

**805-RICR-00-00-1**

## **TITLE 805 - Capital Center Commission**

### **CHAPTER 00 - N/A**

### **SUBCHAPTER 00 - N/A**

PART 1 - Rules of the Capital Center Commission for the Procurement of Supplies, Services and Legal Counsel

#### **1.1 Introduction.**

- A. The Capital Center Commission (the “Commission”) is authorized and empowered to adopt, implement and administer a plan of development for the Capital Center Special Development District in the City of Providence, State of Rhode Island, and for those purposes to enter into contracts necessary or convenient to the exercise of its powers.
- B. The purpose of these rules (the “Rules”) is to comply with the requirements of R.I. Gen. Laws Chapter 37-2 (State Purchases), and to set forth procedures to increase public confidence in the Commission’s procurement procedures, ensure fair and equitable treatment of all persons who deal with the Commission’s procurement system, increase economy in the Commission’s procurement activities by fostering effective competition and to provide safeguards for the maintenance of a procurement system for the Commission of quality, integrity and the highest ethical standards.

#### **1.2 Definitions.**

- A. The words defined in this section shall have the meanings set forth below wherever they appear in these Rules, unless the context in which they are used clearly requires a different meaning.
  - 1. “Change order” means a written order signed by the Chief Purchasing Officer directing the contractor to make changes which the changes clause of the contract authorizes the Chief Purchasing Officer to order without the consent of the contractor.

2. "Chief Purchasing Officer" means the executive director of the Commission acting with the consent of the Commission.
3. "Contract" means all types of agreements, including orders, for the purchase or disposal of supplies and services. It shall include awards; contracts of a fixed-price, cost, cost-plus-a fixed fee, or incentive type contract; contracts providing for the issuance of job or task orders; leases; letter contracts and purchase orders. "Contract" shall include supplemental agreements with respect to any of the foregoing. "Contract" does not include any labor contract with employees of the Commission.
4. "Contract modification" means any written alteration in the specifications, delivery point, rate of delivery, contract period, price, quantity, or other contract provisions of any existing contract, whether accomplished by unilateral action in accordance with a contract provision, or by mutual action of the parties to the contract. It shall include bilateral actions, such as supplemental agreements, and unilateral actions, such as change orders, administrative changes, notices of termination, and notices of the exercise of a contract option.
5. "Contractor" means any person who is a party to a contract with the Commission.
6. "Cost-reimbursement contract" means a contract under which the Commission reimburses the contractor for those contract costs within a stated ceiling, which are allowable and allocable under cost principles provided for in § 1.8(A) of this Part, and a fixed fee, if any.
7. "Department of Administration" means the Department of Administration of the State.
8. "Equal Opportunity Office" means the equal opportunity office of the Department of Administration.
9. "Established catalogue price" means the price included in the most current catalogue, price list, schedule, or other form that:
  - a. Is regularly maintained by the 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 buyers constituting the general buying public for that item; and
  - d. States prices which are obtained from the most recent industry-wide publications and informational journals if any.
10. "Evaluated bid price" means 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.
11. "Invitation for bids" means all documents, whether attached or incorporated by reference, utilized for soliciting bids in accordance with the procedures set forth in § 1.5.1(B) of this Part.
12. "May" shall be deemed to be permissive and not directory.
13. "Negotiation" means contracting by any of the methods set forth in §§ 1.5.1(C), (D), or (E) of this Part.
14. "Office of the Commission" means 30 Exchange Terrace, Providence, Rhode Island, or such other principal office of the Commission located in the City of Providence, State of Rhode Island as the Commission may from time to time determine.
15. "Person" means any business, individual, organization or group of individuals.
16. "Procurement" means the purchasing, buying, renting, leasing or otherwise obtaining of any supplies, services, or construction. It shall also include all functions that pertain to the obtaining of any supply, service or construction item, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.

17. "Purchasing Agent" means the purchasing agent of the State appointed pursuant to R.I. Gen. Laws § 37-1-1.
18. "Request for proposals" means all documents, whether attached or incorporated by reference, utilized for soliciting proposals in accordance with the procedures set forth in §§ 1.5.1(C), (D) and (E) of this Part.
19. "Responsible bidder or offeror" means a qualified bidder who has the capability in all respects, including professional competence and the financial responsibility, to perform fully the contract requirements, and the integrity and reliability which will assure good faith performance.
20. "Responsible bidder" means a person who has submitted a bid or proposal 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. A bidder who submits a bid based on alternative specifications to those contained in the invitation to bid will be responsive only if, in the judgment of the Chief Purchasing Officer, the alternative specifications meet the performance objectives of the Commission with respect to the item or service to be purchased and the invitation to bid states that alternative specifications will be considered.
21. "Services" means the rendering, by a contractor, of its time and effort rather than the furnishing of a specific end product, other than reports which are merely incidental to the required performance of services. "Services" does not include labor contracts with employees of state agencies.
22. "Shall" shall be deemed to be directory and imperative.
23. "Small business" means a person, partnership, corporation or other form of business entity independently owned and operated, not dominant in its field and which employs 500 or fewer employees and has its principal place of business in the State.
24. "State" means the State of Rhode Island and Providence Plantations and any of its departments or agencies and public agencies.

- 25. "Supplemental agreement" means any contract modification which is accomplished by the mutual action of the parties.
- 26. "Supplies" means all property, including, but not limited to leases of real property (other than leases of real property by or to the State), printing and insurance, except land or permanent interest in land.

### **1.3 Application of Rules.**

- A. These Rules shall apply to all expenditures of funds by the Commission under a contract, except contracts between the Commission and the State and contracts between the Commission and political subdivisions of the State or other governments.
- B. Nothing in these Rules shall prevent the Commission from complying with the terms and conditions of any grant, gift, bequest or agreement.
- C. The provisions of these Rules shall be considered to be incorporated in all contracts of the Commission to which they apply.
- D. Contracts entered into in violation of these Rules shall be void ab initio.
- E. Notwithstanding anything contained in § 1.3 of this Part, the "Rules of the Capital Center Commission for the Selection of Architects, Engineers and Consultants" shall govern the selection of architects, engineers and consultants by the Commission.

### **1.4 Procurement Decisions of the Commission.**

Every determination required by these Rules shall be in writing and based upon written findings of fact by the Commission. These determinations and written findings shall be retained in an official contract file in the Office of the Commission.

### **1.5 Source Selection and Contract Formation**

#### **1.5.1 Source Selection**

- A. Methods of Source Selection. Except as otherwise authorized by law or by Rule of the Commission, all contracts of the Commission shall be awarded by:

1. Competitive sealed bidding, pursuant to § 1.5.1(B) of this Part; or
2. Competitive negotiation, pursuant to §§ 1.5.1(C) and (D) of this Part; or
3. Noncompetitive negotiation, pursuant to § 1.5.1(E) of this Part; or
4. Small purchase procedures, pursuant to § 1.5.1(F) of this Part.

B. Competitive Sealed Bidding

1. Contracts exceeding the amount provided by § 1.5.1(F) of this Part shall be awarded by competitive sealed bidding unless it is determined in writing that this method is not practicable. Factors to be considered in determining whether competitive sealed bidding is practicable shall include whether;
  - a. Specifications can be prepared that permit an award on the basis of either the lowest bid price or the lowest evaluated bid price; and
  - b. The available sources, the time and place of performance, and other relevant circumstances as are appropriate for the use of competitive sealed bidding,
2. The invitation for bids shall state whether an award shall be made on the basis of the lowest bid price or the lowest evaluated bid price. If the latter basis is used, the objective measurable criteria to be utilized shall be set forth in the invitation for bids, if available.
3. 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 include publication in a newspaper of general circulation in the State as determined by the Commission not less than seven (7) days nor more than twenty-one (21) days before the date set for the opening of the bids. The Chief Purchasing Officer may make a written determination that the twenty-one (21) day limitation needs to be waived. The written determination shall state the reason why the twenty-one (21) 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.

4. Bids shall be opened publicly 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 for public inspection. Subsequent to the awarding of the bid, all documents pertinent to the awarding of the bid shall be made available and open to public inspection and retained in the bid file.
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 bid price.
6. Correction or withdrawal of bids will be allowed only in the following circumstances:
  - a. A bidder will not be permitted to correct a bid mistake after bid opening that would cause such bidder to have the low bid unless the mistake is clearly evident from examining the bid document, for example, errors in addition.
  - b. After bid opening, an otherwise low bidder may be permitted to correct a material mistake of fact in its bid, including price, when the intended bid is obvious from the bid document or is otherwise supported by proof that has evidentiary value. A low bidder will not be permitted to correct a bid for mistakes or errors in judgment.
  - c. In lieu of bid correction, a low bidder alleging a material mistake of fact will be permitted to withdraw its bid after bid opening when there is reasonable proof that a mistake was made and the intended bid cannot be ascertained with reasonable certainty.
  - d. After bid opening, an otherwise low bidder shall not be permitted to make exceptions to the bid conditions or specifications which affect price or substantive obligations; however, such bidder shall be permitted the opportunity to furnish other information called for by the invitation for bids and not supplied due to oversight, so long as it does not affect responsiveness.

C. Competitive Negotiation

1. When the Chief Purchasing Officer determines in writing that the use of competitive sealed bidding is not practicable, and except as provided in §§ 1.5.1(E) and (F) of this Part, a contract may be awarded by competitive negotiation.
2. Adequate public notice of the request for proposals shall be given in the same manner as provided in § 1.5.1(B)(3) of this Part.
3. The request for proposals shall indicate the relative importance of price and other evaluation factors.
4. Award shall be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to the Commission taking into consideration price and the evaluation factors set forth in the request for proposals.
5. Written or oral discussions shall be conducted with all responsible offerors who submit proposals determined in writing by the Chief Purchasing Officer to be reasonably susceptible of being selected for award. Discussions shall not disclose any information derived from proposals submitted by competing offerors. Discussions need not be conducted:
  - a. With respect to prices, where such prices are fixed by law or regulation, except that consideration shall be given to competitive terms and conditions; or
  - b. Where time of delivery or performance will not permit discussion; or
  - c. Where it can be clearly demonstrated and documented from the existence of adequate competition or accurate prior cost experience with the particular supply, service, or construction item, that acceptance of an initial offer without discussion would result in fair and reasonable prices, and the request for proposals notifies all offerors of the possibility that award may be made on the basis of the initial offers.

D. Negotiations after Unsuccessful Competitive Sealed Bidding

1. Contracts may be competitively negotiated when it is determined in writing by the Commission that the bid prices received by competitive sealed



bidding under § 1.5.1(B) of this Part either are unreasonable as to all or part of the requirements, or were not independently reached in open competition, and for which:

- a. Each competitive bidder has been notified of the intention to negotiate and is given reasonable opportunity to negotiate; and
  - b. The negotiated price is lower than the lowest rejected bid by any competitive bidder; and
  - c. The negotiated price is the lowest negotiated price offered by a competitive offeror.
2. In the event that all bids submitted pursuant to competitive sealed bidding under § 1.5.1(B) of this Part result in bid prices in excess of the funds available for purchase, and Chief Purchasing Officer determines in writing;
  - a. That there are no additional funds available from any source so as to permit an award to the lowest responsive and responsible bidder, and
  - b. The best interest of the Commission will not permit the delay attendant to a resolicitation under revised specifications, or for revised quantities, under competitive sealed bidding as provided in § 1.5.1(B) of this Part, then a negotiated award may be made as set forth in §§ 1.5.1(D)(3) or (4) of this Part.
3. Where there is more than one bidder, competitive negotiations pursuant to § 1.5.1(C) of this Part, shall be conducted with the three (two if there are only two) bidders determined in writing to be the lowest responsive and responsible bidders to the competitive sealed bid invitation. Such competitive negotiations shall be conducted under the following restrictions:
  - a. If discussions pertaining to the revision of the specifications or quantities are held with any potential offeror, all other potential offerors shall be afforded an opportunity to take part in such discussions; and

- b. A request for proposals, based upon revised specifications or quantities, shall be issued as promptly as possible, shall provide for an expeditious response to the revised requirements, and shall be awarded upon the basis of the lowest bid price or lowest evaluated bid price submitted by any responsive and responsible offeror.
4. When after competitive sealed bidding, it is determined in writing that there is only one responsive and responsible bidder, a noncompetitive negotiated award may be made with such bidder in accordance with § 1.5.1(E) of this Part.

E. Sole Source Procurement and Emergency Procurements.

1. A contract may be awarded for a supply, service or construction item with competition when the Chief Purchasing Officer determines, in writing, that there is only one source for the required supply, service, or construction item.
2. Notwithstanding any other provision of these Rules, the Chief Purchasing Officer may make emergency procurements when there exists a threat to public health, welfare or safety under emergency conditions, 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 particular contractor shall be included in the contract file.

F. Small Purchases. Procurements not to exceed two thousand five hundred dollars (\$2,500) may be made at or below the established catalogue or market price of commercial items sold in substantial quantities to the general public. In the case of purchases which do not exceed an aggregate amount of two thousand five hundred dollars (\$2,500), the Chief Purchasing Officer shall procure items in any manner he or she believes reasonable. The Commissioners may ratify from time to time any previous purchases made by the Chief Purchasing Officer under § 1.5.1(F) of this Part. In the case of any purchases to which § 1.5.1(F) of this Part applies, the Chief Purchasing Officer shall, to the extent practicable, make inquiries from at least three sources to determine what is a reasonable price. These inquiries may be made by telephone. No such inquiries are required when the price of the item or service is not expected to exceed five hundred dollars (\$500).

- G. Waiver of Informalities in Bids and Offers. The Chief Purchasing Officer may waive informalities in any bid or offer.

### **1.5.2 Cancellation of Invitation for Bids and Requests for Proposals**

The Chief Purchasing Officer may cancel an invitation for bids, a request for proposal, or negotiations in connection with the procurement of any supply, service or construction, or may reject all bids or proposals, if the Chief Purchasing Officer determines that such action is in the best interests of the Commission. No such cancellation or rejection shall prevent the Chief Purchasing Officer from resoliciting bids for the same supplies, services or construction on the same or different terms.

### **1.5.3 Responsibility of Bidders and Offerors.**

A. Determination of Responsibility.

1. A written determination of responsibility of a bidder or offeror shall be made by the Chief Purchasing Officer in connection with the award of any contract.
2. The Chief Purchasing Officer may make reasonable inquiries to determine responsibility. The failure of any bidder or offeror to promptly supply information in connection with such inquiries may be grounds for determining that such person is not responsible.
3. Except as otherwise provided by law, information furnished by any bidder or offeror pursuant to § 1.5.3(A) of this Part may not be disclosed by the Commission to any other person with the prior written consent of such person.

B. Annual Statement of Qualifications. Persons interested in contracting with the Commission shall be encouraged by the Chief Purchasing Officer to submit to the Commission annually a statement of qualifications. Solicitation mailing lists of potential contractors shall included but need not be limited to those contractors who have submitted an annual statement of qualifications.

C. Cost or Pricing Data

1. A contractor shall submit to the Chief Purchasing Officer cost or pricing data and shall certify that, to the best of his, her or its knowledge and

belief, any cost or pricing data required to be submitted was accurate, complete, and current as of a mutually determined specified date prior to the date of:

- a. The pricing of any negotiated contract where the total contract price is expected to exceed fifty thousand (\$50,000); or
  - b. The pricing of any change order or contract modification which is expected to exceed twenty-five thousand dollars (\$25,000).
2. The Chief Purchasing Officer may require contractor certified cost or pricing data in connection with any bid, proposal or contract without regard to the price ceilings set forth above if the Chief Purchasing Officer determines that such cost or price data is necessary to ensure a fair and reasonable contract price to the Commission.
3. When certified cost or pricing data must be submitted in connection with any contract, change or modification thereto, the price to the Commission, including profit or fee, shall be adjusted to exclude any significant sums by which the Chief Purchasing Officer finds that such price was increased because the contractor furnished cost or pricing data which, as of the date agreed upon between the parties, was inaccurate, incomplete or not current.
4. The Chief Purchasing Officer may elect not to require certified cost or pricing data when the price negotiated is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, prices set by law or regulation, or in exceptional cases where the Chief Purchasing Officer determines that the requirements of this section may be waived, and the reasons for such waiver are stated in writing.

#### **1.5.4 Contracts**

##### **A. Types of Contracts.**

1. The Commission may enter into any type of contract which will promote the best interests of the Commission subject to the following rules:

- a. Cost plus percentage of cost type contracts shall not be awarded to any person.
- b. No cost-reimbursement type of contract shall be awarded to any person unless the Chief Purchasing Officer determines that this type of contract is likely to be less costly to the Commission than any other type of contract, or that it is impracticable to obtain supplies or services of the kind or quality required except under such a contract.
- c. Each contractor under a cost reimbursement type contract shall obtain the consent of the Chief Purchasing Officer, as provided for in the contract, before entering into:
  - (1) A cost-reimbursement type subcontract; or
  - (2) Any other type of subcontract involving more than ten thousand dollars (\$10,000) or ten percent (10%) of the estimated cost of the prime contract.
- d. All cost reimbursement type subcontracts shall contain a provision that only costs recognized as allowable, in accordance with cost principles provided for in § 1.8(A) of this Part, will be reimbursable.

B. Approval of Accounting System. Except with respect to firm fixed price type contracts, no contract type shall be used by the Commission unless the Chief Purchasing Officer has determined that the proposed contractor's accounting system will permit timely development of all necessary cost data in the form required by the specific contract type contemplated and that the contractor's accounting system is adequate to allocate costs in accordance with cost principles set forth in § 1.8(A) of this Part.

C. Partial, Progressive and Multiple Awards.

- 1. A contract may provide for payments as work progresses under the contract, on the basis of costs incurred, on the basis of percentage of completion accomplished, or on the basis of a particular stage of completion.

2. A contract may provide for payments upon submission of proper invoices or vouchers for supplies delivered and accepted, or services rendered and accepted, where such supplies and services are only part of total contract requirements.
3. The Commission may reserve the right to split a contract between two or more responsive and responsible bidders or offerors and to make an award for all or only part of the items, services or construction specified in the solicitation, if so stated in the invitation to bid or the request for proposal.

#### **1.5.5 Reporting of Anti-Competitive Practices**

- A. If for any reason the Chief Purchasing Officer suspects collusion among bidders or offerors, the Chief Purchasing Officer shall transmit a written notice of the facts giving rise to such suspicion to the Attorney General of the State (the "Attorney General").
- B. All documents involved in any procurement in which collusion is expected shall be retained until the Attorney General notifies the Chief Purchasing Officer that they may be released. All such documents shall be made available to the Attorney General or his or her designee upon request, notwithstanding any other provision of this rule.

#### **1.6 Specifications Section**

Specifications. The Commission shall utilize, to the extent practicable, standards and specifications approved by the Department of Administration, the U. S. Government, or industry and professional associations, for supplies, services, and construction, with a view to maximizing, to the extent practicable, competition in the fulfillment of the Commission's requirements.

#### **1.7 Modification and Termination of Contracts for Supplies or Services**

- A. Modification of Contract. The Chief Purchasing Officer may require that any contract for the procurement of supplies or services contain clauses permitting changes or modifications by the Chief Purchasing Officer or the contractor.

- B. Termination of Contract – Default of Vendor. The Chief Purchasing Officer shall require that all contracts for supplies or services may be terminated for default of the contractor and, in the case of such default may provide for liquidated damages.
- C. Termination of Contract – Convenience. The Chief Purchasing Officer shall require that all contracts for supplies or services may be terminated at the convenience of the Commission and in such cases shall provide for appropriate adjustments in price.

## **1.8 Cost Principles Section**

- A. Cost and Pricing Principle. Except as otherwise provided by contract, the Chief Purchasing Officer shall use generally accepted accounting principles:
  - 1. As guidelines in the negotiation of:
    - a. Estimated costs for contracts when the absence of open market competition precludes the use of competitive sealed bidding;
    - b. Adjustments for changes or modifications in contract performance requested by the Commission; and
    - c. Settlements of contracts which have been terminated.
  - 2. To determine the allowability of incurred costs for the purposes of reimbursing costs under contract provisions which provide for the reimbursement of costs; and
  - 3. As appropriate in any other situation where determinations of the estimated or incurred costs of performing a contract may be required.

## **1.9 Dispute Resolution and Debarment**

### **1.9.1 Resolution of Protests of Solicitations and Awards**

- A. Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation or award of any contract may file a protest with the Chief Purchasing Officer. A protest or notice of other controversy must be filed promptly and in any event, within two (2) calendar weeks after such

aggrieved person knows or should have known of the facts giving rise thereto. All protests or notices of other controversies must be in writing.

- B. The Chief Purchasing Officer shall promptly issue a decision in writing regarding such protest. A copy of that decision shall be mailed or otherwise furnished to the aggrieved party and shall state the reasons for the action taken.
- C. In the event a protest is filed in a timely manner under this Section, the Commission shall not proceed further with the solicitation or award which is the subject of the protest until it has issued a decision on the protest, or determined that continuation of the procurement is necessary to protect a substantial interest of the Commission.

### **1.9.2 Debarment and Suspension**

- A. After reasonable notice to the person involved and reasonable opportunity for that person to be heard, the Chief Purchasing Officer may debar a person for cause from consideration for award of contracts. The debarment shall not be for a period of more than three years. The Commission may suspend a person from consideration for award of contracts if there is probable cause for debarment. The suspension shall not be for a period exceeding three months.
- B. Causes for debarment or suspension include the following:
  - 1. conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in performance of such contract or subcontract;
  - 2. conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, stolen property, or any other offense indicating a lack of business integrity or business honesty;
  - 3. conviction under state or federal antitrust statutes arising out of the submission of bids or proposals;
  - 4. violation of contract provisions, as set forth below, of a character which is regarded by the Chief Purchasing Officer to be so serious as to justify debarment action;



- a. deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in a contract with the Commission; or
  - b. a recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts with the Commission; provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment;
- 5. any other cause the Chief Purchasing Officer reasonably determines to be so serious and compelling as to affect responsibility as a contractor, including debarment by a governmental entity.
- C. The Chief Purchasing Officer shall issue a written decision to debar or suspend. The decision shall;
  - 1. state the reasons for the action taken; and
  - 2. inform the debarred or suspended person involved of its rights to judicial review.
- D. A copy of the decision under § 1.9.2(C) of this Part shall be mailed or otherwise furnished immediately to the debarred or suspended person.

### **1.9.3 Resolution of Contract Disputes.**

- A. Prior to the institution of arbitration or litigation concerning any contract claim or controversy, the Chief Purchasing Officer shall endeavor to settle or compromise such claim.
- B. If any claim or controversy is not resolved by mutual agreement, the Chief Purchasing Officer shall promptly issue a decision in writing regarding the subject matter of such claim or controversy. A copy of that decision shall be mailed or otherwise furnished to the contractor. If the Chief Purchasing Officer does not issue a written decision within thirty (30) days after written request for a final decision, or within such longer period as might be established by the parties to the contract in writing, then the contractor may proceed as if an adverse decision had been received from the Commission.

## **1.10 Additional Matters**

- A. Small and Disadvantaged Businesses. The Chief Purchasing Officer shall, to the extent practicable, encourage small businesses and small disadvantaged businesses to bid for contracts to be awarded by the Commission.
- B. Goods Produced in the Republic of South Africa. In conformity with the policy of divestment established in R.I. Gen. Laws § 35-10-12, the Commission shall refrain from the purchase of any goods which are known to be wholly produced in the Republic of South Africa. Such goods are those which are in their final form for use or consumption without additional processing, assembly, or manufacturing. Further, the Commission will give preference in its purchasing to companies which, to the Commission's knowledge, do not do business in, or with, the Republic of South Africa.
- C. Equal Employment Opportunity. For all contracts for supplies and services exceeding Ten Thousand Dollars (\$10,000), contractors must comply with the requirements of federal Executive Order 11246, as amended, and R.I. Gen. Laws § 28-5.2-10, and other regulations as issued by the Purchasing Agent and administered by the Equal Opportunity Office. Failure to comply will be considered a substantial breach of the contract subject to penalties prescribed in such regulations.
- D. Conflict of Interest. No member or employee of the Commission shall have any interest, financial or otherwise, direct or indirect, or engage in any activity which is in substantial conflict with the proper discharge of his or her duties as a member or employee of the Commission.
- E. Legal Counsel
  - 1. Before the Commission arranges for the services of an attorney, it shall determine the following:
    - a. The need for the services required, including the scope of the services to be performed;
    - b. That no legal personnel employed by the State on a full-time basis are available to perform such services;

- c. That funding is available, and the sources from which such funding is to be provided;
  - d. That attorneys to be engaged meet the following minimum requirements:
    - (1) appropriate professional licensing;
    - (2) competence to perform such services as reflected by formal training and education, general experience and experience in providing the required services, and the qualifications and competence of persons who would be assigned to perform the services;
    - (3) ability to perform the services as reflected by workload and availability of adequate personnel, equipment and facilities to perform the services expeditiously.
- 2. The attorney shall enter into a letter of engagement with the Commission. The letter of engagement shall state the rate of compensation, the scope of the services to be performed for the compensation and provision for the payment of expenses incurred in connection with legal services. The letter of engagement shall certify that the rate of compensation does not exceed the rate of compensation charged by counsel to his or her preferred public or private clients. A letter of engagement shall not be for more than one (1) year.
- 3. The Commission may renew or extend the letter of engagement of an attorney previously engaged by the Commission pursuant to the provisions of these procurement regulations without utilizing the methods of source selection set forth in § 1.5.1 of this Part.

## **1.11 Effective Date**

- A. **Effective Date.** These rules shall become effective twenty (20) days following the date they are filed with the Secretary of State of the State.
- B. **Contracts in Effect on Effective Date.** These Rules shall not change in any way a contract commitment by the Commission nor of a contractor to the Commission which was in existence on the effective date of these Rules.

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