

**THE FLORIDA POLYTECHNIC UNIVERSITY BOARD OF TRUSTEES
NOTICE OF PROPOSED REGULATION**

REGULATION NUMBER AND TITLE: FPU-8.003 Authority to Suspend or Debar Contractors/Vendors.

SUMMARY OF THE REGULATION: This regulation specifies the grounds for suspending or debaring a Contractor/Vendor and the procedures to be followed when suspending, debaring, or reinstating a contractor/vendor.

TEXT OF REGULATION: The full text of the Proposed Regulation can be viewed below and on the Florida Polytechnic University Board of Trustees website, at <<http://floridapolytechnic.org/board-of-trustees/university-policies-and-regulations/>>. If you would like a copy of the Proposed Regulation, please contact Bacogie Luke, Administrative Assistant to the VP and General Counsel at (863)583-9061.

AUTHORITY: Board of Governors Regulations 1.001(7), and 18.001.

NAME OF PERSON INITIATING PROPOSED REGULATION: Gina DeIulio, VP and General Counsel.

ANY PERSON SEEKING TO COMMENT ON THE PROPOSED REGULATION MUST SUBMIT COMMENTS IN WRITING TO THE CONTACT PERSON LISTED BELOW. ALL WRITTEN COMMENTS MUST BE RECEIVED BY THE CONTACT PERSON WITHIN 14 CALENDAR DAYS OF THE DATE OF PUBLICATION OF THIS NOTICE.

THE CONTACT PERSON REGARDING THIS REGULATION IS: Bacogie Luke, Administrative Assistant to the VP and General Counsel at 439 South Florida Avenue, Suite 300, Lakeland, Florida 33810, Email: bluke@floridapolytechnic.org, Phone: (863)583-9061, Fax: (863)583-9070.

DATE OF PUBLICATION: November 12, 2013

THE FULL TEXT OF THE PROPOSED REGULATION IS PROVIDED BELOW:

FPU-8.003 Authority to Suspend or Debar Contractors/Vendors.

(1) The President or designee shall be authorized to suspend or debar Contractors/Vendors from competing for and receiving future contracts with the University. Debarment or suspension is a serious action which must be based on adequate evidence rather than mere accusation. The assessment should include an examination of basic documents, such as contracts, inspection reports and correspondence. Debarment or suspension will be for the purpose of protecting the interests of the University.

This regulation does not apply to contractors and subcontractors for University construction projects – decisions regarding the disqualification of contractors and subcontractors for university construction projects shall be governed by Florida Board of Governors' regulation 14.022 and any university procedures implementing that regulation.

(2) Grounds for Suspension (temporarily restricts a Contractor/Vendor from receiving contracts with the University):

(a) Contractor/Vendor has failed to comply with the conditions, specifications, drawings or terms of its contractual agreement with the University on any one (1) contract.

(b) Contractor/Vendor is charged before a court of competent jurisdiction with committing a fraud, misdemeanor or felony in connection with the Contractor's/Vendor's commercial enterprise. (If charges are dismissed or if the Contractor/Vendor is found not guilty of the charge(s), the University will lift the suspension immediately upon being notified of such by the Contractor/Vendor.)

(c) Contractor/Vendor is in bankruptcy.

(d) Contractor/Vendor has violated University regulations, policies, or procedures.

(3) Grounds for Debarment (precludes Contractor/Vendor from receiving future contracts with the University for a minimum of three (3) years):

(a) Contractor/Vendor's willful failure to fully comply with the conditions, specifications, drawings or terms of its contractual agreement with the University two (2) or more times in any twelve (12) month period.

(b) Contractor/Vendor is convicted by, or there is a judgment obtained in, a court of competent jurisdiction for commission of a fraud or criminal offense in connection with the Contractor's/Vendor's commercial enterprise. However, if the conviction or judgment is reversed through the appellate process, the University shall remove the debarment immediately upon being notified by the Contractor/Vendor of such reversal.

(c) Contractor/Vendor's violation of the federal anti-trust laws arising out of submission of bids or proposals.

(d) Contractor/Vendor has a history of failure to perform, or of unsatisfactory performance, in accordance with the terms of one or more contracts, provided that such failure or unsatisfactory performance is within a reasonable period of time preceding the determination to debar. (Failure to perform or unsatisfactory performance caused by acts beyond the control of the Contractor/Vendor shall not be considered as a basis for debarment.)

(4) Any suspension or debarment under this regulation shall not become effective until twenty-one (21) days after the date of the University's notification letter to the Contractor/Vendor

informing the Contractor/Vendor of the intended action. This written notification letter shall clearly state the University's reasons for the suspension or debarment and shall inform the Contractor/Vendor that the action shall become final within twenty-one (21) days after the date of the notification ("effective date") unless:

(a) The Contractor/Vendor demonstrates to the University's satisfaction that it has complied with all lawful requirements to remain eligible to participate in the University's procurement process, or

(b) The Contractor/Vendor requests a review of the proposed suspension or debarment action by filing a written request for review within twenty-one (21) days of the date of the University's written notification letter regarding the suspension or debarment. Should a request for review of the suspension or debarment be timely filed, the proposed suspension or debarment shall be held in abeyance, unless the University decides otherwise and communicates that decision in writing to the Contractor/Vendor. A request for review of the proposed suspension or debarment action shall be reviewed by the President or designee. The Contractor/Vendor must submit written materials to support its request for review. At the Contractor's/Vendor's request, the President or designee will convene a meeting with the Contractor/Vendor and a representative of the procuring department to discuss the suspension or debarment decision. The President or designee shall render a written decision to uphold, reverse, or modify the suspension or debarment within twenty (20) business days of such meeting. This decision shall be final and binding on the Contractor/Vendor and on the procuring department.

(5) Suspension shall be for a minimum period of one (1) year from the effective date. Debarment shall be for a minimum period of three (3) years from the effective date.

(6) A Contractor/Vendor that has been suspended or debarred and wishes to be reinstated for contracting purposes must submit a written request for reinstatement to the President or designee a minimum of ninety (90) calendar days before the end of the designated suspension period or debarment period.

(7) Contractor/Vendor's failure to request reinstatement in a timely fashion shall automatically constitute an extension of the suspension or debarment period by one (1) year.

(a) The Contractor/Vendor's request for reinstatement shall be submitted in writing and in sufficient detail for the President or designee to be able to make a decision whether to continue or rescind the suspension or debarment. The request must thoroughly show that the action that perpetuated suspension or debarment has been corrected and that action has been taken to ensure the violation does not reoccur.

(b) The President or designee shall render a written decision to continue or rescind the suspension or debarment within twenty (20) business days of the University's receipt of the Contractor/Vendor's request. This decision shall be final and binding on the Contractor/Vendor and on the procuring department.

Authority: FBOG Regulations 1.001, 18.001.

History – New ____.