GENERAL CONDITIONS OF PURCHASE 220-RICR-30-00-13

CONCISE EXPLANATORY STATEMENT

In accordance with the Administrative Procedures Act, R.I. Gen. Laws § 42-35-2.6, following is a concise explanatory statement:

AGENCY: Department of Administration

DIVISION: Division of Purchases

RULE IDENTIFIER: 220-RICR-30-00-13

RULE TITLE: General Conditions of Purchase

REASON FOR RULEMAKING: This repeal is associated with the adoption of **220-RICR-30-00-13.** The General Conditions of Purchase have not been updated in many years and are outdated. Additionally, the current General Conditions are not comprehensive and require agencies to enter into separate agreements with vendors. Thus, award of a purchase order or purchase agreement is often delayed by contract negotiations. Aside from the delay, this process also results in State agreeing to varying terms and a lack of consistency across agencies. Having a comprehensive set of General Conditions to serve as the base contract will put vendors on a level playing field when bidding on State contracts. The General Conditions also contemplate contract Addenda (additional contract terms) that will cover federal requirements, public works contracts, information technology agreements, insurance requirements and other specialized situations.

TESTIMONY AND COMMENTS: See attached "Summary of Comments and Response" document.

CHANGE TO TEXT OF THE PROPOSED RULE:

13.1 A – Added the following: "*The purpose of the General Conditions of Purchase is to provide a comprehensive, clear, consistent and reasonable set of contractual terms to serve as the base agreement between the State of Rhode Island ("State") and a*

Vendor. These General Conditions, along with items specified in section 13.4 herein, shall serve as the Contract with the State regardless of the method of procurement."

13.2(A)(2)(a)&(b) – Clarifies term nomenclature (i.e. "Statewide Purchase Agreement" or "Master Price Agreement")

13.3(C)(4) – No pencil bids accepted

13.3(C)(9) – Deletes the word "materially" in the context of determining equal bids.

13.3(C)(9)(D) – Includes State higher education institutions into Public Records provision.

13.3(C)(9)(F) – "Collusion" section reinserted from existing regulation

13.3(C)(9)(G) – "Prohibition against Fees and Gratuities" reinserted from existing regulation.

13.4(A)(7) – Clarified that vendor's "offer" is an incorporated document into the Contract;

13.4(B)(1) – Added "Federal laws and/or regulations (for federally funded contracts only)" as an incorporated item into the Contract.

13.4(B)(5) – Clarified language that vendor's offer is included in the order of precedence.

13.15(B) – Added language to allow Vendor to appeal assessed damages through protest provisions.

13.22 (A)(10) – Adds prescription drug abuse

13.22(12) – Expressly includes vendor obligation: "To comply with the provisions of R.I. Gen. Laws § 37-2-34 (Right to inspect facilities – Right to Audit) as necessary."

13.25(A) – Amends subcontractor requirements to include:

> *"Provided, however, for Rhode Island Department of Transportation ("RIDOT") road, bridge and heavy construction projects, approval of subcontractors shall be in accordance with "Bluebook" specifications issued by RIDOT. Upon request, contractors must submit to the Office of Purchases a list of all subcontractors to*

be employed in the performance of any Purchase Order or other contract arising from this Request."

13.26 – Adds agency approval for advertising.

13.32(A) Effective date change to:

"The General Conditions shall apply to all procurements issued after the effective date of these regulations."

13.34(A) – Clarifies language and provides that the Division of Purchases will specify when an Addenda applies to a Contract.

See attached Summary of Comments and Response document for reasons for changes.

REGULATORY ANALYSIS: The main benefit is the implementation of clear, concise terms and conditions, which are stated upfront. Vendors may offer conditional or qualified terms, which will be considered, but ultimately the default contract terms are stated in the General Conditions, along with applicable addenda. Additionally, having a comprehensive set of general conditions will reduce the need to negotiate a comprehensive agreement after-the-fact and, thus, reduce the time to award a contract. There are no known costs.