STATE OF RHODE ISLAND
PROCUREMENT REGULATIONS

SECTION 9 – EXCEPTIONS TO COMPETITIVE BIDDING REQUIREMENTS

Amended regulations adopted June 20, 2011

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The following amended State of Rhode Island Procurement Regulations were adopted by me, as Director of the State of Rhode Island Department of Administration, on the _____ day of June 2011.

_____

Richard A. Licht, Director
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SECTION 9 - EXCEPTIONS TO COMPETITIVE BIDDING REQUIREMENTS

9.1 AUTHORITY TO MAKE EXCEPTIONS TO THE REQUIREMENT FOR COMPETITION

In certain circumstances competitive bidding for purchases may not be the most cost-effective approach to procurement. The Purchasing Agent may, with the approval of the Chief Purchasing Officer, waive requirements for competitive sealed bidding in accordance with the grounds permitted by law.

9.2 CIRCUMSTANCES PRESCRIBED BY LAW:

In accordance with Chapter [37-2- 54], the following exceptions to competitive bidding are permitted by statute; however, the Chief Purchasing Officer may require competitive bidding in any circumstance where he deems that competition may enhance the state's ability to attain cost savings:

9.2.1 Contractual services where no competition exists, such as telephone service, electrical energy, and other public utility services;

9.2.2 When, in the judgment of the Department of Administration, food, clothing, equipment, supplies, or other materials to be used in laboratory and experimental studies can be purchased otherwise to the best advantage of the state;

9.2.3 Instructional materials available from only one source;

9.2.4 Where rates are fixed by law or ordinance;

9.2.5 Library books;

9.2.6 Commercial items purchased for resale;

9.2.7 Professional, technical, or artistic services; (Contracts exempted by this provision shall be referred to the Governor for review and approval.)

9.2.8 Interests in real property.

9.3 GOODS OR SERVICES OBTAINED BY ONE STATE AGENCY FROM ANOTHER,

such as printing from Prison Industries or use of Central Service Accounts, shall be exempt from competition. However, internal service fund purchases shall be made in accordance with all policies and procedures for competitive procurements. NOTE: Purchases of services from state higher educational institutions are subject to competitive review and require the submission of requisitions.

9.4 SMALL PURCHASES NOT EXCEEDING $250:

Competitive bids shall not be required for purchase orders up to $250 in value if the prices are considered to be reasonable; however, agency officials shall be encouraged to obtain informal quotes.

9.4.1 It shall be the responsibility of agency personnel to exercise good judgment as to what is a fair and reasonable price.

9.4.2 Specific action to verify the reasonableness of a price shall be taken when it is suspected that the price may not be reasonable, e.g., comparison to previous price paid or personal knowledge of the item involved.

9.4.3 Agency Chief Executives shall establish guidelines to evaluate periodically the reasonableness of pricing for purchase orders up to $250.

9.4.4 Purchase orders up to $250 in value shall be distributed equitably among suppliers. Quotations should be solicited from the previous supplier and other bidders prior to placing a repeat order so as to ensure equitable distribution and enhance competition. Additional bidders should be different from previously unsuccessful bidders. When practicable, effort shall be made to solicit small disadvantaged minority or women-owned businesses.

9.4.5 Under no circumstance shall purchases exceeding $250 be artificially divided into component parts to circumvent the competitive process. User agency abuses of this limitation will be reported to the Chief Purchasing Officer who will hold agency chief executives accountable for violations.

9.5 SOLE SOURCE. [37-2-21(a)]

A contract may be awarded for a supply, service, or construction item without competition when, under published regulations, the Chief Purchasing Officer or member of the executive department, above the level of purchasing officer determines, in writing, that there is only one source for the required supply, service, or construction item.

9.5.1 The Chief Purchasing Officer may delegate the authority for determination of sole source to the Purchasing Agent.

9.5.2 Sole source categories may include:

(a) items of a unique nature which are unavailable from other sources due to patents or proprietary processes;

(b)books, maps, periodicals, and technical pamphlets, films, video and audio cassettes obtained from publishers;

(c) certain computer software;

(d) licenses - computer software, electronic transmittal;

(e) specialized replacement/repair parts or expansion parts necessary to maintain the integrity of system or function, e.g. scientific research;

(f) works of art for museum or public display;

(g) specialized services for which there is only one documented accepted source, such as transactions involving unique professional services and/or educational institutions, e.g., visiting speakers or professors, and performing artists; repair/maintenance agreements with manufacturers;

(h) advertisements, public notices in magazines, trade journals, newspapers, television;

NOTE: Purchase of advertising and public relations campaign services must be established through a competitive selection process.

9.5.3 This provision excepting sole source procurements from competitive bidding shall not be interpreted to reduce the responsibility of the Office of Purchases and/or user agencies to evaluate the market continuously to research product alternatives and develop additional sources (distributors).

9.5.4 In attempting to achieve the goal of maximizing competition to the greatest extent possible, alternative distributors and manufacturers shall be pursued to sole source items by using compatible replacement parts as long as warranties are not affected by substitution.

9.5.5 Because certain manufacturers may not be either a sole source for obtaining an item nor offer the most competitive price, agencies shall submit requisitions for sole source purchases in excess of $250 unless specifically delegated such authority by regulation or by the Purchasing Agency.

9.5.6 Maintenance contracts based upon sole source determination shall be subject to the following:

9.5.6.1 Annual maintenance contracts in excess of $1000 shall require approval by the Office of Purchases.

9.5.6.2 All multi-year contracts shall require approval by the Office of Purchases.

9.5.6.3 To achieve better pricing, when the total amount for all contracts with the same supplier exceed one thousand dollars ($1000), the agency shall submit a single purchase requisition consolidating all requirements.

9.5.7 The Chief Purchasing Officer or his designee may, at his initiation or upon the review of a justified request and/or recommendation from the chief executive officer of an agency, make a determination that a category of nonprofit providers constitutes sole source suppliers for certain types of service.

9.6 EMERGENCIES [37-2-21(b)]

Notwithstanding any other provision of Chapter 37- 2, the Purchasing Agent may make or authorize others to make emergency procurements when there exists a threat to public health, welfare or safety under emergency conditions as defined in regulations; provided, that such emergency procurements shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the contractor shall be included in the contract file.

9.6.1 In accordance with procedures established by the Purchasing Agent, authorized officials in user agencies shall be permitted to react quickly to critical situations when the cost for a remedy or repair is in excess of $250 and there is not sufficient time to undertake a public, formal, or informal bidding process.

9.6.2 An emergency shall mean a situation to which an urgent response is required. Immediate dangers to health and safety, threats to property and necessary functions, and failures of critical equipment constitute emergencies.

9.6.3 Inadequate anticipation of need shall not be considered justification for "emergency" purchases.

9.6.4 Commitments which extend beyond the immediate response to the dysfunctional emergency shall be prohibited, i.e. prevention of future problems by corrective measures other than the immediate restoration of function must be pursued through the Office of Purchases competitive purchasing process.

9.6.5 The Office of Purchases shall establish, through competitive bidding, a list of emergency response vendors and shall make such list available to user agencies.

9.6.5.1 When possible, agencies shall obtain services from a list of vendors selected by competitive process to provide specialized trade in emergencies.

5.5.5.2 If an emergency cannot be addressed by a designated vendor, the Office of Purchases shall assist in obtaining names and telephone numbers of responsible vendors.

9.6.6 Under determination of the existence of an emergency, the user agency's designated emergency response officer shall consult with the Office of Purchases before committing to a particular vendor. Office of Purchases officials shall maintain logs of all oral confirmations of authorization to proceed.

9.6.7 If the emergency occurs outside of business hours for the Office of Purchases, the user agency shall be authorized to proceed in accordance with the principles and policies of sound procurement practices outlined herein.

9.6.8 All emergency purchases shall be documented in accordance with procedures established by the Purchasing Agent. The user agency shall submit documentation for the emergency situation and response action in writing to the Purchasing Agent with the voucher for payment. All emergency documentation forms shall be signed by either the agency director or the designated emergency response official.

9.7 STANDARD OR ESTABLISHED CATALOGUE ITEMS may be identified by the Chief Purchasing Officer as exceptions to competitive bidding. Agencies officials may submit requests and justification for Delegated Purchase Authority for the acquisition of such items to the Purchasing Agent, who shall recommend an appropriate course of action to the Chief Purchasing Officer.

9.8 SPOT PURCHASES of certain items (e.g., food, heating oil) sold on the basis of posted market prices may be exempted from competition by the Purchasing Agent when market analysis indicates that such procurements are in the best interest of the state. Opportunities to take advantage of seasonal and supply/demand influences shall be taken into account when determining whether to pursue formal competitive procedures.

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