

**RHODE ISLAND GOVERNMENT REGISTER
PUBLIC NOTICE OF PROPOSED RULEMAKING**

DEPARTMENT OF ADMINISTRATION

Title of Rule: Competitive Bid and Competitive Sealed Bid Review and Source Selection (220-RICR-30-00-5)

Rule Identifier: 220-RICR-30-00-5

Rulemaking Action: Direct Final Amendment

Important Dates:

Date of Public Notice: December 19, 2023

End of Public Comment: January 18, 2024

Rulemaking Authority:

R.I. Gen. Laws § 37-2-13

R.I. Gen. Laws § 37-2-22

Summary of Rulemaking Action:

During the State of Rhode Island's 2023 legislative session, HB5463 and SB0709 were passed increasing the thresholds for small purchases delegated authority effective December 31, 2023, codified in statute as R.I. Gen. Laws § 37-2-22. This statutory change requires the Procurement Regulations to be updated via 220-RICR-30-00-5 and 220-RICR-30-00-9. The Division of Purchases has determined that these updates must be addressed in regulation to ensure uniform applicability and compliance throughout the State, and to prevent potential confusion caused by outdated and misaligned information in regulation that no longer comports with the applicable statutory provision.

The Agency does not expect this filing to be controversial and therefore, a public hearing will not be held.

Additional Information and Public Comments:

If no formal objection is received on or before January 18, 2024, the Department of Administration will file the Amendment and the Final Rule will take effect on this date.

Objections should be addressed to:

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Regulatory Analysis Summary and Supporting Documentation:

Regulatory Analysis for Proposed Rule

Name of Administrative Rule

Revisions to Small Purchases Delegated Authority Regulations by Division of Purchases (220-RICR-30-00-5 and 220-RICR-30-00-9) to Align with Changes to R.I. Gen. Laws § 37-2-22.

Background and Introduction

During the State of Rhode Island's 2023 legislative session, HB5463 and SB0709 were passed increasing the thresholds for small purchases delegated authority effective December 31, 2023, codified in statute as R.I. Gen. Laws § 37-2-22. This statutory change requires the Procurement Regulations to be updated via 220-RICR-30-00-5 and 220-RICR-30-00-9. The Division of Purchases has determined that these updates must be addressed in regulation to ensure uniform applicability and compliance throughout the State, and to prevent potential confusion caused by outdated and misaligned information in regulation that no longer comports with the applicable statutory provision.

Increase to the threshold for when a competitive procurement is necessary for the purchase of goods and/or services permits the State to go out to formal bid only when an individual project amount exceeds \$25,000 for construction and \$10,000 for all other procurements (the minimum threshold amount was previously \$10,000 and \$5,000, respectively). However, for amounts below those thresholds, there is still a process that is required, and in accordance with standard public procurement principles, agencies still must demonstrate due diligence and obtain the best value for that purchase on behalf of the taxpayers.

Accordingly, three written quotes are required for all procurements over \$500.00 and less than \$10,000.00 (\$25,000.00 for construction projects), with projects that exceed those thresholds and not expressly otherwise exempt from competitive procurement processes required to go to public solicitation. Corresponding policy requires agencies to obtain a quote from at least one MBE/WBE vendor and one from a local vendor where available for all procurements.

In addition to these changes that directly reflect the statutory updates, the Division of Purchases seeks to update the "micro" purchases procedures set forth in 220-RICR-30-00-5 and 220-RICR-30-00-9 that apply to procurements under \$500 (which are not contemplated in statute but have been historically regulated through regulation and policy as set forth therein). Although micro purchases have been subject to a \$500 threshold for the past several years in practice, the regulations still contain reference to a \$250 threshold in this context. This correction merely memorializes existing long-term policy and incurs no substantive or known changes.

To accommodate the necessary change in procedures that increases to the small purchase delegated authority threshold entails, the Division of Purchases is revising existing guidance and protocols to ensure that the three-quote process that is employed by fellow States in their own small purchase programs will continue to be employed by Rhode Island ahead of this legislation's

December 31, 2023 effective date as described above.

Benefits and Costs of Regulatory Alternatives

Pursuant to R.I. Gen. Laws § 42-35-2.9, the Division of Purchases has undertaken a regulatory analysis for the proposed regulatory changes. Given the lack of anticipated fiscal impact, the Division used the most relevant information at the time of publication to estimate the benefits and costs of the proposed regulatory updates. The following analysis examines the costs and benefits only of incorporating and reflecting statutory changes into existing regulatory provisions and corresponding policies and procedures currently employed by the State.

There is no contemplated or associated cost to the State or its public agency and municipal partners in effectuating this statutory change, which in substance and practice merely reflects a threshold increase that will still permit agencies to employ existing procedures when procuring goods using small purchases delegated authority. The State currently utilizes Master Price Agreements and other authorized contract vehicles (i.e., cooperative agreements through NASPO) to avoid a time-consuming bid process for low project amounts. However, in relation to these threshold increases, the State may not have to conduct a formal bid process for these low-dollar goods and/or services which can otherwise take upwards of several months to complete. Implementation of these changes, then, is expected to increase efficiency for the State due to the anticipated reduction in volume of procurements in the range between the prior and soon-to-be current threshold amounts.

Increasing the small purchases thresholds allows agencies greater flexibility in making small purchases while maintaining fiscal control over excessive agency spending. Such changes streamline the overall procurement process for a significant number of purchases that fall under this threshold and improve the efficiencies of both agency and Division of Purchases' operations.

In reviewing anticipated impact of these changes, historical procurement data from SFY 21-23 was exported from the State financial system. Of the approximately 2,600 eligible requisitions that were valued under the increased small purchases delegated authority threshold of \$10,000 for the time period in question, 1,100 procurements (42%) had a value of between \$5,000 and \$10,000. These purchases were facilitated on a separate procurement basis and processed manually by Division of Purchases staff. Accordingly, this figure is representative of potential time savings by Division of Purchases personnel, who will no longer be required to manually review, seek agency feedback and clarification, and process these procurements when the statutory changes become effective.

Alternative Approaches Considered During Rulemaking Proceedings

As this change reflects and memorializes only a statutory revision, there were no alternative approaches considered or contemplated during the rulemaking proceedings. The Department of Administration's regulatory authority for procurement regulations is codified in R.I. Gen. Laws § 37-2-13. These regulatory updates are only being effectuated to reflect the statutory change contained in R.I.

Gen. Laws §37-2-22. Moreover, instead of including specific threshold amounts in the regulation, which was done previously, the amended regulation will now simply reference the statutory thresholds. Therefore, if these amounts are changed in the future by the General Assembly, no further regulatory changes will be needed.

Final Determination and Request

Given the fact that the requested modifications to the regulations in question are sought to reflect changes already codified in statute, and the corresponding impact on State operations is minimal as discussed and illustrated above while benefits to the State were already contemplated during the legislative hearings in which the statutory change was authorized, the Department of Administration hereby requests filing of the proposed versions of 220-RICR-30-00-5 and 220-RICR-30-00-9. It is anticipated that there will be no effective need for public comment since these changes, whether contained within regulation or not, are statutory in nature and cannot be modified further through an administrative process. Accordingly, the Department further requests that these changes are implemented through a direct final process and within the appropriate timeline to align with the effective statutory date of January 1, 2024.

For full regulatory analysis or supporting documentation contact the agency staff person listed above.