

**AMENDED NOTICE – APRIL 3, 2008**

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
Department of Administration, Division of Purchasing**

**Notice of Revision to Proposed Rule 8.11.3.3  
Construction Contract Management  
Methods and Criteria---Design-Build**

After Proposed Rule 8.11 had been posted on the Division's website on March 28, 2008, a typographical error in Proposed Rule 8.11.3.3 was brought to our attention. A copy of the corrected rule 8.11.3.3, showing the changes that have been made, is set forth below:

8.11.3.3 Design-Build. In a design-build project, a person contracts directly with the State to meet the State's requirements as described in a set of design or engineering specifications, bridging documents, or scope of work. Final design responsibility and construction responsibility both rest with the design-build contractor. This method can include instances where the design-build contractor supplies the site as part of the design-build package. Design-build shall not be used for construction projects with an estimated cost ~~to exceed~~ that is less than two-million five-hundred thousand dollars (\$2,500,000).

Any comments regarding this rule should be sent to Lorraine Hynes at [lhynes@purchasing.state.ri.us](mailto:lhynes@purchasing.state.ri.us). It would helpful if these comments were sent as an email or an email attachment. All such comments must be submitted by Wednesday April 9, 2008 by the close of business.

After all comments have been reviewed and any necessary changes are made, the Division will begin the formal rulemaking process pursuant to RIGL Chapter 42-35. Notice of a public hearing on proposed rules 8.11 will be posted in the Providence Journal and on this website.

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS**  
**Department of Administration, Division of Purchasing**

**Notice of Request for Comments on Proposed Revised Rule 8.11**  
**Relating to Construction Contract Management**

As previously posted on the Division's website, a public hearing on proposed amendments to construction management procurement regulations was held on January 24, 2008. At this hearing the Division received ten written comments concerning the proposed regulations.

After reviewing these comments, it was initially decided that the proposed rules could be further amended in order to incorporate many of the suggestions resulting from the public hearing. However, as these revisions were made, it became clear to the Division that the rules relating to construction management methods and criteria needed to be further clarified.

As a result, the Division has decided not recommend the adoption of the rules that were the subject of the January 24, 2008 public hearing. Instead, the Division believes that proposed Rule 8.11, revised as of March 28, 2008, should be publicly reviewed and considered. This revised proposed rule is attached to this notice. For comparison purposes, the rules considered at the January 24, 2008 public hearing will continue to be posted on the Division's website.

Before the Division begins formal rulemaking proceedings under the Administrative Procedures Act, the Division invites public comment on the proposed revised rules. It is requested that any such comments are sent to Lorraine Hynes at [lhynes@purchasing.state.ri.us](mailto:lhynes@purchasing.state.ri.us). It would helpful if these comments were sent as an email or an email attachment. Any such comments must be submitted by Wednesday April 9, 2008 by the close of business.

After all comments have been reviewed and any necessary changes are made, the Division will begin the formal rulemaking process. Notice of a public hearing on the proposed rules will be posted in the Providence Journal and on this website.

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS**  
**Department of Administration, Division of Purchasing**  
**Responsibility for Selection of Methods of Construction Contracting**  
**Management**

**Proposed State Procurement Regulation 8.11**  
**(Revised as of March 28, 2008)**

- 8.11.1 Construction Contract Management. The intent of this rule is to specifically identify alternative methods of management of construction and the criteria to be used in selecting such methods. In addition, the intent of this rule is to clarify that the method of source selection used to award a state contract for a particular construction project shall continue to be governed by all the applicable provisions of chapter 2 of title 37, entitled “State Purchases”, also referred to as the “State Purchases Act”. These provisions include but are not limited to sections 37-2-17 “Methods of source Selection”; 37-2-18 “Competitive sealed bidding”; 37-2-19 “Competitive negotiation”; 37-2-20 “Negotiations after unsuccessful competitive sealed bidding”; 37-2-21 “Noncompetitive procurements”; 37-2-22 “Small purchases” and 37-2-59 “Professional services – Architectural, engineering, and consultant services – Committee”. Provided, however, the provisions of Rules 8.11.3 and 8.11.4 shall not apply to road, bridge and heavy construction projects which are funded in whole or in part by federal funds.
- 8.11.2 Road, Bridge and Heavy Construction Projects. The provisions of Rules 8.11.3 and 8.11.4 shall not apply to road, bridge and heavy construction projects that are managed by the Rhode Island Department of Transportation and are funded in whole or in part by federal funds. Road, bridge and heavy construction projects are subject to the methods of management of construction contracting, including the criteria for selecting such methods, that are set forth in applicable federal law, including but not limited to 23 U.S.C. 112(b)(i) as amended, and regulations promulgated thereunder.
- 8.11.3 Construction Contract Management Methods and Criteria. For all other construction projects, the descriptions, including certain criteria, set forth in this rule are the alternative methods of construction contract management deemed feasible by the Chief Purchasing Officer. The methods described herein are not mutually exclusive and may be combined on a project. In each project, these descriptions may be adapted to fit the circumstances of that project.
- 8.11.3.1 General Contractor. The general contractor method is typified by one business, acting as a general contractor, contracting with the State to timely complete an entire construction project in accordance with drawings and specifications provided by the State. Generally, the drawings and specifications are prepared by an architectural or engineering firm

under contract with the State. Furthermore, while the general contractor may take responsibility for successful completion of the project, much of the work may be performed by specialty contractors with whom the general contractor has entered into subcontracts. The general contractor method may be used for any construction project with an estimated cost in excess of one-hundred dollars (\$100).

- 8.11.3.2 Multiple Prime Contractors. Under the multiple prime contractor method, the State or the State's agent contracts directly with any number of contractors with varying areas of construction expertise to complete portions of the project in accordance with the State's drawings and specifications. The State and/or its agent may have primary responsibility for successful completion of the entire project, or the contracts may provide that one of the multiple prime contractors has this responsibility. The State shall only use the multiple prime contractor method for construction renovation projects of individual buildings, with an estimated cost not to exceed two- million dollars (\$2,000,000).
- 8.11.3.3 Design-Build. In a design-build project, a person contracts directly with the State to meet the State's requirements as described in a set of design or engineering specifications, bridging documents, or scope of work. Final design responsibility and construction responsibility both rest with the design-build contractor. This method can include instances where the design-build contractor supplies the site as part of the design-build package. Design-build shall not be used for construction projects with an estimated cost to exceed two-million five-hundred thousand dollars (\$2,500,000).
- 8.11.3.4 Construction Manager at Risk. A Construction Manager at Risk is a person experienced in construction that has the ability to evaluate and to implement drawings and specifications as they affect time, cost, and quality of construction and the ability to coordinate the construction of the project, including the administration of change orders. The State may contract with the construction manager at risk early in a project to assist in the development of a cost effective design (also known as the construction document phase). Upon full or partial completion of a cost effective design satisfactory to the State, the State may enter into a construction management agreement for the actual construction, whereby the construction manager at risk shall guarantee that the project will be completed on time and will not exceed a specified guaranteed maximum price for construction. After the construction document phase and prior to the State entering into a construction management agreement, the construction manager at risk shall be authorized to obtain subcontractors through its issuance of multiple competitively negotiated bid packages, as the design is partially or fully developed, that will form the basis for a negotiated guaranteed maximum price for construction. In the event that

the State and construction at risk manager are unable to agree upon a guaranteed maximum price for construction, the State reserves the right to procure construction services through the general contractor method. The State shall not directly hold subcontracts under the construction manager at risk method. The procurement of a construction manager at risk may be based, among other criteria, on proposals for a management fee which is either a lump sum or other fee arrangement, except for percentage of construction costs, with a guaranteed maximum cost for construction. The construction manager at risk may provide for any and all services as deemed necessary by the State which may include, but not be limited to, construction services, management services, accounting services, design services and, the employment of specialty subcontractors to the construction manager at risk as deemed necessary to successfully complete the project. The construction manager at risk method shall not be used for construction projects with estimated cost of five million dollars (\$5,000,000) or less.

- 8.11.4 Construction Contract Management Selection Criteria. In addition to criteria set-forth in Rule 8.11.3, the criteria to be used by the purchasing agent or purchasing agency in determining which method of management of construction management listed in Rule 8.11.3 is to be used for a particular project shall be as follows:
- 8.11.4.1 When the project must be completed or ready for occupancy or use;
  - 8.11.4.2 The specific nature of the project and its specialized needs, e.g. housing, offices, laboratories, and specialized construction;
  - 8.11.4.3 The extent to which the requirements of the procuring agency and the ways in which said requirements are to be met are known;
  - 8.11.4.4 The location of the project;
  - 8.11.4.5 The size, scope, complexity, and economics of the project;
  - 8.11.4.6 The amount and type of financing available for the project, including whether the budget is fixed and the source of funding, e.g., general or special appropriation, federal assistance moneys, general obligation bonds or revenue bonds;
  - 8.11.4.7 The availability, qualification, and experience of State personnel to be assigned to the project and how much time the State personnel can devote to the project;
  - 8.11.4.8 The availability, experience and qualifications of outside consultants and contractors to complete the project under the various methods being considered;

- 8.11.4.9 The method of source selection under the State Purchases Act that will be used to award a contract to a vendor for this particular project.
- 8.11.5 Selection Documentation. The purchasing agent or purchasing agency responsible for carrying out the construction project shall set forth in writing to the Chief Purchasing Officer the facts that led to the selection of a particular method of construction contract management pursuant to the criteria set forth in Rule 8.11.2 through 8.11.4. The Chief Purchasing Officer shall include in the contract file a written statement setting forth the facts that led to the selection of a particular method of management of construction in each instance. The Chief Purchasing Officer's written statement may adopt, in whole or in part, any written statements provided by the purchasing agent or purchasing agency.
- 8.11.6 Protest. Any actual or prospective bidder, offeror, or contractor, who is aggrieved in connection with the solicitation or selection for award of a contract, may file a protest with the Chief Purchasing Officer pursuant to RIGL section 37-2-52.