

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. 23280
and Adoption of Rule 25-25.030, F.A.C.,)	
pertaining to Leases for Real Property.)	ISSUED: 7-31-90
)	

NOTICE OF ADOPTION OF RULE AMENDMENT

NOTICE is hereby given that the Commission, pursuant to section 120.54, Florida Statutes, has adopted the amendments to Rule 25-25.003, F.A.C., relating to General Purchasing Definitions and the creation of Rule 25-25.030 relating to Leases for Real Property, without change. Revisions to Rule 25-25.023, F.A.C., relating to Vendors and Suppliers have been withdrawn.

The rule amendment was filed with the Secretary of State on July 26, 1990, and will be effective on August 15, 1990. A copy of the relevant portions of the certification filed with the Secretary of State is attached to this Notice.

This docket is closed upon issuance of this notice.

By Direction of the Florida Public Service Commission, this
31st day of JULY, 1990.

 STEVE TRIBBLE, Director
 Division of Records & Reporting

(S E A L)

CBM

0037G

by: Kay Jenson
 Chief, Bureau of Records

DOCUMENT NUMBER-DATE

06857 JUL 31 1990

FPSC-RECORDS/REPORTING

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CERTIFICATION OF
PUBLIC SERVICE COMMISSION ADMINISTRATIVE RULES
FILED WITH THE
DEPARTMENT OF STATE

I do hereby certify:

(1) The time limitations prescribed by paragraph 120.54(11)(a), F.S., have been complied with; and

(2) There is no administrative determination under section 120.54(4), F.S., pending on any rule covered by this certification; and

(3) All rules covered by this certification are filed within the prescribed time limitations of paragraph 120.54(11)(b), F.S. They are filed not less than 28 days after the notice required by subsection 120.54(1), F.S., and;

(a) And are filed not more than 90 days after the notice; or

(b) Are filed not more than 90 days after the notice not including days an administrative determination was pending; or

(c) Are filed within 21 days after the adjournment of the final public hearing on the rule; or

(d) Are filed within 21 days after the date of receipt of all material authorized to be submitted at the hearing; or

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L/ (e) Are filed within 21 days after the date the transcript was received by this agency.

Attached are the original and two copies of each rule covered by this certification. The rules are hereby adopted by the undersigned agency by and upon their filing with the Department of State.

<u>Rule No.</u>	<u>Specific Rulemaking Authority</u>	<u>Law Being Implemented, Interpreted or Made Specific</u>
25-25.003	350.127(2), F.S. 120.53(1), F.S.	120.53(1), F.S.
25-25.030	350.127(2) 120.53(1), F.S.	120.53(1), F.S.

Under the provision of paragraph 120.54(12)(a), F.S., the rules take effect 20 days from the date filed with the Department of State or a later date as set out below:

Effective: _____
 (month) (day) (year)

 Steve Tribble

Director, Division of Records & Reporting Title

 Number of Pages Certified

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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, and court reporters, artistic services, academic program reviews, ~~of~~ lectures by individuals, and auditing services, and research/consulting services rendered by the National Association of Regulatory Utility Commissioners;

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(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.

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(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 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.

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(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

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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

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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 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,

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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 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

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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.

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SUMMARY OF RULE

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

SUMMARY OF HEARINGS ON THE RULE

On July 17, the Commission held a final public meeting on the rule proposals. No comments had been filed by any participants and no hearing had been requested. However, Joint Administrative Procedures Committee staff objected to the use of the word "may" in proposed revisions to Rule 25-25.023, relating to vendors and suppliers. Commission staff recommended withdrawing that rule from final action, and the Commission voted to withdraw it.

FACTS AND CIRCUMSTANCES JUSTIFYING THE RULE

Rule 25-25.003 revisions would codify guidance that the Commission may negotiate and contract with the research/consulting services of the National Association of Regulatory Utility Commissioners (NARUC) in the same manner as the Commission may do with other governmental agencies. The National Regulatory Research Institute is the research arm of NARUC, which conducts utility-related studies.

The creation of Rule 25-25.030 on leases for real property would provide guidance for the Commission's leasing procedures. The rule would allow for negotiating for office space in certain circumstances.