STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
RHODE ISLAND Department of Administration
Division of Purchasing
NOTICE OF PUBLIC HEARING

The Director of the Rhode Island Department of Administration has under consideration proposed amendments to STATE PROCUREMENT REGULATIONS. These proposals amend the State Procurement Regulations adopted in January of 1995 currently on file with the Office of the Secretary of State as ERLID Number 5334. The proposed amended regulations are promulgated in accordance with Section 37-2-9 and Chapters 42-35 and 42-11 of the General Laws of Rhode Island, as amended, and Executive Order 08-01 in order to implement Executive Order 08-01 requiring all persons and entities doing business with any Executive Branch department or agency to utilize a federally approved work authorization program to ensure that all newly hired employees of said person or entity have complied with all applicable federal immigration laws.

Notice is hereby given in accordance with the provisions of Chapter 42-35 of the Rhode Island General Laws, as amended, that a public hearing on the above proposed amended rules and regulations shall be held on Wednesday December 3, 2008, at 10:00 a.m. in Conference Room B in the William E. Powers Building (Department of Administration Building), One Capitol Hill, Providence, Rhode Island, at which time and place all persons interested will be heard.

In the development of the proposed amended rules and regulations, consideration was given to the following: (1) alternative approaches; (2) overlap or duplication with other statutory and regulatory provisions; and (3) significant economic impact on small business, as defined in Chapter 42-35 of the Rhode Island General Laws, as amended, which may result from these regulations. No alternative approach or duplication or overlap was identified based upon available information.

Copies of the proposed regulations are available for public inspection at the offices of Division of Purchases, Department of Administration, One Capitol Hill, Providence, RI 02908, or by calling Lorraine Hynes at 401-574-8100, or by sending an email to: LHynes@purchasing.state.ri.us. In conformance with Section 42-35-3(a)(1) of the General Laws of Rhode Island, copies of a concise summary of all non-technical amendments being proposed are available upon request.

For the sake of accuracy, it is requested that statements made relative to any aspect of the regulations, including alternative approaches, overlap, or significant economic impact, be submitted in writing at the time of the hearing or mailed prior to the hearing date to: Lorraine Hynes, Division of Purchases, Department of Administration, One Capitol Hill, Providence, RI 02908. Oral statements made at the public hearing will be considered, but should be limited to five minutes each.

Conference Room B is accessible to individuals with disabilities. Individuals requesting interpreter services for the hearing impaired must call James Pitassi at 222-6395 at least forty-eight (48) hours in advance of the hearing date.

Signed this 17 day of October, 2008

Donald W. Enand

For: Jerome Williams
Director, Department of Administration

RHODE ISLAND Department of Administration
Division of Purchases
SUMMARIES PREPARED PURSUANT TO § 42-35-3 (a) OF THE RHODE ISLAND GENERAL LAWS, AS AMENDED

(1) Summary of All Non-technical Differences Between Existing and Proposed Rules Pursuant to RIGL § 42-35-3(a)(5)

The amendments to these rules and regulations implement Executive Order 08-01 requiring all persons and entities doing business with any Executive Branch department or agency to utilize a federally approved work authorization program ("program") to ensure that all newly hired employees of said person or entity have complied with all applicable federal immigration laws. The amendments are provided as follows:

1. Six definitions have been added to the rules and regulations to fully explain the terms used in the Executive Order. (New Rules 1.12 through 1.12.1.6)
2. The specific requirements for compliance with the Executive Order have been set forth in a new section, including required documentation, retention periods, application and authorized use of the program. (New Rules 1.12.2 through 1.12.4.1)
3. Failure to comply with the requirements of this program may be grounds for vendor disqualification, rejection of bids, removal from bidder lists, debarment, suspension or termination of contract. (New/Amended Rules 4.3.1.3, 4.6.2, 4.7.1, 4.8.1.3, 4.8.3.6.4, 4.8.3.6.5, and 8.8.3.11 through 8.8.3.14)
4. Compliance with the program may be waived by the Purchasing Agent in accordance with applicable laws in the event of an emergency procurement. (New Rule 9.6.9)
5. A term requiring compliance with the program, as set forth in the Executive Order, is added as a condition to "State of Rhode Island Office of Purchases General Conditions of Purchase". (New Appendix A Term 38)

(2) Concise Explanatory Statement Pursuant to RIGL § 42-35-2.3

The purpose of amending these rules and regulations is to implement Executive Order 08-01 requiring all persons and entities doing business with any Executive Branch department or agency to utilize a federally approved work authorization program ("program") to ensure that all newly hired employees of said person or entity have complied with all applicable federal immigration laws. Requirements of entities doing business with an Executive Branch agency are fully described, as are the consequences of noncompliance.

PROPOSED AMENDMENTS TO STATE PROCUREMENT REGULATIONS

All new text is underlined.

SECTION 1. Section 1, "General Provisions" of the Rhode Island Procurement Regulations, is hereby amended as follows:

1.12 New Employee Verification Requirement through E-Verify (or any successor thereto) – Pursuant to Executive Order 08-01, all Executive Branch departments, agencies and personnel shall require that any and all persons and businesses, including but not limited to grant recipients, contractors and their subcontractors, and vendors, doing business with or proposing to engage in a business relationship with an Executive Branch department or agency of the State of Rhode Island certify that said person or business has registered with and is utilizing a federally approved work authorization program/service, such as "E-Verify," to ensure that newly hired employees of said person or business have complied with all applicable federal immigration laws.

1.12.1 Definitions

For the purposes of this Section and any related provisions of these Regulations the following definitions shall apply:

1.12.1.1 "Contract" shall mean all types of agreements including, but not limited to, State grants; orders for the purchase or disposal of supplies, services, construction, or any other item; awards; contracts of a fixed-price, cost, or incentive type; contracts providing for the issuance of job or task orders; letter contracts; purchase orders; Master Price Agreements; Agency Price Agreements; and, construction management contracts.

1.12.1.2 "Contractor" shall mean any person having a contract with any Executive Branch entity as defined in section 1.12.1.3.

1.12.1.3 "Executive Branch" shall mean any department, commission, council, board, bureau, committee, institution, agency, authority or other entity, together with their respective officers and employees, under the supervision or control of the Chief Executive of the State government, including the Board of Governors for Higher Education and Board of Regents-Elementary and Secondary Education.

1.12.1.4 "Federally approved work authorization program" or "E-Verify" shall mean any federal electronic verification of work authorization program or service operated by the United States Department of Homeland Security ("USDHS"), or any equivalent electronic federal work authorization program or service operated by the USDHS, whose purpose is to verify information of newly hired employees, pursuant to the Immigration Reform and Control Act of 1986 (LRCA), P.L. 99-603. Any other electronic federal work authorization program operated

by the USDHS or any equivalent federal electronic work authorization program recognized by the USDHS to verify information of newly hired employees, pursuant to the Immigration Reform and Control Act of 1986 (IRCA), P.L. 99-603, as such work authorization programs become available, may be used in the alternative, subject to review and approval by the Chief Purchasing Officer.

1.12.1.5 "Doing business with or proposing to engage in a business relationship with an Executive Branch department or agency of the State of Rhode Island" shall mean registration with the Rhode Island Vendor Information Program ("RIVIP"), the submission of a bid offering, the response to a "Request for Proposals," "Request for Quotations," "Request for Information or LOI," receipt of a monetary grant; or the entering into, renewal or extension of a contract to provide goods or services to an Executive Branch department or agency which has resulted in or is expected to result in the issuance of a Purchase Order.

1.12.1.6 "Subcontractor" shall mean any person or business, at any tier, who provides goods and or services required to be supplied or performed by a Contractor under a Contract with the Executive Branch.

1.12.2 Requirements

1.12.2.1 The Executive Branch shall implement Executive Order 08-01 and Procurement Regulation 1.12 as follows:

1.12.2.2 The Executive Branch shall not do business with or award a contract to any person or business unless the contractor, and its subcontractors, registers with and participates in the E-Verify program to ascertain the work eligibility information of all new employees and so certifies its compliance to the Executive Branch in accordance with section 1.12.2.4. Purchase Orders or other similar contracts shall not be entered into, extended or renewed by the Executive Branch unless the person or business doing business with the State complies with this section.

1.12.2.3 Subcontractors – No person or business doing business with the Executive Branch shall enter into a subcontract directly related to the delivery of goods or services to the Executive Branch unless the subcontractor has registered with and utilized the E-Verify program to verify the work eligibility information of all new employees and so certifies in accordance with section 1.12.2.4.

1.12.2.4 Any person or business doing business with the Executive Branch, shall certify compliance with the requirement to register and utilize E-Verify on a form acceptable to the Purchasing Agent. Completion of such certifications shall be a material term and condition of any contract with the Executive Branch.

1.12.2.5 The Rhode Island Vendor Information Program ("RIVIP") certification form, which is submitted with a bid or proposal to do business with the Executive Branch, shall include a provision that represents express agreement from a vendor to register and utilize E-Verify, and to certify that subcontractors of the vendor also comply with the requirements of this regulation. Failure to certify E-Verify registration and use on the RIVIP form shall result in the vendor's bid

or proposal being considered non-responsive. Any non-responsive bid or proposal shall be rejected from consideration. The terms and conditions included in the RIVIP certification form are general terms and conditions of the agreement with the Executive Branch.

1.12.2.6 Failure to certify compliance with the requirement to register and utilize E-Verify or otherwise meet the requirements contained in this section shall be grounds for contract termination, cancellation and other sanctions, including but not limited to suspension and debarment at the discretion of the Purchasing Agent. Any sanctions or contract terminations or cancellations that occur related to the requirements of this section shall be in accordance with the R.I. Gen. Laws § 37-2-1, *et seq.* and these Procurement Regulations.

1.12.2.7 All persons and businesses doing business with the Executive Branch shall maintain any and all documents relating to participation in the E-Verify program for not less than three (3) years after ceasing to do business with the Executive Branch or as required by law, which ever period is longer. Any such records shall be available upon request by the Rhode Island Department of Administration. The Department of Administration reserves the right to conduct random audits of contractor records to confirm compliance with the requirement of these regulations.

1.12.2.8 Enforcement – The Purchasing Agent or his/her designee shall be responsible for reviewing complaints alleging non-compliance in accordance with these Procurement Regulations.

1.12.2.9 All requirements of the E-Verify Program consistent with this regulation shall be considered additional requirements of these regulations.

1.12.2.10 The requirements of this section shall not be used for purposes other than to verify the eligibility of individuals legally qualified to work in the State of Rhode Island in accordance with federal laws and regulations relating thereto. Any discrimination or abuse of these requirements directed at individuals legally entitled to work in the United States shall not be tolerated by the Rhode Island Department of Administration and shall be subject to sanctions in accordance with the provisions of these regulations and the State Purchasing Act at the discretion of the Chief Purchasing Officer.

1.12.2.11 These regulations are in addition to and not a substitute for any other employment requirements required by state and/or federal law, or specific requirements included in a solicitation issued by the Executive Branch.

1.12.2.12 In the event of an emergency procurement in accordance with R.I. Gen. Laws 37-2-21(b) and Procurement Regulation 9.6, the Purchasing Agent may waive the E-Verify requirements to any extent practicable with the understanding that any ongoing relationship that occurs after the emergency has ceased shall require compliance with these regulations.

1.12.3 General Information

The "Federal work authorization program" or "E-Verify" began as the "Basic Pilot Program," an electronic program which compares employer-provided U.S. Citizenship and Immigration Services Form 1-9 information with Social Security Administration and USDHS databases to verify the employment authorization of newly hired employees. This database can be accessed from the USDHS', U.S. Citizenship and Immigration Services, internet website at: http://www.uscis.gov/portal/site/uscis.

1.12.4 Exceptions

1.12.4.1 These regulations shall not apply to any labor contracts between the State of Rhode Island and collective bargaining agents for employees of State agencies or contracts for the purchase, sale, lease or license of real estate.

SECTION 2. Procurement Regulation 2.3, "Structure and Responsibilities for Centralized State Agency Procurement," is hereby amended to include the following provision:

2.3.2.12 Assuring all persons and businesses doing business with the Executive Branch register and utilize the services of the E-Verify program in accordance with section 1.12 of these regulations to ensure compliance with federal and state law.

SECTION 3. Procurement Regulation 4.3, "Responsibilities of Bidders and Offerors," is hereby amended to include the following amended provision:

4.3.1.3 The Purchasing Agent may utilize factors such as financial capability, reputation, management, (and, as to Executive Branch contracts, registration with and utilization of the E-Verify program), 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.

Purchasing Regulation 4.6, "Vendor Disqualification," is hereby amended to include the following provision:

4.6.2 Failure to meet the requirements of Section 1.12 that mandate vendors to register and utilize the E-Verify program is grounds for vendor disqualification from Executive Branch contracts and the other sanctions mentioned above.

Purchasing Regulation 4.7, "Rejection and Removal," is hereby amended to include the following provisions:

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, or, as to Executive Branch contracts, fails to meet the requirements of section 1.12 mandating the registration with and utilization of the E-Verify program and certification related thereto.

Purchasing Regulation 4.8, "Debarment and Suspension," is hereby amended to include the following provisions:

4.8.1.3 As to Executive Branch contracts failure to register and utilize E-Verify as required in section 1.12 of these regulations is grounds for suspension or debarment. The severity of the sanction will be determined by the Purchasing Agent or his/her designee in accordance with the provisions below in this section.

4.8.3.6.4 Failure to certify to register and utilize the E-Verify system in accordance with the section 1.12 of these regulations.

4.8.3.6.5 False certification of registering and utilizing the E-Verify system in accordance with the section 1.12 of these regulations.

SECTION 5. Procurement Regulation 8.2, "Fundamental Requirements and Principles for State Contracts," is hereby amended to include the following provision:

8.2.8 Pursuant to Executive Order 08-01 and Procurement Regulation 1.12 herein, Executive Branch departments, agencies and personnel shall require that any and all persons and businesses doing business with the Executive Branch shall register with and utilize the services of the E-Verify program to ensure compliance with federal and state law.

Procurement Regulation 8.8, "Termination of Contract," is hereby amended to include the following provision:

8.8.3.11 Failure to register and utilize E-Verify as required in section 1.12 of these regulations is grounds for suspension or debarment of persons and businesses doing business with the Executive Branch. The severity of the sanction will be determined by the Purchasing Agent or his/her designee in accordance with the provisions below in this section.

8.8.3.12 Failure to certify to register and utilize the E-Verify system in accordance with the section 1.12 of these regulations.

8.8.3.13 False certification of registering and utilizing the E-Verify system in accordance with the section 1.12 of these regulations.

8.8.3.14 Persons and businesses failing to submit the required certifications from subcontractors shall not be allowed to continue to do business with the State of Rhode Island.

SECTION 6. Procurement Regulation 9.6, "Emergencies," is hereby amended to include the following provision:

9.6.9 In the event of an emergency procurement in accordance with R.I. Gen. Laws 37-2-21(b) and Purchasing Regulation section 9.6, the Purchasing Agent may waive the E-Verify requirements for the Executive Branch to any extent practicable with the understanding that any ongoing relationship that occurs after the emergency has ceased shall require compliance.

SECTION 7. Appendix A, "General Terms and Conditions" is hereby amended as follows:

38. New Employee Verification Requirement through E-Verify – Pursuant to Executive Order 08-01 and Procurement Regulation 1.12, all persons and businesses, including grantees, contractors and their subcontractors and vendors doing business with the Executive Branch of the State of Rhode Island are required to register with and utilize the services of the E-Verify program, or any successor thereto, to ensure compliance with federal and state law, and in accordance with the provisions of section 1.12 of the Purchasing Regulations. This requirement represents a condition of contract with the State. Failure to comply may result in sanctions with the Procurement Regulations and in accordance with Section14. Suspension and Debarment and/or Section 34. Default and Cancellation of the general terms and conditions.

"E-Verify Certification forms are available on the Division of Purchases' website at www.purchasing.ri.gov.