business companies as defined in Section 287.012, F.S., in Commission contracts.~~

(2) If two identical bids/proposals to an invitation for bids or request for proposals are received and one response is from a minority owned company, the Commission shall enter into a contract with the minority owned company.

(3) Except for the preferences outlined in subsections 25-25.009(5) and (2), F.A.C., of this rule, the award of identical bids/ proposals shall be determined by lot.

Rulemaking Authority 350.0603, 350.127(2) FS. Law Implemented 350.0603 FS. History–New 4-12-83, Formerly 25-25.25, Repealed _____.

25-25.025 Minority Business Companies.

Rulemaking Authority 350.0603, 350.127(2) FS. Law Implemented 350.0603 FS. History–New 4-12-83, Formerly 25-25.25, Repealed _____.

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25-25.030 Leases for Real Property.

(1) The agency head may utilize the Florida Department of Management 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 60H-1, F.A.C., of the Department of Management Services' rules, or (b) the current rental rate charged by the Department of Management Services for state buildings which are a part of the Florida Facilities Pool, or (c) 90% of the Department of Management 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 60H-1, F.A.C., of the Department of Management 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 Management Services.

Rulemaking Authority 350.0603, 350.127(2) FS. Law Implemented 350.0603 FS. History—New 8-15-90, Repealed _____.

25-25.030 Leases for Real Property.

Rulemaking Authority 350.0603, 350.127(2) FS. Law Implemented 350.0603 FS. History—New 8-15-90, Repealed _____.

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25-25.0061 Purchasing Threshold Amounts and Procedures for Automatic Annual Adjustments.

~~(1) The following purchasing threshold categories are hereby established:~~

~~(a) Category One: \$11,000.~~

~~(b) Category Two: \$22,000.~~

~~(2) The purchasing threshold amounts shall be adjusted annually concurrent with the Department of Management Services (DMS) State Purchasing Office's adjustment of its threshold amounts calculated pursuant to DMS Rule 60A-1.012, F.A.C.~~

~~*Rulemaking Authority 350.0603, 350.127(2) FS. Law Implemented 350.0603 FS. History--New 12-24-86, Amended 6-19-95, Repealed*~~

25-25.0061 Purchasing Threshold Amounts and Procedures for Automatic Annual Adjustments.

~~*Rulemaking Authority 350.0603, 350.127(2) FS. Law Implemented 350.0603 FS. History--New 12-24-86, Amended 6-19-95, Repealed*~~