

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

(1) Concise Explanatory Statement Pursuant to RIGL § 42-35-3(a)(1)

These proposed rules seek to amend the State Procurement Regulations to clearly define the specific types of construction management contracts available for construction and public works projects. Each type of contract is described and a general outline of rights and responsibilities is included in each description. Of the seven types of contracts described, a purchasing agent or agency may utilize one or more contract type depending on the needs of the project. (Proposed Rule 8.11.1)

In addition, in determining what type of contract will be utilized in a particular project, the purchasing agent or agency must consider specific criteria not previously included in these rules. Eight specific criteria which must be assessed in making that determination are set forth in the proposed rule. (Proposed Rule 8.11.2)

Finally, these rules require the purchasing agent or agency to put in writing the facts and criteria upon which the selection of contract type was made. A copy of that written determination will remain within the contract file to which it pertains. (Proposed Rule 8.11.3)

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

While the proposed rules set forth seven different methods of contract management and describes each method in detail, the existing rules simply gave discretion to the purchasing agent or agency to choose the method of contract management for a particular project without actually listing the various types of contract management. (Existing Rule 8.11)

While the existing rules provide for one preferred method of contract management, the proposed rules list eight separate criteria which must be reviewed in making the determination of which method of contract management will be utilized for a particular project. (Existing Rule 8.11.2)

Although the existing rules already require the Chief Purchasing Officer to record the reasons for the choice of contract management in writing and maintain such document in the contract file, the proposed rules further extend this requirement to the purchasing agent or agency. (Existing Rules 8.11, 8.11.2)

AMENDMENTS

~~8.11 CONSTRUCTION CONTRACTING MANAGEMENT. [37-2-39] Responsibility for selection of methods of construction contracting management. The Chief Purchasing Officer shall issue regulations providing for as many alternative methods of management of construction contracting as he may determine to be feasible, setting forth criteria to be used in determining which method of management of construction is to be used for a particular project, and granting to the Purchasing Agent, or the purchasing agency responsible for carrying out the construction project, the discretion to select the appropriate method of construction contracting for a particular project, provided, however, that the Chief Purchasing Officer shall execute and include in the contract file a written statement setting forth the facts which led to the selection of a particular method of management of construction contracting in each instance.~~

8.11 Construction Contract Management

~~8.11.1 The Chief Purchasing Officer may delegate to the Purchasing Agent authority to select the appropriate contract type for construction and public works projects. The Purchasing Agent shall carry out all responsibilities of the Chief Purchasing Officer in recording such determinations.~~

8.11.1 Construction Contract Management Methods

(a) Use of Descriptions. The descriptions in (b) through (g) herein 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.

(b) Single Prime Contractor. The single prime 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. Further, 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 prime contractor has entered into subcontracts.

(c) Multiple Prime Contractors. Under the multiple prime contractor method, the State or the State's agent contracts directly with any number of contractors, often are representing different trades, 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.

(d) 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.

(e) Construction Manager. A construction manager 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 early in a project to assist in the development of a cost effective design. Without limitation, the construction

manager may become the single prime contractor, may guarantee that the project will be completed on time and may obtain subcontractors through the issuance of multiple bid packages as the design is developed. The construction manager 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 as deemed necessary to successfully complete the project.

(f) 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. Without limitation, the construction manager at risk may become the single prime contractor, and may guarantee that the project will be completed on time and will not exceed a specified maximum price, and/or may obtain subcontractors through the issuance of multiple bid packages as the design is developed. 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 a percentage of construction costs with a guaranteed maximum cost. 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.

(g) Sequential Design and Construction. Sequential design and construction denotes a method in which design of substantially the entire structure is completed prior to beginning the construction process. The design and construction services may be provided by the same or different vendors under the one or multiple contracts.

(h) Phased Design and Construction. Phased design and construction denotes a method in which construction is begun when appropriate portions have been designed but before design of the entire structure has been completed. This method is also known as fast track construction. The design and construction services may be provided by the same or different vendors under the one or multiple contracts.

~~8.11.2 The generally preferred method of construction contracting management for all projects shall be a general contractor selected as the lowest responsive bidder based on a lump sum, fixed-fee contract type, and projects utilizing this method shall not require individual written determination of such preference. The use of any other method must be justified in writing to the Purchasing Agent by the requesting agency, stating the reasons why the preferred method may not be used, and the Purchasing Agent may approve or reject such requests at his discretion.~~

8.11.2 Construction Contract Management Selection Criteria

The criteria to be used by the purchasing agent or purchasing agency in determining which method of management of construction listed in Section 8.11.1 is to be used for a particular project shall be as follows:

(a) when the project must be completed or ready for occupancy or use;

(b) the specific nature of the project, e.g. housing, offices, laboratories, roads, bridges, and heavy or specialized construction;

(c) the extent to which the requirements of the procuring agency and the ways in which said requirements are to be met are known;

(d) the location of the project;

(e) the size, scope, complexity, and economics of the project;

(f) 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;

(g) 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;

(h) the availability, experience and qualifications of outside consultants and contractors to complete the project under the various methods being considered.

8.11.3 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 out in 8.11.2. 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 as required herein