

Notice of Proposed Rule

FLORIDA HOUSING FINANCE CORPORATION

RULE NOS.: RULE TITLES:

<u>67-49.0005</u>	<u>General Provisions</u>
67-49.001	Definitions
67-49.002	Procurement of Commodities or Contractual Services
67-49.003	Withdrawal of a Competitive Solicitation
67-49.0031	Emergency Purchases; Single Source
<u>67-49.0032</u>	<u>Single Source Purchases</u>
67-49.004	Modification of Terms of a Competitive Solicitation
67-49.005	Responsibility of Bidders and Offerors
67-49.007	Evaluation of Responses
67-49.011	Nonresponsive Bids
67-49.012	Contract Administrator and Managers <u>Manager</u>
67-49.013	Contracts; Terms, Amendments, Renewals

PURPOSE AND EFFECT: The purpose of this Rule Chapter is to establish the procedures by which the Florida Housing Finance Corporation will procure commodities and contractual services, and to specify which portions of part I of Chapter 287, F.S., are applicable.

SUMMARY: The rule chapter is being amended to clarify terms, eliminate unnecessary definitions, and revise some sections to be consistent with state agencies. Emergency purchase provisions are being separated from single source purchases. A new rule is created in order to set forth certain general provisions that apply to the entire rule chapter. The Corporation is specifically exempting itself from certain training requirements that are unavailable to it.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS AND LEGISLATIVE RATIFICATION: The Agency has determined that these proposed rule changes will not have an adverse impact on small business or likely increase directly or indirectly regulatory costs in excess of \$200,000 in the aggregate within one year after the implementation of the rule. A SERC has not been prepared by the Agency. The Agency has determined that the proposed rule is not expected to require legislative ratification based on the information expressly relied upon and described herein. The rule is not likely to have an adverse impact on economic growth, private sector job creation or employment, or private sector investment in excess of \$1 million in the aggregate within 5 years after the implementation of the rule. The rule is not likely to have an adverse impact on business competitiveness, including the ability of persons doing business in the state to compete with persons doing business in other states or domestic markets, productivity, or innovation in excess of \$1 million in the aggregate within 5 years after the implementation of the rule. In addition, the rule is not likely to increase regulatory costs, including any transactional costs, in excess of \$1 million in the aggregate within 5 years after the implementation of the rule. Any person who wishes to provide information regarding a statement of estimated regulatory costs, or provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

RULEMAKING AUTHORITY: 420.507(12) FS.

LAW IMPLEMENTED: 420.507(13), (27) FS.

A HEARING WILL BE HELD AT THE DATE, TIME, AND PLACE SHOWN BELOW:

DATE AND TIME: -----

PLACE: Florida Housing Finance Corporation, 227 North Bronough Street, 6th Floor Seltzer Room, Tallahassee, FL 32301

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Jenny Marshall, Florida Housing Finance Corporation, 227 North Bronough Street, Suite 500, Tallahassee, FL 32301, email Jenny.Marshall@floridahousing.org.

THE FULL TEST OF THE PROPOSED RULE IS:

67-49.0005 General Provisions.

(1) Section 420.507(27), F.S., authorizes the Corporation to establish procedures and practices to implement the purchase and procurement of materials and services for use by the Corporation. Except as provided below, the provisions of part I of Chapter 287, F.S., apply to such purchases unless a different or additional procedure or practice is set forth in this Chapter.

(a) Subsections 287.057(14), (16), and (22), F.S.

(b) Section 287.0571, F.S.

(c) Section 287.059, F.S.

(d) Section 287.063, F.S.

(e) Section 287.064, F.S.

(2) Interested parties that wish to protest the terms of any competitive solicitation issued pursuant to this rule chapter may only do so pursuant to the procedures set forth in Section 120.57(3), F.S., and Chapter 28-110, F.A.C.

(3) This Chapter does not apply to any competitive solicitation issued through any Corporation program to allocate or award funding for the construction, rehabilitation, preservation, or purchase of affordable housing.

Rulemaking Authority 420.507(12) FS. Law Implemented 420.507(13), (27) FS. History—New _____.

67-49.001 Definitions.

As used in this rule, the term:

(1) through (3) No change

~~(4) “Competitive Sealed Bids” or “Competitive Sealed Proposals” refers to the receipt of two or more sealed bids or proposals submitted by responsive Bidders or Offerors.~~

~~(4)(5) “Competitive Solicitation” or “Solicitation” means any Request for Proposals, Request for Qualifications, Invitation to Bid, Invitation to Negotiate, or other process of requesting and receiving two or more sealed bids, proposals, or replies in accordance with the terms of a competitive process, regardless of the method of procurement, including any publication or transmission by electronic means.~~

~~(6) “Contractor” means a person or entity who enters into a written contract to sell commodities or provide contractual services to the Corporation.~~

~~(5)(7) “Contractual Service” means the rendering by a contractor of its time, skill and effort rather than the furnishing of specific commodities. The term applies only to those services rendered by individuals and firms who are independent contractors, and such services may include: evaluations; consultations; maintenance; accounting; security; management systems; management consulting; educational training programs; research and development studies or reports on the findings of consultants engaged there under; and professional, technical, and social services.~~

~~(6)(8) No Change~~

~~(9) “Days” means calendar days unless otherwise specified.~~

~~(10) “FAR” means the Florida Administrative Register. All references to FAR in this rule chapter shall also be read to include any other written or electronic publication or information delivery system designated by Florida Statute or by rule of the Florida Department of State or Florida Department of Management Services as an acceptable alternative means of publication.~~

~~(11) “Good Purchasing Practices” means obtaining at least two (2) written quotations or making a written record of at least two quotes obtained verbally, including the name and address of the company and amount quoted, for Contractual Services or Commodities that exceed five thousand (\$5,000) and are not available through a vendor under a contract negotiated by the Florida Department of Management Services. If the Corporation does not obtain at least two (2) quotations, the Corporation shall document as to why they were not obtained.~~

~~(7)~~(12) “Invitation to Bid” means a written solicitation requesting competitive sealed bids specifically defining the eCommodity, service, group of commodities or group of services for which bids are sought. It includes instructions prescribing all conditions for bidding and shall be available to all prospective Bidders simultaneously.

~~(8)~~(13) No Change

~~(14)~~ “Minority Business Enterprise” has the same definition as in Section 288.703, F.S.

~~(9)~~(15) “Minor Irregularity” means a variation from a mandatory term or condition of a competitive solicitation that does not materially affect the price of the Ceommodity or Contractual service, or give the Bidder ~~or Offeror~~ an advantage or benefit not enjoyed by other Bidders ~~or Offerors~~, and does not adversely impact the interests of the Corporation or the public.

~~(10)~~(16) “Publication,” means the publishing or posting of notice regarding solicitations, decisions or intended decisions, or other matters relating to procurement under this rule, on the Corporation Wwebsite section designated for this purpose,

~~(11)~~(17) “Publication Date” means the date on which the Corporation publishes the notice of the availability of the competitive solicitation on the Corporation Website ~~and in the FAR~~ For purposes of Section 120.57(3), F.S., publication occurs at the time and on the date the notice is posted on the Corporation Wwebsite.

~~(18)~~ “Request for Proposals” means a written solicitation requesting competitive sealed proposals. ~~The Request for Proposals is used when the Corporation is incapable of specifically defining the scope of work for which the commodity, group of commodities or contractual service is required and when the corporation is requesting that a qualified Offeror propose a commodity, group of commodities or contractual service to meet the specifications of the solicitation document. The Request for Proposals includes general information, applicable laws and rules, functional or general specifications, statement of work, proposal instructions and evaluation criteria.~~

~~(12)~~(19) “Request for Qualifications” means a written solicitation requesting competitive sealed qualifications. The Request for Qualifications is used ~~utilized~~ when the Corporation does not have a specific immediate need for a particular service, but desires to have qualified individuals or firms under contract ~~that which~~ can be assigned duties as the need arises over a period of time. The Request for Qualifications includes general information, applicable laws and rules, functional or general specifications, statement of work, instructions and evaluation criteria.

~~(13)~~(20) “Response” means the written submission by a Bidder ~~or Offeror~~ addressing a competitive solicitation.

~~(21)~~ “Valid Emergency” means a circumstance caused by an unexpected turn of events beyond the control of the Corporation involving the security, integrity or the financial status of the Corporation; or involving public health, welfare, safety, injury or loss.

~~(14)~~(22) No change

Rulemaking Authority 420.507(12) FS. Law Implemented 420.507(13), (27) FS. History—New 1-31-99, Amended 3-12-02, 9-14-03, 2-24-14, _____.

67-49.002 Procurement of Commodities or Contractual Services.

(1)(a) When the purchase price of a commodity or contractual service does not exceed ~~thirty five thousand dollars~~ (\$35,000) in any 12-month period ~~fiscal year~~, including all delivery costs and administrative costs, then the Corporation may proceed with the procurement of commodities or contractual services without a competitive solicitation. In these instances, but the Corporation must obtain at least two written quotations or make a written record of at least two quotes obtained verbally, including the name and address of the company and amount quoted, for Contractual Services or Commodities that exceed \$15,000 and are not available through a vendor under a contract negotiated by the Florida Department of Management Services. If the Corporation does not obtain at least two quotations, the Corporation shall document why they were not obtained use Good Purchsing Practices.

(b) When the purchase price of Ceommodities or Contractual Sservices exceeds or is estimated to exceed ~~thirty five thousand dollars~~ (\$35,000), in any ~~twelve~~ (12) month period, purchases of these Ceommodities or Contractual Sservices, except as otherwise provided in subsections 67-49.002(4) and (5), F.A.C., must be made pursuant to a competitive solicitation.

~~(2) Public notice of any competitive solicitation shall be given in advance of the due date of the Responses as provided herein to permit Bidders and Offerors to prepare and submit Responses in a timely fashion. Notice shall~~

~~include, at a minimum, publication in the FAR.~~

~~(2)(3)~~(a). The Corporation shall post any competitive solicitation on its Website ~~not later than the publication of the FAR notice.~~ There will be a minimum of ~~7 fourteen~~ (14) days between the publication date of the notice in FAR and the due date of the responses. The competitive solicitation shall describe the Commodities or Services, and require prices, fees, or both to be stated in the Response, and include the contract period(s).

(b) For those contracts that are subject to renewal, the contract award shall include an evaluation of offers or bids for the entire initial contract period, ~~including the renewals(s).~~ Pricing for any optional renewal periods may be negotiated at the time of renewal.

~~(3)(4)~~ The purchase of Commodities or Contractual Services are exempt from competitive solicitation if the Corporation purchases such services or commodities from a vendor under a contract negotiated and executed by the Florida Department of Management Services.

~~(4)(5)~~ The following Contractual Services and Commodities are not subject to the competitive sealed response bid requirements of paragraph (1)(b):

(a) through (d) No change

(e) Services or Commodities provided by governmental entities, including, but not limited to, Florida State Universities and State Colleges, or by any independent, nonprofit college or university which is accredited by the Southern Association of Colleges and Schools and is located within the state.

(f) No change.

~~(6) This rule does not apply to any competitive solicitation issued through any corporation program to allocate or award funding for the construction, rehabilitation, preservation, or purchase of affordable housing.~~

Rulemaking Authority 420.507(12) FS. Law Implemented 420.507(13), (27) FS. History—New 1-31-99, Amended 3-12-02, 9-14-03, 2-24-14, .

67-49.003 Withdrawal of a Competitive Solicitation.

(1) The Corporation may withdraw any competitive solicitation at any time prior to the due date of the Responses when the withdrawal is determined by the Executive Director to be in the best interest of the Corporation or the public. Notice of such determination shall be posted on the Corporation's Website ~~and published in the next available FAR.~~

(2) Any Bidder or Offeror may request to withdraw its Response, in writing, at any time prior to a vote by the Corporation's Board of Directors regarding any Responses received.

Rulemaking Authority 420.507(12) FS. Law Implemented 420.507(13), (27) FS. History—New 1-31-99, Amended 3-12-02, 9-14-03, 2-24-14, _____.

67-49.0031 Emergency Purchases; Single Source.

~~(1)~~ The Corporation's Executive Director may waive any requirement of this rule and permit emergency purchases of commodities and contractual services where a valid eEmergency exists and is documented in writing. Any circumstance caused by an unexpected turn of events beyond the control of the Corporation involving the security, integrity or the financial status of the Corporation, or involving public health, welfare, safety, injury or loss, shall be construed as a valid emergency.

~~(2) The Board may exempt commodities or contractual services from competitive solicitation requirements upon a determination by the executive director that such commodities or services are most readily available from a single source or that the best interests of the Corporation or the public are served by obtaining such commodities or services from a single source. Upon such determination, the Corporation shall electronically post a description of such commodities or services for at least seven (7) business days, including a request that prospective vendors provide information regarding their ability to supply the described commodities or contractual services sought. If the executive director, after reviewing any information received from prospective vendors, determines that the commodities or contractual services are practically available only from a single source, the Corporation shall provide notice of its intended decision to enter a single source purchase contract in the manner specified in Section 120.57(3), F.S~~

Rulemaking Authority 420.507(12) FS. Law Implemented 420.507(13), (27) FS. History—New 3-12-02, Repromulgated 9-14-03,

Amended 2-24-14, _____.

67-49.0032 Single Source Purchases.

(1) For purchases estimated not to exceed \$35,000 in a 12-month period, the Executive Director shall exempt Commodities and Contractual Services from the requirements set forth in paragraph 67-49.002(1)(a), F.A.C., upon a determination that such Commodities or Services are most readily available from a single source or that the best interest of the Corporation or the public are served by obtaining such Commodities or Services from a single source.

(2) Upon a determination by the Executive Director that Commodities or Contractual Services that are otherwise required to be purchased through a competitive solicitation are most readily available from a single source, or that the best interests of the Corporation or the public are served by obtaining such Commodities or Services from a single source, the Corporation shall electronically post a description of such Commodities or Services for at least 7 business days, including a request that prospective vendors provide information regarding their ability to supply the described commodities or contractual services sought. If the Executive Director, after reviewing any information received from prospective vendors, determines that the Commodities or Contractual Services are practically available only from a single source, or that the best interests of the Corporation or the public will be served by obtaining such Commodities or Services from a single source, the Board may exempt such Commodities or Contractual Services from competitive solicitation requirements. The Corporation shall provide notice of the Board's decision to enter a single-source purchase contract.

Rulemaking Authority 420.507(12) FS. Law Implemented 420.507(13), (27) FS. History–New _____.

67-49.004 Modification of Terms of a Competitive Solicitation.

(1) The Corporation may modify the terms of a competitive solicitation at any point prior to the due date of the Responses. A notice of modification will be posted on the Corporation's Website ~~and sent to all Bidders and Offerors by facsimile or email~~. Any Bidder ~~or Offeror~~ shall have at least ~~seven~~ (7) days from the date of the posting of the notice of the modification to submit or modify its Response.

(2) Any Bidder ~~or Offeror~~ may modify its Response at any time prior to the Response deadline.

Rulemaking Authority 420.507(12) FS. Law Implemented 420.507(13), (27) FS. History–New 1-31-99, Amended 3-12-02, 9-14-03, 2-24-14, _____.

67-49.005 Responsibility of Bidders ~~and Offerors~~.

The failure of a Bidder ~~or Offeror~~ to supply required information in connection with a competitive solicitation shall constitute nonresponsiveness with respect to its Response. If a determination of nonresponsiveness is made by the Corporation, the Response will not be considered.

Rulemaking Authority 420.507(12) FS. Law Implemented 420.507(13), (27) FS. History–New 1-31-99, Amended 3-12-02, Repromulgated 9-14-03, Amended 3-11-14, _____.

67-49.007 Evaluation of Responses.

(1) Notwithstanding the provisions set forth in Section 287.057, Fla. Stat., relating to the composition of review committees, tThe Corporation shall establish a review committee ~~composed only of employees of the Corporation~~ to evaluate ~~r~~Responses to appropriate competitive solicitation types, and shall provide their conclusions findings, recommendations, or both to the Board of Directors of the Corporation.

(2) Notwithstanding the provisions set forth in Section 287.057, Fla. Stat. relating to the persons conducting negotiations, the Corporation shall appoint persons to conduct negotiations for appropriate competitive solicitation types. Negotiators and review committee members shall not be required to be Florida Certified Contract Negotiators or Project Management Professionals.

Rulemaking Authority 420.507(12) FS. Law Implemented 420.507(13), (27) FS. History–New 1-31-99, Amended 3-12-02, Repromulgated 9-14-03, Amended 2-24-14, _____.

67-49.011 Nonresponsive Bids.

If not more than one responsive Bid, Proposal, or Response to any competitive solicitation is received, the Corporation

shall negotiate for the Ceommodities or Sservices sought, on the best terms and conditions. The Corporation shall document the reasons that such action is in the best interest of the Corporation in lieu of resoliciting.

Rulemaking Authority 420.507(12) FS. Law Implemented 420.507(13), (27) FS. History--New 9-14-03, Amended 2-24-14, _____.

67-49.012 Contract Manager ~~Administrator and Managers~~

(1) The Corporation will designate at least one employee as a contract administrator who will ~~contract manager~~ shall be responsible for preparing solicitations for publication, for publishing notice of solicitations, review committee meetings, and board awards, preparing drafts of contracts, maintaining contract files, ~~financial information, and a tracking system on all contractual services contracts,~~ and serving as liaison with the contractor for solicitations and contracts under this rule.

(2) For each contract, the Corporation will designate at least one employee as a contract manager who will be responsible for enforcing performance of the contract terms and conditions and serve as a liaison with the contractor.

Rulemaking Authority 420.507(12) FS. Law Implemented 420.507(13), (27) FS. History--New 9-14-03, Amended 2-24-14, _____.

67-49.013 Contracts; Terms, Amendments, Renewals.

(1) Each contract shall embody all provisions and conditions of the procurement including at a minimum:

(a) No change

(b) Requirements that travel expense bills or reimbursements not exceed the maximums provided in Sections 112.061(6) and (7), F.S.;

(c) through (e) No change

(2) through (3) No change

(4) Contracts shall be executed by the Executive Director or a designee.

Rulemaking Authority 420.507(12) FS. Law Implemented 420.507(13), (27) FS. History--New 2-24-14, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Jenny Marshall, Florida Housing Finance Corporation, 227 North Bronough Street, Suite 500, Tallahassee, FL 32301, (850)488-4197

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Bernard Smith, Chairman of the Board, Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32031-1329, (850)488-4197

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: -----, 2017.

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAR: August 8, 2017