# STATE OF RHODE ISLAND
# PROCUREMENT REGULATIONS

## SECTION 5 – COMPETITIVE AND COMPETITIVE BID REVIEW AND SOURCE SELECTION

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Division of Purchases
Rhode Island Department of Administration
One Capitol Hill, Second Floor
Providence, Rhode Island 02908

Tel: (401) 574-8100

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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
State of Rhode Island
Department of Administration
One Capitol Hill
Providence, Rhode Island 02908

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## SECTION 5 – COMPETITIVE BID AND COMPETITIVE SEALED BID REVIEW AND SOURCE SELECTION


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# SECTION 5 – COMPETITIVE BID AND COMPETITIVE SEALED BID REVIEW AND SOURCE SELECTION

## 5.1 DEFINITIONS

5.1.1 "Bid" shall mean an executed document submitted by a bidder in response to an

Invitation for bids, and except as otherwise defined pursuant to RIGL 37-2-18 (a)-(h) "Competitive Sealed Bidding" and these regulations, or a Request for Quotation.

5.1.1.1 "Firm Bid" shall mean a bid that binds the bidder until a stipulated time of expiration.

5.1.1.2 "Sealed Bid" shall mean a bid which has been submitted in a sealed envelope to prevent its contents being revealed or known before the deadline for the submission of all bids to enhance fair competition, and except as otherwise defined pursuant to RIGL 37-2-18 (a)-(h) "Competitive Sealed Bidding" and these regulations.

5.1.2 "Bid Abstract" shall mean a summary of responsive bids to a solicitation.

5.1.3 "Bid Bond" shall mean an insurance agreement in which a third party agrees to be liable to pay a certain amount of money in the event that a specific bidder, if his bid is accepted, failed to accept the contract as bid.

5.1.4 "Bid Deposit" or "Bid Security" or "Bid Surety" shall mean a sum of money or check deposited with and as instructed by the prospective purchaser to guarantee the bidder (depositor) will, if selected, accept the contract in accordance with the bid.

5.1.5 "Bid opening " shall mean the process through which bids are opened and the contents revealed for the first time to the state, other bidders and to the public.

5.1.6 "Bid Sample" shall mean a sample required of a bidder for examination, comparison, testing, and evaluation for the prospective purchaser.

5.1.7 "Collusive Bidding or Corrupt Combination" shall mean the response to bid invitations by two or more vendors who have secretly agreed to circumvent laws and rules regarding independent and competitive bidding.

5.1.8 "Commodity" shall mean an article of trade, a movable article of value, something that is bought or sold; any movable or tangible thing that is produced or used as the subject of barter or sale.

5.1.9 "Competition" shall mean the process by which two or more vendors vie to secure the business of a purchaser by offering the most favorable terms as to price, quality, delivery and/or service.

5.1.10 [37-2-15(2)] "Established catalogue price" shall mean the price included in the most current catalogue, price schedule or other form that:

(a) is regularly maintained by a manufacturer or vendor of an item; and

(b) is either published or otherwise available for inspection by customers; and

(c) states prices at which sales are currently or were last made to a significant number of any category of buyers, or to the general buying public for that item; and

(d) states prices which are obtained from the most recent industry wide publications and informational journeys if any.

5.1.11 [37-2-15(3)] "Evaluated bid price" shall mean the dollar amount of a bid after bid price adjustments are made pursuant to objective measurable criteria, set forth in the invitation for bids, which affect the economy and effectiveness in the operation or use of the product, such as reliability, maintainability, useful life, and residual value.

5.1.12 "Evaluation of Bid" shall mean the process of examining a bid after opening to determine the bidder's responsibility, responsiveness to requirements, and to ascertain other characteristics of the bid that relate to determination of the successful bidder.

5.1.13 [37-2-15(4)] "Invitation for bids" shall mean all documents, whether attached or incorporated by reference, utilized for soliciting proposals in accordance with the procedures set forth in section 37-2-18 of this chapter, and except as otherwise defined pursuant to RIGL 37-2-18 (a)-(h) "Competitive Sealed Bidding."

5.1.14 "Proposal Evaluation Criteria" shall mean factors, usually weighted, relating to management capability, technical capability, manner of meeting performance requirements, price and other important considerations used to evaluate which proposer in a competitive negotiation has made the most advantageous offer.

5.1.15 [37-2-76.1)] "Recycled product" shall mean a product containing pre-consumer content and post-consumer content.

5.1.15.1 "Pre-consumer content" shall mean any material generated during any steps in the production of an end product, but does not include any waste material or byproduct that can be reused or has been normally reused within the same plant or another plant of the same parent company.

5.1.15.2 "Post-consumer content" shall mean those materials generated by a business or consumer which have served their intended end uses and which have been separated or diverted from solid waste. Printer's waste, lathe wastes, and other wastes generated during production of an end product and undistributed finished products are not "post-consumer content."

5.1.15.3 "Office paper products" shall mean any paper used by the state for the purpose of writing, printing, copying, and/or typing, including, but not limited to, computer, bond, xerographic, forms and/or duplicator paper, envelopes, business cards, index cards, and writing pads, either white or colored.

5.1.16 "Request for bids" shall mean a solicitation which consists of a specific description of the goods and services, to which necessary blueprints, specifications, and special conditions are appended, and except as otherwise defined pursuant to RIGL 37-2-18 (a)-(h) "Competitive Sealed Bidding."

5.1.17 "Request for Information (RFI)" shall mean a document used in informal, uncompetitive solicitation of information, data, comments, or reaction from possible suppliers preceding the issuance of a Request for Proposals or a multi-step bidding process.

5.1.18 In accordance with [37-2-15(5)] "Request for Proposal (RFP)" shall mean all documents, whether attached or incorporated by reference, utilized for soliciting (competitive) proposals.

5.1.19 "Request for Quotation (RFQ)" shall mean a document or oral solicitation used for seeking competition on small purchases or on any purchase lower than the amount that requires competitive bidding.

5.1.20 [37-2-7(17)] "Requisition" or a "purchase request" shall mean a document whereby a using agency requests that a contract be entered into to obtain goods and/or services for a specified need, and may include, but is not limited to, the technical description of the requested item, delivery requirements, transportation mode request, criteria for evaluation of proposals, and/or suggested sources of supply, and information supplied for the making of any written determination and finding required by section 37-2-6 of this chapter.

For the purposes of establishing rules and regulations pursuant the Chapter 37-2, a "requisition" shall also mean an internal document by which a using agency requests the Office of Purchases to initiate a procurement. The request may include, but is not limited to, a performance or technical description of the requested item, delivery schedule, transportation mode, criteria for evaluation, suggested sources of supply, and information related to the making of any written determination required by policy or procedure.

5.1.21 [37-2-15(7)] "Responsive Bidder" shall mean a person who has submitted a bid under section 37-2-20 of this chapter which conforms in all material respects to the invitation for bids, so that all bidders may stand on equal footing with respect to the method and timeliness of submission and as to the substance of any resulting contract.

For the purposes of establishing rules and regulations pursuant the Chapter 37-2, a "responsive bidder" shall also mean a bid which conforms in all material respect to the terms and conditions, specifications and any other requirements of the Bid Invitation.

5.1.22 "Solicitation" shall mean the process of notifying prospective bidders or offerors that the state wishes to receive bids for furnishing goods and services. The process may consist of public advertising, mailing Invitations to Bid, posting notices, and/or telephone or telegraph messages to prospective bidders.

5.1.23 "Source Selection" shall mean the technique of appropriate selection by solicitation, i.e., competitive sealed bidding, multi-step competitive sealed bidding, competitive negotiation, small purchase procedure, sole source or emergency purchase.

5.1.24 "Specification" shall mean a description of what the purchaser seeks to buy, and consequently, what a bidder must be responsive to in order to be considered for award of a contract. A specification may be a description of the physical or functional characteristics, or the nature of, a supply or service. It may include a description of any requirements for inspecting, testing, or preparing a supply or service item for delivery; a purchase description.

5.1.24.1 "Standardization (of Specifications)" shall mean the process of examining characteristics and needs for items of similar end usage and developing a single specification that will satisfy the need for most or all purchases for the purpose.

5.1.24.2 "Restrictive Specification" shall mean a specification or purchase description that unnecessarily limits competition by precluding items that would be capable of satisfying the intended need.

5.1.25 "Spot Purchase" shall mean a one-time purchase occasioned by a small requirement, an unusual circumstance, or to take advantage of a favorable market condition.

5.1.26 "Standard" shall mean a characteristic or set of characteristics for an item that, for reasons of performance level, compatibility or interchangeability with other products, etc., is generally accepted by producers and by users of the item as a required characteristic of all items for the designed purpose.

5.1.27 [37-2-7(23)] "Supplies" shall mean all property, including but not limited to leases of real property, printing and insurance, except land or permanent interest in land.

5.1.28 "Vendor" shall mean a supplier or contractor.

## 5.2 COMPETITION

In accordance with the purposes set forth in Chapter [37-2- 2(2)(f)], the Chief Purchasing Officer shall assure that all state agency procurement activities foster effective

competition, such that economies in expenditure can be obtained. A competitive environment shall be considered to exist when the following conditions are met:

5.2.1 Two or more items or offers can be compared to determine relative merit;

5.2.2 Objective standards of comparison are fairly and impartially applied;

5.2.3 Offers are evaluated within a market context:

5.2.3.1 The lowest price offered may not be considered to be a competitive price when not supported by an evaluation of the market or market conditions within which the offer was rendered;

5.2.3.2 Market evaluation must be conducted using objective standards to assure fairness and to encourage participation;

5.2.4 An equal opportunity for participation in any procurement applies to all prospective offerors, and affirmative action to achieve participation in the procurement process as a means of achieving social objectives is accomplished without violation of these general principles.

## 5.3 CENTRALIZATION

5.3.1 Except as otherwise provided for herein, the Purchasing Agent shall be responsible for the administration of all procurement activities and determinations with respect to the solicitation and evaluation of competitive offers, and to source selection.

5.3.2 Unless specifically authorized otherwise, the Office of Purchases shall be the sole point of contact with prospective and current offerors, relative to the business, financial and other commercial aspects of all solicitations and offers:

5.3.2.1 All other state employees shall be authorized to contact suppliers to obtain technical data only, prior to the award of a contract.

5.3.2.2 Representatives of the Office of Purchases shall be present at, or party to, all discussions with suppliers with respect to current solicitations, or with respect to price or delivery information, or with respect to modifications of any contract.

5.3.3 Delegated Purchases.

5.3.3.1 The following goods and services may be procured by user agencies without the express approval of the Purchasing Agent in accordance with the provisions set forth herein:

5.3.3.1.1 Items purchased through Master Pricing Agreements (MPA) - Schedule/Term Contracts Purchases. All agencies shall be authorized to order MPA items directly from vendors in accordance with procedures established by the Chief Purchasing Officer.

5.3.3.1.2 Items exempted from competition by law, regulation or determination by the Chief Purchasing Officer or his designee.

5.3.3.1.3 Grants in the form of general subsidies or assistance shall be administered by state agencies in accordance with legal mandates restricting or defining the use of such funds.

5.3.3.2 State officials designated by the Chief Operating Officer (Director) of an agency or department shall be authorized to obtain bids for procurements reasonably not expected to exceed an aggregate amount of one thousand dollars ($1,000) in accordance with small purchase regulations promulgated herein by the Chief Purchasing Officer.

5.3.3.2.1 Violation of these regulations may result in withdrawal of such authority by the Purchasing Agent.

5.3.3.2.2 All bids and contract awards made under these provisions shall be documented in a central location.

5.3.4 Violations of Purchase Authority

5.3.4.1 The Controller shall review all documents for which state agencies undertake purchasing actions and shall report suspected violations of delegated purchasing authority to the Purchasing Agent.

5.3.4.2 Transactions which are determined by the Purchasing Agent to be out of compliance with state purchasing regulations and procedures shall be returned to agencies for explanation and justification.

5.3.4.3 User agency abuses of limited delegated purchasing authority shall be reported to the Chief Purchasing Officer who will hold agency chief executives accountable for violations.

5.3.4.4 Deliberate disregard of state officials for purchasing regulations, policies and procedures shall be subject to disciplinary action, including dismissal.

5.3.5 Additional delegated authority may be granted by the Purchasing Agent upon reviewing written requests submitted by the chief executive officer of a department or agency in accordance to the provisions set forth in Section 2 of these regulations.

## 5.4 STANDARDS AND SPECIFICATIONS

5.4.1 [37-2-38] Issuance of specifications.

(1) The Chief Purchasing Officer shall have the responsibility for issuing and maintaining all standard specifications for supplies, services, and construction required by the state. Among its duties, it shall, to the greatest extent practicable:

(a) Prepare and issue standard specifications for supplies, services, and construction commonly required by the state.

(b) Revise all standard specifications to conform to all technical and scientific advances pertaining to the supplies, services, and construction described in those specifications, and to reflect changes in the state's requirements and user agencies; and

(c) Establish guidelines for drafting specifications.

(2) All specifications shall be drafted so as to maximize, to the extent practicable, competition in fulfillment of the state's requirements.

5.4.2 [37-2-38.1] Certification by building commissioner. -- The state controller shall order no payment to any person on account of any contract for any construction which is subject to the state building code, unless and until the state building commissioner has certified to the state controller in writing that: (i) All permits required under Sections 23-27.3 - 113.1 for the construction for which such payment has been requested have been issued and are valid; and (ii) The state building commissioner has, pursuant to Sections 23-27.3 - 113.3.1, verified that all construction work for which payment has been requested and which state law requires to be performed by licensed persons has been performed by persons so licensed.

5.4.3 Solicitations shall be prepared in a manner and form which enables suppliers to submit fully responsive and knowledgeable offers, and which clearly define the criteria to be used in evaluating responses.

5.4.4 All material submitted by requisitioners to the Office of Purchases for action shall be in sufficient detail and shall contain adequate supportive information to:

5.4.4.1 Adequately describe the purpose, use, or desired performance level of the requirement; and

5.4.4.2 Identify measurable criteria for evaluation of offers including, but not limited to, acceptance testing.

5.4.5 Wherever possible, solicitations shall incorporate a standard specification, describing the level of performance required, and measurable criteria which define acceptance.

5.4.5.1 In certain cases, following detailed evaluation, brand name or other designations may be defined as standard items, where it is determined to be in the best interest of the State with regard to economies of scale, or cost or value analysis.

5.4.5.2 The Office of Purchases shall develop Standards Committees (product advisory committees) to review, develop, and update specifications and standard item designations for frequently and/or extensively used products.

5.4.6 Selection and evaluation criteria shall be clearly defined in all solicitations.

5.4.6.1 [37-2-18 (a)-(h)] The invitation for competitive sealed bids shall state whether award shall be made on the basis of the lowest bid price or the lowest evaluated or responsive bid price. ~~bids~~. . If the latter basis is used the objective measurable criteria to be utilized shall be set forth in the invitation for bid. All bids shall be opened and read aloud publicly at the time and place designated in the invitation to bid. Factors to be considered shall include, but not be limited to, (1) specifications prepared that permit award on the basis of either the lowest bid price or the lowest evaluated price; (2) available sources, the time and place of performance, and other relevant circumstances as are appropriate for the use of competitive sealed bidding.

5.4.6.1.1 37-2-18 (2) Pursuant to RIGL 37-2-18 (2) this section shall apply to all Competitive Sealed Bid contracts greater than one million dollars effective January 1, 2011; on January 1, 2012 for all contracts greater than five hundred thousand dollars; and on January 1, 2013 for all other contracts so awarded.

5.4.6.2 Unless alternate offers are clearly requested or allowed, only those offers which are responsive, in all material respects, to the terms of the solicitation shall be considered.

5.4.6.2.1 Alternate specifications may be considered only where it has been determined that the alternate satisfies all objective performance characteristics of the procurement, and represents a reduction in expenditure;

5.4.6.2.2 Alternate terms and conditions may be considered only where consideration is determined to be in the best interest of the State to do so, and where they constitute a reduction in expenditure.

5.4.6.3 Used Items may be purchased to achieve financial benefit if the manufacturer will provide warranties for maintenance requirements and for the replacement of parts. Such certification/warranties shall be the same as that provided for new equipment. Purchase of used items which exceed a value of two hundred and fifty dollars shall require approval by the Office of Purchases.

5.4.6.4 [37-2-75] Prohibition against the use of lead based paints. -- When purchasing paint products or contracting or subcontracting for painting, construction, improvement, completion, or repair of any public building, any public road, any public bridge, or any public construction, all governmental bodies and public agencies, as defined by sections 37-2-7(11) and 37-2-7(16), shall be prohibited from the use of lead based paint.

5.4.6.5 [37-2-76] State purchase of recycled products. -- (a) The state shall, through its purchasing policy and practice, affirmatively promote the use of recycled products. The Department of Administration in conjunction with the Department of Environmental Management shall, through regulations, establish a time table requiring increased utilization by the state of recycled products. In January of each year, the Department of Administration shall report to the General Assembly the State's progress in utilizing recycled products materials and supplies for the preceding twelve (12) months.

(b) With respect to office paper products, at least fifty percent (50%) of the expenditure for office paper products purchased by the state of Rhode Island, its agencies and departments, shall be recycled paper products by fiscal year 1995.

(c) The Department of Administration in conjunction with the Department of Environmental Management shall annually establish comprehensive technical specifications based on research by the Department of Environmental Management for the recycled products, materials and supplies to be purchased by the state under this section. These specifications shall include the minimum performance and quality attributes as well as minimum pre- and post-consumer content.

(d) The Director of the Department of Administration, acting as the Chief Purchasing Officer of the State, shall direct that all subsequent purchases of the subject recycled products, materials and supplies by the state, its agencies and departments shall meet the source specifications of pre-consumer and/or post-consumer content standards established under subsection (c) of this section.

(e) Subsequent discovery by the State, its agencies or departments that products delivered by vendors to the state as "recycled products" do not satisfy the specifications of "recycled" content stated in the award, shall be grounds for the return of all discrepant goods, refunds of all moneys paid, termination of all outstanding contracts and orders, and at the discretion of the Chief Purchasing Officer suspension of the vendor's involvement in state procurement for a period of up to twenty-four (24) months.

## 5.5 GENERAL PROVISIONS

5.5.1 Except as otherwise authorized by law, or as specifically exempted herein, all state contracts shall be awarded as the result of:

5.5.1.1 [37-2-17(1)] competitive sealed bidding; or

5.5.1.2 [37-2-17(2)] competitive negotiation; or

5.5.1.3 [37-2-17(3)] non-competitive negotiation; or

5.5.1.4 [37-2-17(4)] small purchase procedures; or

5.5.1.5 [37-2-18 (a)-(h)] competitive sealed bidding;

5.5.1.6 [37-2-18.1] electronic reverse auction;

5.5.1.7 Requests for Proposal; or

5.5.1. 8 Where permitted by law, grants.

5.5.2 [37-2-8] When foodstuffs of good quality grown or produced in Rhode Island by Rhode Island farmers are available, the Purchasing Agent is hereby directed to purchase such foodstuffs at the prevailing market prices when any such foodstuffs are required by the state institutions.

5.5.3 The Office of Purchases shall establish and make available to participating agencies Master Pricing Agreements for goods and services where the nature and amount of demand is not specifically known in advance (e.g., office furniture, food, athletic equipment and emergency repair trades).

## 5.6 RULES FOR SOLICITATION

5.6.1 In general, solicitations will be sent only to those suppliers who have formally expressed a desire to bid on the particular types of items which are the subject of the bid solicitation; however, the Purchasing Agent may determine that competition would be enhanced by soliciting bidders who are not on the established Bidders List.

5.6.2 Small and small disadvantaged businesses shall be solicited to maximum extent determined by the Chief Purchasing Officer to be practicable.

5.6.2.1 All solicitations described elsewhere under Small Purchase Procedure shall include solicitation from at least one responsible supplier certified by the Department of Economic Development as a small disadvantaged business, where suppliers have been identified for the product or service in question.

5.6.2.2 For all awards of $250 or less, agencies shall be encouraged to utilize small, disadvantaged businesses as suppliers.

5.6.3 Notification and Advertising

5.6.3.1 Notices shall be published in sufficient time to afford suppliers a fair opportunity to respond prior to the bid opening date and time.

5.6.3.2 Advertisements may be utilized in conjunction with requests for quotations or proposals for products or services at any estimated level of expenditure if the Purchasing Agent so determines:

5.6.3.2.1 that the commodity or service is of such special nature that opportunities for competition will be enhanced by extending invitations to other than known suppliers;

5.6.3.2.2 that a purchase will be of interest to supportive industries, e.g. construction projects;

5.6.3.2.3 that a purchase is unusually large or infrequent.

5.6.3.3 The Purchasing Agent may advertise in widely circulated newspapers and/or trade journals to promote effective competition.

5.6.3.4 The Purchasing Agent may place advertisements in publications directed to minority communities and/or women to enhance opportunities for disadvantaged businesses to participate in the bidding process.

5.6.3.5 The Purchasing Agent shall have the sole authority to place advertisements for contracts awarded under his aegis; however he may delegate such authority as circumstances dictate.

5.6.4 The Purchasing Agent may solicit offers from prospective suppliers who are not registered bidders upon written recommendation by a user agency, or where such solicitation is judged to be necessary in order to expand the filed of competition.

5.6.5 The State of Rhode Island shall be under no obligation to consider an offer which has been submitted without solicitation.

## 5.7 BIDDER SECURITY

5.7.1 [37-2-40(1)] Bidder's security shall be a bond provided by a surety company authorized to do business in the State of Rhode Island, or the equivalent in cash, in a form satisfactory to the state.

5.7.1.1 The bidder may submit a certified check, bank check (cashier's check or treasurer's check), or money order as surety instead of a bond.

5.7.1.2 All such sureties must be dated within 30 days of the bid opening date and shall be valid for no less than 60 days from the bid opening dates.

5.7.1.3 All such sureties shall be made payable to the State of Rhode Island General Treasurer.

5.7.1.4 All sureties shall contain an identification of the bid number for which the surety is intended.

5.7.2 [37-2-40(1)] Bidder security shall be required for all competitive sealed bidding for construction contracts when the estimated price exceeds twenty-five thousand dollars

($25,000). Nothing herein prevents the requirement of such bonds on construction contracts under twenty-five thousand dollars ($25,000) when circumstances warrant.

5.7.2.1 The Purchasing Agent may require bidder security for any procurement that he judges to be substantial, or where in his opinion the potential of capricious or artificial bidding exists, or where there is a risk of withdrawal of offers prior to an award being made, or where the interests of the State otherwise require protection.

5.7.2.2 Bidder security may be required for contracts involving blanket orders, services or high value items when the value of the contract exceeds two thousand five hundred dollars ($2,500).

5.7.3 [37-2-40(2)] Bidder's security shall be in an amount equal to at least five percent (5%) of the amount bid.

5.7.4 [37-2-40(3)] When the invitation for bids requires that bid security be provided, noncompliance requires that the bid be rejecteded, provided, however, that the Chief Purchasing Officer may set forth by regulations exceptions to this requirement in the event of substantial compliance. If bid security is identified as mandatory in the invitation to bid pursuant to RIGL 37-2-18(a)-(h) "Competitive Sealed Bidding" and these regulations, the purchasing agent shall have no discretion to waive the bid security requirement.

5.7.5 [37-2-40(4)] After the bids are opened, they shall be irrevocable for the period specified in the invitation for bids, provided that if a bidder is permitted to withdraw his bid before award because of a mistake in the bid as allowed by law or regulation, no action shall be taken against the bidder or the bidder's surety.

5.7.6 After the bid opening the Purchasing Agent shall return the sureties of all but the three (3) apparent lowest bidders. When the evaluation of the bid has been completed, the Purchasing Agent shall return all but the lowest bidder's surety.

5.7.7 After the low bidder has been notified of the state's intent to proceed with a contract, the low bidder's bid surety shall be returned. When performance, labor and/or material bonds are required, the bid surety shall be returned upon receipt of the appropriate bond(s).

## 5.8 CANCELLATION OF INVITATION FOR BIDS AND REQUESTS FOR PROPOSALS. - [37-2-23]

An invitation for bids, a request for proposals, and other solicitation may be cancelled, or all bids or proposals may be rejected, if it is determined in writing that the action is taken in the best interest of the state and approved by the Chief Purchasing Officer.

5.8.1 If a solicitation results in none of the proposals being reasonably close to expectations, the Purchasing Agent may with the written approval of the Chief Purchasing Officer declare all bids unacceptable and re-solicit the procurement.

5.8.2 Nothing in RIGL 37-2-18 (a)-(h) and these regulations shall be construed to interfere with or invalidate the results of the due diligence conducted by the division of purchases, the Chief Purchasing Officer, or the Chief Purchasing Agent to determine whether bids are responsive and responsible.

5.8.3 If a solicitation results in only one proposal, the price of which is not reasonably close to expectations, the Purchasing Agent may recommend that the Chief Purchasing Officer declare the bid unacceptable and either re-solicit the procurement or ask that the price be negotiated with the vendor.

5.8.4 The Purchasing Agent may eliminate bidders whose offers are clearly noncompetitive prior to re-solicitation.

## 5.9 CORRECTION OR WITHDRAWAL OF BIDS

5.9.1 [37-2-18(6)] Correction or withdrawal of bids may be allowed only to the extent permitted by regulations issued by the Chief Purchasing Officer.

5.9.2 The Purchasing Agent or his designee shall be the sole determiner of whether correction or withdrawal of bids may be made without penalty.

5.9.3 The Purchasing Agent shall respond to requests for correction or withdrawal within ten (10) working days, notifying the bidder of the status of his bid, bid surety and continued inclusion in the state's Bidders List.

5.9.4 Correction of a bid.

5.9.4.1 Correction of a bid at any time prior to bid opening may be permitted without penalty when a bidder requests that his bid be returned and he resubmits a corrected bid prior to the bid opening.

5.9.4.2 A vendor who fails to resubmit a corrected bid before the bid opening shall be considered non-responsive.

5.9.4.3 Requests by the apparent low bidder for correction of bids identifying all error(s) and specifying corrective action shall be submitted in writing to the Purchasing Agent and shall be re-evaluated with all other offers within five (5) working days after the bid opening.

5.9.5 Withdrawal of bids.

5.9.5.1 Requests for withdrawal of bids shall be submitted in writing to the Purchasing Agent, providing an explanation for the action and advising the Purchasing Agent as to why the bidder should not be suspended from the state's Bidders List.

5.9.5.2 Withdrawal of bids without the written consent of the Purchasing Agent shall result in forfeiture of bid sureties and shall result in suspension or debarment from the state's Bidders List, depending upon the severity of the violation.

## 5.10 SOLICITATION CRITERIA

5.10.1 [37-2-58] At least every three (3) years the Chief Purchasing Officer shall review the prevailing costs of labor and materials and may make recommendations to the next regular session of the General Assembly for the revision of the then current threshold amounts contained in this chapter [37-2] as justified intervening changes in the cost of labor and materials.

5.10.1.1 The Chief Purchasing Officer may make recommendations to the General Assembly for changes to solicitation criteria based on factors other than the cost of labor and materials.

5.10.2 [37-2-22] Small Purchases. Procurements not to exceed an aggregate amount of ten thousand ($10,000.00) for construction and five thousand ($5,000.00) for all other purchases may be made in accordance with small purchase regulations promulgated by the Chief Purchasing Officer. Procurement requirements shall not be artificially divided so as to constitute a small purchase under this section.

5.10.2.1 Competitive offers shall be solicited for all procurements with a value greater than $250 except under specifically prescribed circumstances set forth herein.

5.10.2.2 Small construction purchases shall include building, altering, repairing, improving or demolishing buildings or other improvements to real property. Small construction purchases shall not include routine maintenance or repair of existing structures, buildings, or real property performed by salaried employees of the State in the usual course of their job.

5.10.3 Competitive bids shall be obtained from a sufficient number of suppliers to be considered representative of the industry cited. Although three bids shall be considered the minimum, the Purchasing Agent may in some instances declare the existence of two bids to be considered to provide adequate price competition. The determination shall be made in writing and placed in the bid file.

## 5.11 SOLICITATION METHODOLOGY FOR COMPETITVE SEALED BIDDING

5.11.1 Public Competitive Sealed Bids. [37-2-18 (a)-(h)] Sealed written competitive bids shall be required for purchase orders exceeding the amount provided by RIGL 37-2-22

unless it is determined in writing that this method is not practicable or that the best value for the state may be obtained by using an electronic reverse auction as set forth in RIGL 37-2-18.1.

5.11.1.1 [37-2-18 (a)-(h)] Factors to be considered in determining if competitive sealed bidding is practicable shall include, but not be limited to whether (1) specifications can be prepared that permit award on the basis of either the lowest bid price or the lowest evaluated bid price; (2) the available sources, the time and place of performance, and other relevant circumstances appropriate for the use of competitive sealed bidding.

5.11.1.2 [37-2-18 (a)-(h))] Adequate public notice of the invitation for bids shall be given a sufficient time prior to the date set forth therein for the opening of bids. Such notice may consist of a written invitation soliciting quotations from suppliers on the State's approved vendors list. Such notice may include publication in a newspaper of general circulation in the state as determined by the Chief Purchasing Officer not less than seven (7) days nor more than twenty-one (28) days before the date set for the opening of the bids. The Chief purchasing officer may make a written determination that there is a need to waive the twenty-one (28) day limitation. The written determination shall state the reason why the twenty-one (28) day limitation is being waived and shall state the number of days, giving a minimum and maximum, before the date set for the opening of bids when public notice is to be given.

5.11.1.3 [37-2-18 (a)-(h)] Bids shall be opened publicly and read aloud at the time and place designated in the invitation for bids. Each bid, together with the name of the bidder, shall be recorded and an abstract made available immediately for public inspection. Subsequent to the awarding of the bid, all documents pertinent to the awarding of the bid that were not made public pursuant to RIGL 37-2-18 (e) shall be made available and open to public inspection pursuant to chapter 38-2, the Access to Public Records Act, and retained in the bid file. The copy of the bid proposal provided pursuant to RIGL 37-2-18 (b) shall be retained until the bid is awarded.

5.11.1.3.1 The term "immediately" for contracts awarded pursuant to RIGL 37-2-18 (a)-(h) "Competitive Sealed Bidding" and this regulation shall mean that a copy of the redacted bid proposal shall be available for public inspection by the close of business the day the subject bid(s) and/or contract(s) is opened by the division of purchases.

5.11.1.3.2 The burden to identify and withhold from the public copy that is released at the bid opening any trade secrets, commercial or financial information, or other information the bidder deems not subject to public disclosure pursuant to Chapter 38-2, the Access to Public Records Act, shall rest solely and exclusively with the bidder submitting the bid proposal.

5.11.1.3.3 A bidder has the sole and exclusive responsibility to provide a public copy of its bid to the division of purchases , so it can be made available for public inspection. At the time that a proposal is submitted, a bidder must submit a redacted copy of the bid proposal on a readable CD-R Media Disk (hereinafter referred to as a "CD").

Failure of the bidder to submit a public copy on a readable CD, as required by RIGL 37-2-18 as amended, shall result in the disqualification of said bid.

5.11.1.3.4 In order to comply with the public copy requirement, a bidder, at the time that a proposal is submitted, must submit a redacted copy of the bid proposal on a readable CD. The CD should contain: (1) the title of the solicitation as it appears on the RIVIP cover letter; (2) the name of the company and vendor identification as it appears on the RIVIP cover letter; (3) the bid response number as it appears on the RIVIP cover letter; and (4) the date of the bid as it appears on the RIVIP cover letter. Failure to provide the division of purchases with a readable CD with the above-cited information, as required, may result in the disqualification of the bid.

5.11.2 Formal Competitive Bids.

5.11.2.1 Except under emergency circumstances, competitive bids shall be obtained in the form of sealed written quotations for all procurements exceeding one thousand dollars ($1,000), and except as otherwise provided for pursuant to RIGL 37-2-18 (a)-(h) "Competitive Sealed Bidding."

5.11.2.2 A formal bid shall be distinguished by:

(a) a specific date and time by which sealed written bids must be submitted;

(b) an opening of all bids at a specified time at the Office of Purchases;

(c) the solicitation of a minimum of three selected bidders who are potential suppliers for the commodity or service to be procured.

5.11.2.3 All Formal Competitive bids shall be issued by the Office of Purchases.

5.11.3 Informal Competitive Bids.

5.11.3.1 Oral quotations (including telephone) may be solicited for purchase orders with a value less than one thousand dollars ($1,000). If the Office of Purchases is unable to verify prices using published lists/catalogs or by market analysis, the lowest quotation obtained by telephone solicitation for procurements exceeding two hundred and fifty dollars ($250) shall be confirmed in writing.

5.11.3.2 An informal bid shall be distinguished by:

(a) lack of a specific time by which bids must be submitted;

(b) lack of sealed written bids; quotes may be oral on the spot or by telephone and confirmed at a later date in writing;

(c) lack of an opening and reading of bids;

(d) the solicitation of selected registered or unregistered bidders who are potential suppliers for the commodity or service to be procured and/or vendors suggested for consideration by the user agency.

5.11.3.3 Informal bids shall be solicited from a minimum of three suppliers.

5.11.3.4 All informal bid invitations shall be conducted in such fashion as to maximize the opportunity for participation of all responsible suppliers.

5.11.3.5 For those purchases not affected by regional considerations, requests for quotations (RFQ's) shall be distributed equitably among various responsible suppliers. Where practical, a quotation will be solicited from other than the previous supplier prior to placing a repeat order.

5.11.3.6 When informal competitive bids are received in accordance with the provisions contained herein and award is not made to the low bidder, the Purchase Order File shall be annotated with statements of how the supplier was selected and why the price is fair and reasonable.

5.11.3.7 Purchasing management shall audit the use of informal competitive bids. As a minimum, quarterly review of performance by buyers should be conducted to sample (on a random basis) the reasonableness and effectiveness of buyer use and documentation of the informal bid process.

5.11.4 Requests for Proposal

5.11.4.1 Requests for Proposal (RFP) shall be utilized to solicit competitive offers in all cases where:

5.11.4.1.1 Lowest price is not the sole or primary consideration to be used in determining an award; or

5.11.4.1.2 Performance is neither specific nor objective, and open to the offeror's interpretation; or

5.11.4.1.3 It is otherwise anticipated that offers may be substantially different and that there is insufficient common ground for objective comparison; or

5.11.4.1.4 It is anticipated that changes will be made after proposals are opened and that the nature of the proposals and/or prices offered will be negotiated prior to award.

5.11.4.2 Wherever possible, the Request for Proposal shall define the performance or benefit required and shall set forth specific criteria to be utilized in evaluation of offers.

5.11.4.3 Offers shall be evaluated by a committee comprised of a representative of the Office of Purchases, representative of the user agency, and other appropriate parties on the basis of:

5.11.4.3.1 The qualifications of the offerors, established by professional accomplishment and previous experience;

5.11.4.3.2 Aspects of offers which provide benefit, other than those based on cost; and

5.11.4.3.3 Other provisions of offers which are determined to serve the best interests of the State.

5.11.4.4 Nothing herein shall be construed to preclude the possibility of determining an award solely on the basis of cost.

5.11.4.5 The evaluation of offers, including the weight assigned to various aspects of the offerors, and all award determinations, including the reasons for a selection recommendation, shall be fully documented.

## 5.12 SOURCE SELECTION AND CONTRACT AWARD

5.12.1 [37-2-18(5)] The contract shall be awarded with reasonable promptness by written notice to the responsive and responsible bidder whose bid is either the lowest bid price or lowest evaluated or responsive bid price.

5.12.1.1 Awards shall be made within sixty (60) days of the bid opening unless expressly provided for to the contrary in the solicitation. Bids may not be withdrawn during this period without penalty without the express permission of the Purchasing Agent.

5.12.1.2 In accordance with Chapter 37-14.1, RIGL, the Purchasing Agent may, after considering the overall cost to the state prior to making a final determination of award, apply special consideration to the offers of minority business enterprises when:

5.12.1.2.1 the solicitation provides for such consideration;

5.12.1.2.2 the offer is fully responsive to the terms and conditions of the solicitation; and

5.12.1.2.3 the price offer made by the MBE is determined to be within a competitive range (not to exceed five percent (5%) higher than the lowest responsive price offer) for the product or service; and

5.12.1.2.4 the firm making the offer conforms to the definition of a minority business enterprise as set forth in Section 4 herein (Vendor Qualification.

5.12.2 In accordance with the provisions of Chapter 37-14.1-7 ten percent (10%) of the dollar value of the work performed against contracts for construction exceeding five

thousand dollars ($5000) shall be performed by Minority Business Enterprises where it has been determined that subcontract opportunities exist, and where certified MBE contractors are available.

5.12.2.1 Award of such contracts shall be subject to approval by the Director of Administration, based on the bidder's subcontracting plan. Such plan shall be submitted to the Director of Administration prior to or upon tentative notification of award by the Purchasing Agent.

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