

SECTION 4 - VENDOR QUALIFICATION, PREQUALIFICATION AND SOLICITATION

4.1 DEFINITIONS

4.1.1 "Bidder" shall mean any person submitting a competitive bid in response to a solicitation.

4.1.2 "Bidders Lists" shall mean lists maintained by the Purchasing Agent containing the names and addresses of suppliers of various goods and services from whom bids, proposals, and quotations may be solicited.

4.1.3 A "Handicapped Business Enterprise" shall mean a small business concern, owned and controlled by one or more handicapped persons certified by the Rhode Island Handicapped Products Committee to meet the definition established by Chapter 37-2.2-2 of the General Laws of Rhode Island.

4.1.4 A "Minority Business Enterprise" shall mean a small business concern, owned and controlled by one or more minorities or women certified by the Rhode Island Department of Economic Development to meet the definition established by Chapter 37-14.1 of the General Laws of Rhode Island. A "small disadvantaged business" shall mean a minority business enterprise.

4.1.5 "Offeror" shall mean an individual who proposes a specific offer to sell goods and services to the state, whether in response to a bid or request for proposals or unsolicited.

4.1.6 "Proposer" shall mean a person submitting a proposal in response to a Request for Proposal.

4.1.7 "Qualified Bidder" shall mean a bidder determined by the Purchasing Agent to meet standards of business competence, reputation, financial ability, and product quality.

4.1.8 [37-2-15(6)] "Responsible Bidder" shall mean a qualified bidder who has the capability in all respects including financial responsibility to perform fully the contract requirements, and the integrity and reliability which will assure good faith performance.

4.1.9 A "Small Disadvantaged Business" shall refer to either a "minority business enterprise" or a "handicapped business enterprise" as defined above.

4.1.10 "Supplier" shall mean an actual or potential contractor; a vendor.

4.1.11 "Vendor" shall mean a supplier or contractor.

4.2 RESPONSIBILITY AND AUTHORITY OF THE PURCHASING AGENT - Unless notified in writing by the Chief Purchasing Officer to the contrary, the Purchasing Agent shall be authorized to act on behalf of the Chief Purchasing Officer in carrying

out the responsibilities and authority set forth herein for selection, evaluation, approval, debarment, suspension, rejection, and restriction of bidders and offerors.

4.3 RESPONSIBILITIES OF BIDDERS AND OFFERORS

4.3.1 [37-2-24(1)] A reasonable inquiry to determine the responsibility of a bidder or offeror may be conducted. A written determination of responsibility of a bidder or offeror shall be made and it shall be made in accordance with regulations issued by the Chief Purchasing Officer. The failure of a bidder or offeror to supply information promptly in connection with an inquiry related to responsibility may be grounds for a determination of nonresponsibility.

4.3.1.1 "Prompt" shall mean five (5) working days unless otherwise specified by the Purchasing Agent.

4.3.1.2 [37-2-24(2)] Except as otherwise provided, by law, information furnished by a bidder or offeror pursuant to this Section may not be disclosed outside of the Division of State Purchasing or the purchasing agency administering the contract without prior written consent of the bidder or offeror.

4.3.1.3 The Purchasing Agent may utilize factors such as financial capability, reputation, management, etc., to evaluate the responsibility and qualifications of potential suppliers in order to develop a list of prospective bidders qualified to be sent invitations to bid.

4.3.1.4 Ability to meet performance bond requirements set forth for public works contractor in Chapters 37-12 and 37-13-14 shall be valid criteria for determination of responsibility, provided that the Chief Purchasing Agent may waive such requirement for good cause for contracts not exceeding fifty thousand dollars (\$50,000).

4.3.1.4.1 "Public Works Contractor" shall mean a contractor, in accordance with Chapter 37-12-1 of the General Laws of Rhode Island, every person (including co-partnerships, joint enterprises and corporations) being awarded contracts by the departments of administration or transportation for construction, improvement, completion or repair of any public building, or portion thereof.

4.3.1.5 The Purchasing Agent may require interested suppliers to submit completed state Bidder Registration Forms to the Office of Purchases for consideration by the Purchasing Agent.

4.3.1.5.1 A copy of the state's General Terms and Conditions for contracts shall be distributed with the Bidder Registration Form.

4.3.1.5.2 The Bidder Registration Form shall be signed by a representative of the supplier who has the capacity to enter into contracts. The signature shall be an original signature made in ink and dated by the signatory. The signature shall affirm that:

(a) any and all information on the Registration Form is true and accurate;

(b) the existence of relationship (blood, spousal, adoptive, financial, etc.) between a

principal of the firm and any state employee where a conflict of interest may exist has been disclosed; and

(c) that falsification of information contained on a signed Registration Form may be grounds for criminal charges of perjury and that conviction of such charges may be grounds for debarment.

4.3.1.5.3 As a prerequisite condition for contract award, the Purchasing Agent may require any bidder to complete a Bidder Registration Form and/or submit current certifications of financial responsibility, affirmative action compliance, drug-free and barrier free environment, and status as small, women-owned and/or disadvantaged businesses.

4.4 BIDDERS LISTS. Bidders Lists shall be maintained by the Purchasing Agent consisting of the names and addresses of suppliers of various goods and services from whom bids, proposals, and quotations can be solicited.

4.4.1 Bidders Lists shall be formatted in a manner which identifies those suppliers certified as small disadvantaged businesses by the Rhode Island Department of Economic Development or the Handicapped Products Committee.

4.4.2 The Purchasing Agent or his designee may add to or delete suppliers from Bidders Lists based on information made available to him.

4.4.3 Bidders Lists may consist of:

4.4.3.1 Registered Suppliers - the names of interested suppliers who have submitted completed Bidder Registration Forms to the Office of Purchases which have been reviewed and approved by the Purchasing Agent.

4.4.3.2 Unregistered Suppliers - suppliers which have not expressed interest in selling to the state by submitting a Bidder Registration Form, but who have been determined by the Purchasing Agent, due to the nature of the firm's status in the market, to be responsible and qualified with regard to particular commodities. Inclusion of any firm on the Bidders List without a supporting registration form shall be permitted with the written approval of the Purchasing Agent.

4.4.4 The Purchasing Agent may disqualify a supplier, contractor, or subcontractor from participating in State Bidding Lists. Just cause for such determination may include but shall not be limited to:

4.4.4.1 Lack of a properly prepared and submitted Bidder Registration Form;

4.4.4.2 Refusal to submit a Bidder Registration Form;

4.4.4.3 Falsification of information on Bidder Registration or Certification Forms;

4.4.4.4 Suspension or debarment by the federal government;

4.4.4.5 Conviction of fraud or perjury;

4.4.4.6 Lack of competence, financial responsibility, or other limitations related to the ability of a supplier to provide the goods and services indicated on his Bidder Registration Form; or

4.4.4.7 Any reason stipulated in Section 4.8 of these regulations.

4.4.5 Based on the Purchasing Agent's review of a supplier's level of financial responsibility and/or qualification, the Purchasing Agent may restrict the items or size of orders for which a supplier will be solicited. Restriction shall relate to:

4.4.5.1 limiting the kinds of goods and services for which the supplier may be solicited to a portion of those indicated on a Bidder Registration Form.

4.4.5.2 limiting the scope/amount of goods and services for which the supplier may be solicited (e.g., categorizing a contractor by the size of construction projects he is deemed capable of undertaking).

4.4.6 The Purchasing Agent may require registered suppliers to resubmit updated Bidder Registration Forms annually.

4.4.6.1 [37-2-9.1] Bidder registration fee. -- The Chief Purchasing Officer may adopt regulations to establish an annual fee, of not less than twenty-five dollars (\$25.00), which shall be paid by all potential bidders requesting to subscribe to solicitation mailings for public bids for specific types of supplies, services, and construction during a fiscal year, and may waive said fee for Rhode Island firms. Additionally, the Chief Purchasing Officer may delegate to the Purchasing Agent the authority to waive said fee for an individual solicitation and to include unregistered bidders in the solicitation in the interest of expanding competition. Nothing herein shall prevent any interested party from submitting a bid in response to any solicitation of which they become aware.

4.4.7 The Office of Purchases shall maintain Vendor Information Files for the following documentation purposes:

4.4.7.1 General.

4.4.7.1.1 Bidder Registration Forms.

4.4.7.1.2 Results of investigations for prequalification, responsibility, suspension, debarment, restriction, and nonperformance.

4.4.7.1.3 Certifications.

4.4.7.1.4 Correspondence.

4.4.7.2 Bidding history.

4.4.7.3 Performance history.

4.4.7.3.1 Solicited and unsolicited reports regarding contract performance (e.g., quality,

responsiveness) shall be recorded in the Vendor Information File.

4.4.7.3.2 Complaints shall be investigated by Office Purchases staff, the results submitted to the Purchasing Agent for adjudication, and the results documented and maintained in the Vendor Information File.

4.4.8 Potential bidders who have been determined by the Purchasing Agent to be brokers or jobbers shall not be included on State Bidders Lists.

4.4.9 Firms bidding on construction or building renovation must demonstrate an ability to perform a substantial portion of the subject work using their own forces. Bidders who do not maintain permanent workforces, or who propose to subcontract a disproportionate percentage of project work shall be considered unqualified, and the Purchasing Agent reserves the right to reject their offers.

4.5 PREQUALIFICATION OF CONTRACTORS

4.5.1 General Procurement - [37-2-25] The Chief Purchasing Officer may provide for prequalification of suppliers as responsible prospective contractors for particular types of supplies, services, and construction. Solicitation mailing lists of potential contractors of such supplies, services, and construction shall include but need not be limited to such prequalified contractors. Prequalification shall not foreclose a written determination:

(1) Between the time of the bid opening or receipt of offers and the making of an award, that a prequalified supplier is not responsible; or

(2) That a supplier who is not prequalified at the time of bid opening or receipt of offers is responsible.

4.5.2 Prequalification information may be submitted within a time period subsequent to a project bidder's conference, which period has been specified in the bid solicitation.

4.5.3 The Purchasing Agent may conduct supplementary prequalification examinations of registered bidders prior to solicitation or award which include, but are not limited to:

4.5.3.1 requirement for additional certification(s);

4.5.3.2 requirement for demonstration of additional licensure;

4.5.3.3 requirement for recent financial information;

4.5.3.4 submission of an affirmative action employment plan; and/or

4.5.3.5 submission of the names of proposed small disadvantaged business subcontractors and the value of such subcontracts.

4.5.4 Inclusion of a supplier on Bidders Lists shall not constitute a prequalification determination for a specific procurement.

4.5.5 [37-2-26] Roads - Prequalification for a contractor who bids on road work for the

Department of Transportation shall be conducted as follows:

4.5.5.1 The Chief Purchasing Officer may delegate responsibility and authority for evaluation of all or a portion of the evaluation of road work contractor prequalification documentation to the Director of the Department of Transportation.

4.5.5.1.1 Such delegation shall authorize the publication and implementation of policies and procedures which conform to the rules and regulations promulgated by the Chief Purchasing Officer in accordance with Chapter 37-2-26 of the General Laws of Rhode Island.

4.5.5.1.2 Such delegation shall be made in writing.

4.5.5.1.3 The Chief Purchasing Officer shall monitor the appropriateness and effectiveness of such delegation on a regular basis.

4.5.5.1.4 The Chief Purchasing Officer may rescind such authorization at any time provided that the rescission of such authority shall be conveyed in writing to the Director of the Department of Transportation no less than thirty-five (35) working days prior to the effective date of the rescission.

4.5.5.2 Every bid solicitation shall include within the project specification document a description of the prequalification requirements set forth herein and any additional requirements established by the Department of Transportation.

4.5.5.3 Each bidder shall submit to the Office of Purchases with his bid, the following prequalification information:

4.5.5.3.1 [37-2-26(1)] A list of equipment in his possession and which he proposes to use on the contract if awarded to him. [The equipment listed shall be in operable condition.]

4.5.5.3.2 [37-2-26(2)] The name and qualifications of his superintendent or supervisory personnel to be assigned to the major features of the work.

4.5.5.3.3 [37-2-26(3)] His financial references and an original copy of his current financial statement.

4.5.5.3.4 [37-2-26(5)] The number of proposed trainees to be trained in each classification and training program as stated in the required contract provision for federal aid projects. (This information shall be submitted directly to the Department of Transportation External Equal Employment Opportunity Office for approval.)

4.5.5.3.5 [37-2-26(9)] Copies of letters directly from bonding and insurance companies indicating their willingness to furnish the required bonds and insurance for the work.

4.5.5.3.6 [37-2-26(7)] Four (4) copies on the company's letterhead of certification of nondiscrimination in equal employment opportunity.

4.5.5.3.7 [37-2-26(6)] The name of the individual who will act as equal employment

opportunity officer for the company.

4.5.5.4 Prior to the Purchasing Agent executing a contract, the apparent successful contractor shall submit to and obtain approval from the Department of Transportation for the following:

4.5.5.4.1 [37-2-26(8)] The names of any proposed subcontractors and/or suppliers, indicating the phase and extent of the work which they will perform. If any proposed subcontractors have not performed similar work for the state, the contractor shall supply records of experience for work.

4.5.5.4.2 [37-2-26(4)] An executed contract agreement(s) between the contractor and the Department of Transportation approved qualified Disadvantaged Business Enterprise (DBE) to be utilized during the performance of the work.

4.5.6 Construction Management. In accordance with Chapter [37-2-27] a person who bids on a construction management contract shall provide the following information, which information shall constitute the prequalifications for a construction management contract:

4.5.6.1 Firm history - Name of the firm, location of principal and branch offices, length of time in business, firm ownership structure, and annual construction management volume for each of the past five (5) years including number of projects and total construction volume.

4.5.6.2 Personnel - Total number of the firm's personnel, other than secretarial/clerical, by professional or skill group and outside firms which will be used to provide such services as estimating, value engineering analysis, scheduling or computer services.

4.5.6.3 Experience - Information regarding projects which the firm has constructed during the past five (5) years, including those where the firm has served as construction manager: project name and address, year completed, type of project, construction cost, and a reference(s).

4.5.6.4 Project Staffing -

(a) The firm's proposed management staff for the project, including an organizational chart identifying the firm's key staff members and showing how each staff member interacts with other staff members assigned to the project, and

(b) A detailed resume for each key staff member which summarizes education, professional registration, professional society membership, construction experience, and construction management project experience.

4.5.6.5 Services -

(a) Scope of preconstruction phase services, including how such services are provided, with specific attention to the first budget estimate, methods of cost control, scheduling, value engineering and the method of reporting project status and schedule position;

- (b) Scope of construction phase services and how such services are to be provided;**
- (c) The firm's method of working with the project architects, engineers, consultants and other planning team members; and**
- (d) The firm's method of coordinating the efforts of various trade contractors.**

4.6 VENDOR DISQUALIFICATION

4.6.1 The Purchasing Agent may disqualify a supplier, contractor, or subcontractor from participating in state procurements. Disqualification may result in any of the following actions being taken:

4.6.1.1 Debarment - permanent removal from State Bidders Lists and exclusion from all subsequent procurements, and termination of all outstanding contracts; or

4.6.1.2 Suspension - temporary removal from State Bidders Lists and exclusion from subsequent procurements, and termination of outstanding contracts (at the discretion of the Purchasing Agent) for a specified period of time; or

4.6.1.3 Removal - deletion from State Bidders Lists (only), without interruption of outstanding contracts or the ability to participate in subsequent procurements; or

4.6.1.4 Rejection - lack of inclusion on State Bidders Lists or non-consideration of an offer submitted for a particular procurement, based on lack of demonstrated responsibility or competency.

4.7 REJECTION AND REMOVAL

4.7.1 A vendor's offer for a specific procurement may be rejected for any of the causes described for suspension, or where, in the judgment of the Purchasing Agent, the vendor does not possess the capacity, capability, or integrity requisite for the procurement.

4.7.2 Failure to respond to three consecutive solicitations for products or services which a vendor has indicated an interest or ability in supplying on a Bidder Registration form, or a demonstrated lack of success in receiving awards, shall constitute grounds for removal from the Bidders List(s) in question.

4.8 DEBARMENT AND SUSPENSION

4.8.1 Applicability

4.8.1.1 A debarment or suspension judgment against a part of a corporate entity constitutes debarment or suspension of all of its divisions and all other organizational elements, except where the action has been specifically limited in scope and application, and may include all known corporate affiliates of a contractor, when such offense or act occurred in connection with the affiliate's performance of duties for or on behalf of the contractor, or with the knowledge, approval, or acquiescence of the contractor or one or more of its principals or directors, or where the contractor otherwise

participated in, knew of, or had reason to know of the acts.

4.8.1.2 The fraudulent, criminal or other serious improper conduct of any officer, director, shareholder, partner, employee, or any other individual associated with a contractor may be imputed to the contractor when the conduct occurred in connection with the individual's performance of duties for or on behalf of the contractor, or with the contractor's knowledge, approval, or acquiescence. The contractor's acceptance of benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

4.8.2 Just cause for debarment may include, but shall not be limited to:

4.8.2.1 Conviction or final adjudication by a court or administrative agency of competent jurisdiction of any of the following offenses:

4.8.2.1.1 Criminal offense incident to obtaining or attempting to obtain a public contract or subcontract, or the performance of such contract or subcontract, in any jurisdiction, or

4.8.2.1.2 Criminal offense involving embezzlement, theft, fraud, perjury, forgery, bribery, falsification or destruction of records, receiving stolen property (or any other offense indicating a lack of business integrity or honesty which seriously and directly affects the contractor's present responsibility as a public contractor), or

4.8.2.1.3 Violation of state or federal antitrust laws relative to the submission of bids or proposals (including those proscribing price fixing between competitors, allocation of customers between competitors, and bid rigging), or

4.8.2.1.4 Violation of state or federal laws regulating campaign contributions;

4.8.2.1.5 Violation of state or federal laws regulating equal employment opportunity or handicapped access;

4.8.2.2 Violation of the terms of a public agreement or transaction so serious as to affect the integrity of any agency program;

4.8.2.3 Falsification of information on a bid submission or Bidder Registration form, subcontracting plan, or affirmative action plan;

4.8.2.4 Substantial nonperformance on two or more contracts;

4.8.2.5 Debarment by the federal government; or

4.8.2.6 Withdrawal, without written permission of the Purchasing Agent, of two or more bids after an award has been announced.

4.8.3 Just cause for suspension may include, but shall not be limited to:

4.8.3.1 Any cause for debarment, depending on the severity of the violation;

4.8.3.2 An indictment or any information filed by a public agency charging a criminal

offense as described above for debarment;

4.8.3.3 Substantial evidence of willfully supplying materially false information incident to obtaining or attempting to obtain or performing any public contract or subcontract, or willful failure to comply with requirements imposed upon contractors or subcontractors by law or regulation;

4.8.3.4 Suspension by the federal government;

4.8.3.5 Substantial nonperformance on at least one contract;

4.8.3.6 Lack of responsibility evidenced by:

4.8.3.6.1 Withdrawal of two or more bids within a two-year period, even with the consent of the Purchasing Agent, or

4.8.3.6.2 Correction following public or formal opening of two or more bids within a two-year period, even with the consent of the Purchasing Agent, or

4.8.3.6.3 Rejection for non-responsiveness of two or more bids within a two-year period.

4.8.4 A vendor or contractor who knowingly engages as a subcontractor, for a contract awarded by the State, a vendor or contractor then under a ruling of suspension or debarment by the State shall be subject to disallowance of cost, annulment or termination of award, issuance of a stop work order, debarment or suspension, as may be judged to be appropriate by the State Purchasing Agent.

4.8.5 The Purchasing Agent may suspend a vendor for not less than a three-month and not more than a two-year period, depending on the severity of a particular violation, provided however that where the cause of the suspension is a criminal indictment as described above, the suspension shall remain in force until such time as the court has disposed of the indictment.

4.8.6 Pest Control Services [37-2-73] Upon receipt of an order from the Director of Environmental Management pursuant to section 23-25-28(a)(1) RIGL, the Purchasing Agent shall take such steps as are necessary to insure that the named business or commercial applicator shall not be eligible to receive state contracts for pest control services for the duration of the period enumerated in said Director's order.

4.9 NOTIFICATION, PROTEST AND RECONSIDERATION

4.9.1 The Purchasing Agent shall notify in writing any vendor whom he intends to debar or suspend. Such notice shall:

4.9.1.1 state the nature of and, in the case of suspension, the duration of the sanction,

4.9.1.2 provide the vendor with the rationale for the decision, and

4.9.1.3 establish a specific time for reconsideration not less than two weeks nor more than three weeks within which the vendor may provide justification for why such

action should not be implemented.

4.9.2 Where reconsideration has been requested in writing by a vendor, the Purchasing Agent shall, upon expiration of the reconsideration period, notify the affected vendor of his final decision. Where no such request is received, the action shall be implemented without notice.

4.9.3 Where issuance of a purchase order or other award to a particular vendor may compromise the best interests of the State, nothing herein prevents the Purchasing Agent from directing that a suspension or debarment take effect immediately.

4.9.4 No notice shall be required where the Purchasing Agent rejects the offer of a bidder for an individual procurement, or removes a registered bidder from one or more Bidders List(s), as described above.

4.9.5 A vendor who has been suspended, or rejected from one or more Bidders List(s), shall not be reinstated until he has submitted a written request for reinstatement to the Purchasing Agent, with evidence that the reason for suspension, rejection, or removal has been corrected.

4.9.6 Protests of decisions rendered by the Purchasing Agent shall be administered in accordance with the requirements of section 37-2-52 RIGL.