

# STATE OF RHODE ISLAND PROCUREMENT REGULATIONS (Amended January 2009)

## PURSUANT TO CHAPTER 37 - 2 OF THE GENERAL LAWS OF RHODE ISLAND STATE PURCHASES

**PURPOSE OF THE REGULATIONS:** These regulations have been developed to provide a framework for implementation of the letter and intent of State Purchasing Law, Chapter 37-2 of the General Laws of Rhode Island. The procurement activities of all state agencies are governed by this document. Among other provisions, the legislation and regulations set forth herein prohibition state agency administrators from committing funds or entering into agreements without the **express** written authorization of the Chief Purchasing Officer. Each agency director must be familiar with these regulations and must indoctrinate his/her personnel in their implementation.

**LEGISLATIVE INTENT:** The major thrust of the legislation is the creation of a framework for enhanced opportunities for competitive procurement and increased accountability for state officials through the centralization of purchasing functions for state agencies. The legislation names the Director of the Department of Administration the state's Chief Purchasing Officer and requires all state agencies and commissions to adhere to certain mandates of the law and comply with regulations, policies and procedures promulgated by the Chief Purchasing Officer. Certain public agencies are not under the jurisdiction of the Chief Purchasing Officer but must adhere to all requirements of the legislation.

**ADMINISTRATIVE PROCEDURES ACT:** On July 10, 1989, House Bill 89-H 5000 Substitute A as amended (known as the "Lamb Legislation"), an Act Relating to State Purchases, was signed into law. The Act repealed in its entirety Chapter 37-2 of the General Laws of Rhode Island, and substituted new language to institute legal mandates based on the Model Procurement Act published by the American Bar Association. The legislation, effective when the Governor signed the bill, made provision for a January 1, 1990, implementation date. In accordance with the Administrative Procedures Act (Title 42, Chapter 35 of the General Laws of Rhode Island), a Public Hearing was held on December 7, 1989, on the draft regulations promulgated by the Chief Purchasing Officer, pursuant to the requirements of Chapter 37-2. In addition to comments provided at the hearing, written comments and suggestions were received from state and public agencies and from trade organizations. Consideration of these comments and further dialogue demonstrated that, due to the complexity and depth of the requirements of the new law, refinements and additions to the regulations should be considered in relation to a relevant body of administrative procedures. Therefore, in accordance with the provisions of the Administrative Procedures Act, after consideration was given to these comments, interim Emergency Regulations were filed on March 15, 1990, with all additions, deletions, or other modifications subject to further public commentary. A minor technical revision was filed on April 2, 1990, and the final regulations filed with the Secretary of State on October 12, 1990. In April of 1994 Emergency Regulations were filed and a public hearing on the changes was held in May of 1994. Further technical revisions were filed in

November of 1994. This document has been published to incorporate new requirements and to recodify and/or clarify existing regulations. In January of 1995 updated Regulations were filed with the Secretary of State. Amended Regulations were filed with the Secretary of State in January of 2009.

**FORMAT:** These regulations have been developed in a manner which attempts to avoid legalistic terminology to the extent practicable to enhance the ability of all affected persons, agencies and suppliers to understand and meet the requirements of Rhode Island law. However, in certain instances, the exact language of the enabling legislation has been used due to its specificity, clarity, or inclusiveness. Language copied precisely from the enabling legislation is indicated by a citation in bold print preceding the quotation. If the language is a rephrasing of the legislation for the sake of brevity or clarity, the reference is preceded by the phrase "in accordance with." Because the order in which the regulations have been presented differs from the enabling legislation a different codification system has been used. Each Section has been assigned a title and unique number.

## **SECTION 1 - GENERAL PROVISIONS**

### **1.1 PURPOSES AND POLICIES**

1.1.1 The underlying purposes and policies of these regulations are:

1.1.1.1 To simplify, clarify, and modernize purchasing activities undertaken by the State of Rhode Island and its local public agencies;

1.1.1.2 To permit the continuous development of purchasing policies and practices;

1.1.1.3 To provide for increased public confidence in the procedures followed in public procurement;

1.1.1.4 To insure fair and equitable treatment of all persons who deal with the procurement system of the state.

1.1.1.5 To provide increased economy in state and public agency procurement activities by fostering effective competition;

1.1.1.6 To provide safeguards for the maintenance of a procurement system of quality, integrity and the highest ethical standards; and

1.1.1.7 To provide for clearly defined accountability and responsibility for procurement actions.

1.1.2 Administrative Practices and Policies

1.1.2.1 Competition: The State of Rhode Island will operate an effective procurement system by obtaining goods and services within a competitive environment whenever possible.

The primary method of assuring that procurements are to the advantage of the State of Rhode Island, will be the use of competitive bidding procedures.

Contract awards shall be made to the lowest responsive and responsible bidder, taking into consideration the reliability of the bidder, the qualities of the materials, equipment or supplies to be furnished, their conformity with the specifications, the purposes for which required, terms of delivery and the best interests of the state.

1.1.2.2 Centralization: The State of Rhode Island will operate an effective procurement system by establishing a centralized purchasing authority responsible for the promulgation and oversight of rules, regulations, policies and procedures for the implementation of all laws relating to purchasing activities. The State of Rhode Island will provide centralized purchasing support services to assure that equity and professional expertise are employed in the purchase of goods and services.

1.1.2.3 Responsibility and Accountability: All state agency officials shall be responsible for verbatim compliance with purchasing legislation enacted by the General Assembly and with all related policies, rules, regulations, procedures and codes promulgated by the Chief Purchasing Officer and shall be held accountable for violations of the spirit, intent and letter of these governing requirements.

All state employees shall be responsible for carrying out their designated functions with care, integrity and a sense of responsibility to the taxpayers of Rhode Island for providing public services in the most cost-effective manner possible.

## **1.2 APPLICATION**

1.2.1 In accordance with Section [37-2-4], Chapter 37-2, RIGL, shall apply to every expenditure of public funds except as otherwise provided by law, by the State of Rhode Island or a public agency under any contract or like business agreement, excepting only those contracts or like business agreements between the state and its political subdivisions or other governments. It shall also apply to the disposal of state supplies. Nothing in Chapter 37-2 or in the regulations promulgated hereunder shall prevent any governmental body or department or division from complying with the terms and conditions of any grant, gift, bequest or co-operative agreement.

1.2.2 Regulations promulgated by the Chief Purchasing Officer in accordance with the authority and requirements set forth in Chapter 37-2, RIGL, shall apply to the procurements of every state governmental body with the following exceptions:

1.2.2.1 Secretary of State printing, advertising, and election expenses [37-2-74]. – All printing, binding and advertising and election expenses in connection with all primaries

and elections, advertising Rhode Island, and all legislative printing, including the printing of the public laws and acts and resolves, shall be purchased by the Secretary of State and in respect to said purchases the Department of State shall be exempt from the requirements of Chapter 37-2 which relate to the function of purchasing.

1.2.2.2 General Assembly [22-11-3(5/6)] The Joint Committee on Legislative Management shall have the exclusive responsibility for procurement for the General Assembly: Office space, supplies, equipment, professional and technical assistants, rental, installation and maintenance of equipment.

1.2.2.3 [37-2-12(1)] A public agency does not have to utilize the centralized purchasing of the state but the public agency, through its existing internal purchasing function, shall adhere to the general principles, policies and practices set forth in this chapter [37-2].

1.2.2.4 Public agencies may utilize the state Central Purchasing Authority as a procurement agency provided that such activity is conducted in accordance with all purchasing policies, procedures and regulations promulgated by the Chief Purchasing Officer.

### **1.3 GENERAL DEFINITIONS**

1.3.1 [37-2-7(1)] "Business" shall mean any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or other legal entity through which business is conducted.

1.3.2 [37-2-7(4)] "Construction" shall mean the process of building, altering, repairing, improving or demolishing any public structures or building, or other public improvements of any kind to any public real property. It does not include the routine maintenance or repair of existing structures, buildings, or real property performed by salaried employees of the state in the usual course of their job.

1.3.3 [37-2-7(8)] "Data" shall mean recorded information, regardless of form or characteristic.

1.3.4 [37-2-7(9)] "Designee" shall mean a duly authorized representative of a person holding a superior position.

1.3.5 [37-2-7(11)] "Governmental body" shall mean any department, commission, council, board, bureau, committee, institution, legislative body, agency, government corporation, including, without limitation, the Board of Governors for Higher Education and Board of Regents - Elementary and Secondary Education or other establishment of the executive, legislative, or judicial branch of the state.

1.3.6 [37-2-7(12)] "May" shall mean permissive.

1.3.7 [37-2-7(14)] "Person" shall mean any business, individual, organization or group of individuals.

1.3.8 [37-2-7(15)] "Procurement" shall mean 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 contracts, and all phases of contract administration.

1.3.9 "Proprietary Information" shall mean information or data describing technical processes, mechanisms, or operational factors that a business wishes to keep from general public view in order to maintain competitive capabilities in the market. See "trade secret."

1.3.10 "Protest" shall mean a complaint about a governmental action or decision brought by a prospective bidder, a bidder, a contractor, or other interested party to the appropriate administrative section with the intention of achieving a remedial result.

1.3.11 Public Agency. In accordance with Chapter 37-2-7(16) of the RIGL, a "public agency" shall be defined as any of the following agencies and "any other body corporate and politic which has been heretofore or which is hereinafter created or established within this state excepting cities and towns":

Rhode Island Industrial and Recreational Facilities Authority  
Rhode Island Port Authority and Economic Development Corporation  
Rhode Island Industrial Facilities Corporation  
Rhode Island Public Buildings Authority  
Rhode Island Housing and Mortgage Finance Corporation  
Rhode Island Solid Waste Management Corporation  
Rhode Island Public Transit Authority  
Rhode Island Student Loan Authority  
Howard Development Corporation  
Water Resources Board Corporate  
Rhode Island Health and Education Building Corporation  
Rhode Island Higher Education Assistance Authority  
Rhode Island Turnpike and Bridge Authority  
Blackstone Valley (Sewer) District Commission  
Narragansett Bay Water Quality District Commission  
Rhode Island Public Telecommunications Authority  
Convention Center Authority  
Channel 36 Foundation

1.3.12 [37-2-7(18)] "Purchasing agency" shall mean any governmental body which enters into a contract to procure supplies, services or construction or the Central Purchasing Authority acting on behalf of another governmental body.

1.3.13 [37-2-7(20)] "Services" shall mean 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.

1.3.14 [37-2-7(21)] "Shall" shall mean imperative.

1.3.15 [37-2-7(25)] "State" shall mean the State of Rhode Island and any of its departments or agencies and public agencies.

1.3.16 "State agency" shall mean any state governmental body other than the General Assembly or public body as defined herein.

1.3.17 "Trade Secret" shall mean any aspect of a business or its operation not made available to competitors. See "proprietary information."

1.3.18 [37-2-7(24)] "Using Agency" shall mean any governmental body[/]public agency of the state which utilizes any supplies, services or construction procured under this chapter [37-2].

## **1.4 DOCUMENTATION AND REPORTS**

### **1.4.1 Purchase Reports**

1.4.1.1 [37-2-54(9)] The Department of Administration shall maintain records of all purchases and sales made under its authority and shall make periodic summary reports of all transactions to the Chief Purchasing Officer, the Governor, and the General Assembly.

1.4.1.2 [37-2-54(9)] The Chief Purchasing Officer shall also report trends in costs and prices, including savings realized through improved practices, to the above authorities.

### **1.4.1.3 Sole Source, Emergency and Small Purchases**

1.4.1.3.1 In accordance with Section [37-2-37] the Purchasing Agent shall compile annually within ninety (90) days following the close of the fiscal year a report of procurement actions for sole source, emergency, and small purchase contracts made during the preceding fiscal year. The summary shall (1) name each contractor, and (2) state the amount and type of each contract.

1.4.1.3.2 All documentation of contracts made for such procurements shall be retained for a period of five (5) years and made available for public inspection.

1.4.2 Adequate written records shall be maintained in purchasing files to document procurement activities, reasons for selection of the supplier's product and justification of price.

1.4.2.1 At a minimum, documentation shall include adequate justification of source selection and pricing.

1.4.2.2 The extent of documentation may vary with user agency needs and requirements and the value and complexity of the purchase.

1.4.2.3 Procurement officials shall be required to provide an "audit trail" for every purchase. Such documentation shall be recorded and maintained in accordance with procedures established by the Purchasing Agent. Purchasing personnel shall document and maintain records of all actions with respect to a purchase for the purpose of:

1.4.2.3.1 providing background information to assure that informed decisions are made at each step in a procurement;

1.4.2.3.2 rationale for action taken;

1.4.2.3.3 providing information for reviews and audits conducted by purchasing management and audit agencies; and

1.4.2.3.4 furnishing facts in the event of litigation.

1.4.3 Purchasing documentation shall be signed or initialed (as appropriate) by duly authorized officials. Such signature or initialing shall constitute certification by the official that the action documented meets the administrative requirements for which he/she is responsible.

1.4.3.1 Annually the Director/Chief Executive of each user agency shall submit to the Chief Purchasing Officer for approval, a list of agency officials who shall have the authority to act on behalf of the agency. The approved list shall be placed on file at the Department of Administration Offices of Purchases, Accounts and Control and Budget.

1.4.3.1.1 All authorizations shall be specific as to:

1.4.3.1.1.1 maximum levels of expenditure commitment, program account;

1.4.3.1.1.2 persons authorized to call Office of Purchases personnel to obtain information or provide clarification on requisitions; and

1.4.3.1.1.3 officials who will have the authority to decide whether a situation requires an emergency purchasing action and who will be responsible for following emergency purchasing procedures.

1.4.3.1.2 The Chief Purchasing Officer shall have the right to reject for cause the authorization of any official to represent an agency in procurement transactions.

1.4.3.2 State Purchase Orders shall require the original signature of the Chief Purchasing Officer, the Purchasing Agent or his designee.

1.4.3.3 Requisitions shall require the original signature of an official designated by the user agency Director/Chief Executive as a agent authorized to act on his behalf for procurement transactions.

1.4.3.4 Requisitions submitted to the Office of Purchases shall require the original signature of an official designated by the Budget Officer as responsible for certifying as to the availability of funds for purchasing actions.

1.4.4 Documentation records may be in the form of copies, microfilms, computer files or other means permitted in accordance with procedures established and published by the Chief Purchasing Officer or shall be original documents as required by law or the State Controller.

1.4.5 Audit of contractors records.

1.4.5.1 In accordance with [37-2-34(2)] the Department of Administration may audit the books and records of any person who has submitted cost or pricing data for certain negotiated contracts or change orders at any time until the period of record retention as set forth in 37-2-34(3) shall have expired. The right to audit hereunder shall only extend to those books and records reasonably connected with cost or pricing data submitted in accordance with 37-2-28. (Note: Actual reference is to 37-2-27, which addresses prequalification of construction management vendors; 37-2-28 addresses cost and pricing data, so an assumption was made that the latter was the correct reference.)

1.4.5.1.1 "Certain negotiated contracts or change orders" shall mean negotiated contracts exceeding fifty thousand dollars (\$50,000) and negotiated change orders exceeding twenty five thousand dollars (\$25,000).

1.4.5.2 [37-2-34(3)] The Department of Administration or the Auditor General may audit the books and records of a contractor or any subcontractor under any negotiated contract or subcontract other than a firm fixed-price type contract, provided, however, that this subsection shall not limit the right to audit as set forth in subsection (2) of this section [37-2-34].

1.4.5.3 [37-2-34(2/3)] Such books and records shall be maintained by the contractor for a period of three (3) years from the date of final payment under the prime contract and by the subcontractor for a period of three (3) years from the date of the final payment under the subcontract.

1.4.6 [37-2-36(2)] All documents involved in any procurement in which collusion is suspected shall be retained until the Attorney General gives notice that they may be



released, and all such documents shall be made available to the Attorney General or his designee upon request.

1.4.7 In accordance with [37-2-6] every determination required by Chapter 37-2 and the policies contained herein shall be in writing and based upon written findings of fact by the public official making the determination. These determinations and written findings shall be retained in an official contract file in the Office of the Chief Purchasing Officer or in the Office of the using agency or public agency administering the contract. For the purposes of this section, the Office of Purchases shall be considered synonymous with the "Office of the Chief Purchasing Officer."

1.4.8 [37-2-18(4)] 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 a 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.

1.4.8.1 "Bid Abstract" shall mean a summary of responsive bids to a solicitation.

1.4.8.2 All documentation records shall be subject to public disclosure with the following exceptions:

1.4.8.2.1 Information of a proprietary nature submitted by vendors; and

1.4.8.2.2 Information furnished by a bidder in connection with an inquiry related to responsibility.

1.4.8.3 The Purchasing Agent shall assure that information not in the public domain is not divulged.

1.4.8.4 Bids shall not be available for public inspection at the bid opening. Abstracts of bid information shall be available for public inspection at the Office of Purchases no later than ten (10) working days after an award has been made.

1.4.8.5 Requests for access to records other than bid abstracts shall be made in writing and signed by the applicant.

1.4.8.5.1 The Purchasing Agent shall have a reasonable time to respond to requests for access to information.

1.4.8.5.2 Reviews of document records shall be permitted by appointment only and shall be conducted under the supervision of an Office of Purchases official.

1.4.8.5.3 No documentation shall be removed from the premises of the Office of Purchases without the written consent of the Chief Purchasing Officer.

## **1.5 BREACH OF CONTRACT DISPUTES**

1.5.1 [37-2-46] Authority to resolve contract and breach of contract controversies. - Prior to the institution of arbitration or litigation concerning any contract, claim, or controversy, the Chief Purchasing Officer is authorized, subject to any limitations or conditions imposed by regulations, to settle, compromise, pay, or otherwise adjust the claim by or against or controversy with, a contractor relating to a contract entered into by the Department of Administration on behalf of the state or any state agency, including a claim or controversy based on of contract, mistake, misrepresentation, or other cause for contract modification or rescission, but excluding any claim or controversy involving penalties or forfeitures prescribed by statute or regulation where an official other than the Chief Purchasing Officer is specifically authorized to settle or determine such controversy.

1.5.1.1 "Contract dispute" shall mean a circumstance whereby a contractor and the state user agency are unable to arrive at a mutual interpretation of the requirements, limitations, or compensation for the performance of a contract.

1.5.1.2 The Purchasing Agent shall be authorized to resolve contract disputes between contractors and user agencies upon the submission of a request in writing from either party, which request shall provide:

1.5.1.2.1 a description of the problem, including all appropriate citations and references from the contract in question,

1.5.1.2.2 a clear statement by the party requesting the decision of his interpretation of the contract, and

1.5.1.2.3 a proposed course of action to resolve the dispute.

1.5.1.3 The Purchasing Agent shall determine whether:

1.5.1.3.1 the interpretation provided is appropriate,

1.5.1.3.2 the proposed solution is feasible, or

1.5.1.3.3 another solution may be negotiable.

1.5.1.4 The Purchasing Agent may assess dollar damages against vendors or contractors determined to be non-performing or otherwise in default of their contractual obligations equal to the cost of remedy incurred by the State, and make payment of such damages a condition for consideration of any subsequent award. Failure by the vendor or contractor to pay such damages shall constitute just cause for disqualification and rejection, suspension, or debarment.

1.5.2 [37-2-47] Failure to render timely decisions. This section shall apply to a claim or controversy arising under contracts between the state and its contractors. If such a claim or controversy is not resolved by mutual agreement, the Chief Purchasing Officer or his designee, shall promptly issue a decision in writing. A copy of the 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.

### 1.5.3 Legal Remedy for Disputes

1.5.3.1 Public Works Contracts - In accordance with [37-2-48] disputes involving public works contracts shall be resolved in accordance with the provisions for arbitration set forth in Chapter 37-16 of the General Laws of Rhode Island.

1.5.3.2 Other Contracts - [37-2-49(2)] Any person, firm or corporation, having a lawfully authorized written contract with the state at the time of or after January 1, 1990 may bring an action against the state on the contract, including but not limited to actions either for breach of contracts or for enforcement of contracts or for both. Any such claim shall be commenced in Superior Court within three (3) years from the date of completion specified in the contract and shall be tried by the court sitting without a jury. Such case shall receive a priority position on the calendar. All defenses in law or equity, except the defense of governmental immunity, shall be preserved to the state.

1.5.3.3 [37-2-49(3)] The Superior Court shall enter its findings as a judgment of the court, and such judgment shall have the same effect and be enforceable as any other judgment of the court in civil cases, subject to the provisions of this Chapter.

1.5.3.4 [37-2-49(4)] Appeals may be taken to the Supreme Court under the same conditions and under the same practice as appeals are taken from judgments in civil cases rendered by the Superior Court.

1.5.3.5 [37-2-49(5)] If damages awarded on any contract claim under this section exceed the original amount of the contract, such excess shall be limited to an amount which is equal to the amount of the original contract.

1.5.3.6 [37-2-49(6)] No person, firm or corporation shall be permitted more than one (1) money recovery upon a claim for the enforcement of or for breach of contract with the state.

### 1.5.4 Settlement of dispute

1.5.4.1 [37-2-50(1)] The first five hundred thousand dollars (\$500,000) of any arbitration award or Superior court judgment against the state awarding damages on a contract claim under the provision of state purchasing law shall be a necessary governmental expense and payment shall be approved by the Chief Purchasing Officer and paid by the State

Treasurer out of the General Fund upon warrants drawn by the Chief Purchasing Officer. Appropriations for these judgments shall be continued appropriations.

1.5.4.2 [37-2-50(2)] The Governor shall request an appropriation from the next regular session of the General Assembly for the purpose of satisfying all such awards and judgments granted during the preceding two (2) fiscal years which are not satisfied under [provisions set forth in Chapter 37-2-50(1) of the RIGL].

## **1.6 RESOLUTION OF PROTESTS**

1.6.1 [37-2-51] The decision of any official, board, agent, or other person appointed by the state concerning any controversy arising under, or in connection with, the solicitation or award of a contract, shall be entitled to a presumption of correctness and shall not be disturbed unless the decision was procured by fraud; in violation of constitutional or statutory provisions; in excess of the statutory authority of the agency; made upon unlawful procedure; affected by other error of law; clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or arbitrary or capricious or characterized by the abuse of discretion or clearly unwarranted exercise of discretion.

### **1.6.2 Authority to resolve protests**

1.6.2.1 [37-2-52(1)] The Chief Purchasing Officer or his designee shall have authority to determine protests and other controversies of actual or prospective bidders or offerors in connection with the solicitation or selection for award of a contract.

1.6.2.2 [37-2-52(2)] Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation or selection for award of a 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.

1.6.2.3 [37-2-52(3)] The Chief Purchasing Officer shall promptly issue a decision in writing. A copy of that decision shall be mailed or otherwise furnished to the aggrieved party and shall state the reasons for the action taken.

1.6.3 [37-2-53] In the event of a protest timely filed under Section 37-2-52(2) of this chapter, the state shall not proceed further with the solicitation or award involved, until the Chief Purchasing Officer makes a written and adequately supported determination that continuation of the procurement is necessary to protect substantial interest of the state.

1.6.3.1 The protestor may request access to documentation to support his protest.

1.6.3.2 The Purchasing Agent shall assure that information not in the public domain is not divulged.

1.6.3.3 Requests for access to records shall be made in writing and signed by the protestor.

1.6.3.3.1 The Purchasing Agent shall have a reasonable time to respond to requests for access to information.

1.6.3.3.2 Reviews of document records shall be permitted by appointment only and shall be conducted under the supervision of an Office of Purchases official.

1.6.3.3.3 No documentation shall be removed from the premises of the Office of Purchases without the written consent of the Chief Purchasing Officer.

## **1.7 IMPREST FUNDS**

1.7.1 [37-2-55(1)] Subject to the provisions of this chapter any budget unit, when provided for by appropriation or when authorized by the Department of Administration may establish one (1) or more imprest cash funds for the purpose of making disbursements requiring prompt cash outlay, and to carry out the provisions of this chapter. The State Treasurer upon warrants to the Chief Purchasing Officer based upon a requisition for the head of the budget unit, shall pay to the head of such budget unit the amount necessary to establish such a fund.

1.7.1.1 "Budget Unit" shall mean state agency or department.

1.7.1.2 "Head" shall mean the Chief Executive Officer, Director or Executive Director.

1.7.1.3 Prior to the establishment of any imprest fund the agency shall submit to the State Controller a document demonstrating the need for such a fund. If the Controller determines that a such need exists and that adequate accounting controls are provided, he shall obtain the approval of the state Budget Office and the Chief Purchasing Officer to establish the fund.

1.7.2 [37-2-55(2)] A custodian shall be designated by the head of the budget unit and certified by the Department of Administration after appropriate instruction and testing as qualified to administer the fund. The custodian shall, as often as may be necessary to replenish the fund and at least once each month file with the Chief Purchasing Officer a schedule of the disbursements from the fund, accompanied by appropriate vouchers and statements of indebtedness therefor approved by the head of the budget unit, and by a certificate as to the condition of the fund. The amount of the total of the approved voucher shall be paid to the custodian of the fund on the warrant of the Chief Purchasing Officer, and the amount shall be devoted to reimbursement of the fund. Any question relative to the amount to be allowed in any imprest cash fund, the expenditure thereof, the

accounting therefor, and the repayment thereof to the state treasurer, shall be determined by the Chief Purchasing Officer.

1.7.2.1 The Chief Purchasing Officer may delegate authority and responsibility for oversight of imprest fund cash flow to the State Controller.

1.7.3 [37-2-55(3)] The agency head shall be responsible for expenditures authorized from such funds, and the custodian shall be responsible for administration of the fund. Each agency head and custodian shall be separately bonded in the amount by which the total authorization for the fund exceeds the state blanket bond for such officials.

1.7.4 [37-2-55(4)] A post audit of each imprest fund shall be conducted.

1.7.4.1 The audit may be conducted by the Bureau of Audits, the Auditor General or by an independent audit firm approved by the Auditor General.

1.7.4.2 Costs for the audit shall be the responsibility of the budget unit responsible for the imprest fund.

1.7.5 [37-2-55(5)] Each imprest fund shall lapse with the appropriation for the next ensuing year or when authorized by the Chief Purchasing Officer, [whichever occurs first].

1.7.6 [37-2-55(6)] Where work is done on public projects by the state through the use of its own personnel or facilities in whole or in part, which work is not subject to the provisions of law for competitive bidding, the budget unit having such work performed may, when authorized by the Chief Purchasing Officer, establish an imprest cash fund for the purpose of defraying the expenses of the proposed project, which fund shall not exceed at any time an amount equal to twenty-five percent (25%) of the anticipated total cost of the project.

**1.8 PURCHASING FOR MUNICIPALITIES AND REGIONAL SCHOOL DISTRICTS.** [37-2-56] The Chief Purchasing Officer shall permit, subject to such terms and conditions as he may prescribe, any municipality or municipalities or regional school district of the state, to participate in contract for the purchase of materials, supplies and equipment entered into by the Purchasing Agent. Any municipality or regional school district desiring to participate in purchase contracts shall file with the Chief Purchasing Officer a certified copy of a resolution of its council or regional school committee requesting that it be authorized to participate in purchase contracts of the Purchasing Agent and agreeing that it will be bound by such terms and conditions as the Purchasing Agent may prescribe, and that it will be responsible for payment directly to the vendor under each purchase contract.

1.8.1 Nothing herein shall prevent a municipality or regional school district, other political subdivision, or public agency from negotiating with vendors who have been awarded contracts for goods or services by the State, or from accepting a State contract as

the basis for the award of a requirement by the municipality, regional school district, other political subdivision, or public agency, where rules, regulations, charter or ordinance permit.

**1.9 GOODS PRODUCED IN THE REPUBLIC OF SOUTH AFRICA [37-2-57]** In conformity with the policy of divestment established in Section 35-10-12, the state of Rhode Island, including all of its departments, agencies, authorities, and instrumentalities, 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 state will give preference in its purchasing to companies not doing business in, or with, the Republic of South Africa. The Chief Purchasing Officer shall promulgate such rules and regulations as are necessary and proper to carry out the purpose of this section.

1.9.1 Firms expressing an interest in being placed on the state Bidders List shall be required to report whether the goods (in their final form) which the firm intends to supply are made in the Republic of South Africa.

**1.10 ADMINISTRATIVE RESPONSIBILITY FOR CONTRACTUAL AND OTHER EXPENDITURES WHICH ARE NOT PROCUREMENTS**

1.10.1 [37-2-7(5)] "Contract" shall mean all types of agreements, including grants and orders, for the purchase or disposal of supplies, services, construction, or any other items. It shall include awards, contracts of a fixed price, cost, cost-plus-a-fixed-fee, or incentive type; contracts providing for the issuance of job or task orders, leases, letter contracts, purchase orders and construction management contracts. It also includes supplemental agreements with respect to any of the foregoing. With respect to the procurement regulations set forth herein, "contract" shall not apply to labor contracts with employees of state agencies.

1.10.1.1 Contracts for concessions (cafeteria services, vending machines, recreational programs, transportation services, etc.) shall be deemed not to be procurements.

1.10.2 Except for contracts for grants-in-aid, award of nonprocurement contracts shall be subject to the same open, competitive procedures which apply to procurements.

**1.11 [37-2-54(3)] No purchase or contract shall be binding on the state or any agency thereof unless approved by the Department [of Administration] or made under general regulations which the Chief Purchasing Officer may prescribe.**

1.11.1 The Chief Purchasing Officer may delegate authority to enter into nonprocurement contracts; or

1.11.2 The Chief Purchasing Officer may direct the Purchasing Agent to oversee and/or administer competitive procedures prior to the award of nonprocurement contracts,

including, but not limited to, grants, interagency cooperative agreements, and concessions. However, such administrative authority shall not constitute responsibility for the selection of recipients of such contracts, or the substance of the accompanying agreements.

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 or business with one or more employees 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 (IRCA), 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, whichever 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.

1.12.4.2 Participation in E-Verify is voluntary for a surety performing under a takeover agreement entered into with an agency pursuant to a performance bond unless otherwise provided by agreement.

## **SECTION 2 - PROCUREMENT STRUCTURE AND ACCOUNTABILITY**

### **2.1 DEFINITIONS**

2.1.1 In accordance with [37-2-7(3)], for state agencies the Chief Purchasing Officer shall be the Director of the Department of Administration.

2.1.2 In accordance with [37-2-7(19)] "purchasing agent" shall mean:

2.1.2.1 any person authorized by a governmental body in accordance with procedures prescribed by regulations, to enter into and administer contracts and make written determinations and findings with respect thereto; or

2.1.2.2 any authorized representative acting within the limits of authority; or

2.1.2.3 the person appointed in accordance with Chapter 37-2-1 as the administrator of the state's central purchasing and contracting authority.

2.1.3 For the purposes of the regulations contained herein, the definition set forth in Section 2.1.2.3 shall apply to the terms "State Purchasing Agent" or "Purchasing Agent".

### **2.2 CENTRALIZED PROCUREMENT AUTHORITY FOR STATE AGENCIES SET FORTH IN CHAPTER 37-2**

2.2.1 [37-2-12(1)] All rights, powers, duties, and authority relating to the procurement of supplies, services, and construction, and the management, control, warehousing, sale, and disposal of supplies, services, and construction exercised by any state agency as established by the General Assembly, shall be under the jurisdiction of the state's Chief Purchasing Officer.

2.2.1.1 [37-2-54(3)] No purchase or contract shall be binding on the state or any agency thereof unless approved by the department [of Administration] or made under general regulations which the Chief Purchasing Officer may prescribe.

2.2.1.1.1 Purchasing Authority shall be defined as the authority to act on behalf of the state to commit funds, enter into binding agreements or contracts, dispose of state property, or in any other manner control procurement or obligate the State.

2.2.1.1.2 No state agency official shall have the right to exercise purchasing authority through written or oral agreements or contracts or in any other way financially or otherwise obligate the State without the express written consent of the Chief Purchasing Officer.

2.2.1.1.3 No state agency may place orders or negotiate with suppliers or potential suppliers without the participation or express approval of the Chief Purchasing Officer.

2.2.1.2 The Office of Purchases within the Department of Administration shall be the state's centralized purchasing and contracting authority.

2.2.2 [37-2-1] Within the Department of Administration there shall be a purchasing agent who shall be appointed by the Chief Purchasing Officer with the approval of the Governor, and who shall now and hereafter be in the classified service of the state. [37-2-11] The Purchasing Agent shall be the administrator of the Office of Purchases and shall:

2.2.2.1 [37-2-11(1)] Serve as the central procurement and contracting agent of the state;

2.2.2.2 [37-2-11(2)] Recommend regulations, rules, and procedures to the Chief Purchasing Officer;

2.2.2.3 [37-2-11(3)] Purchase or otherwise acquire, or, with the approval of the Chief Purchasing Officer to delegate the purchase and acquisition of, all supplies, services and construction for the state.

2.2.3 [37-2-54(1)] The Chief Purchasing Officer, except as otherwise provided by law, shall purchase, or shall delegate and control the purchase of, the combined requirements of all spending agencies of the state including, but not limited to, interests in real property, contractual services, rentals of all types, supplies, materials, equipment, and services, except where competitive bids may not be required.

2.2.3.1 Delegated Purchase Authority shall mean the transfer of Purchasing Authority from the Chief Purchasing Officer or the Purchasing Agent to another state official in accordance with the provisions and limitations of Chapter 37-2 of the General Laws of Rhode Island and the regulations set forth herein.

2.2.3.1.1 The Purchasing Agent may recommend to the Chief Purchasing Officer that purchasing authority be delegated in circumstances where cost-effectiveness and efficiency are best served.

2.2.3.1.2 The Purchasing Agent may delegate purchase authority with the written approval of the Chief Purchasing Officer.

2.2.3.1.3 Requested Delegated Purchase Authority shall be specifically justified by an agency director/chief executive and authorized by the Purchasing Agent in advance of any purchase action.

2.2.3.1.4 All delegated purchasing authority shall be specific as to:

2.2.3.1.4.1 The names and titles of individuals authorized by an agency director to commit funds on behalf of his agency

2.2.3.1.4.2 The accounts, commodities and levels of expenditures for which the agency director authorizes individuals to commit funds

2.2.3.1.5 The Chief Purchasing Officer shall transmit on an annual basis a list of officials approved to authorize delegated purchase transactions to the Office of Accounts and Control and the Budget Office.

2.2.3.1.6 The implementation of Delegated Purchasing Authority shall be monitored by the Purchasing Agent and the State Controller. If at any time a user agency is deemed to be in violation of purchasing rules, regulations, policies and procedures, the Chief Purchasing Officer or the Purchasing Agent, with the approval of the Chief Purchasing Officer, may revoke any Delegated Purchasing Authority privilege which has been previously granted.

2.2.4 [37-2-9(1)] The Chief Purchasing Officer shall have power and authority over, and may, except as otherwise expressly provided in Chapter 37-2 of the RIGL, adopt regulations pursuant to Section 42-35-2 governing the purchasing management and control of any and all supplies, services, and construction, and other items required to be purchased by the state. The Chief Purchasing Officer shall consider and decide matters of policy with regard to state procurement. The Chief Purchasing Officer shall have the power of review with respect to the implementation of regulations and policy determinations.

2.2.5 [37-2-10] The Chief Purchasing Officer may provide for the distribution of the Department's procurement activities and functions among the various divisions within the

Department. However, in accordance with Chapter 37-2-13(3) the Chief Purchasing Officer shall not delegate his power to issue state purchasing regulations to any other person or agency, and no state purchasing regulations shall be issued except as approved by the Chief Purchasing Officer.

2.2.6 [37-2-54(3)] The Department of Administration shall have supervision over all purchases by the various spending agencies, except as otherwise provided by law, and shall prescribe rules and regulations to govern purchasing by or for all such agencies, subject to the approval of the Chief Purchasing Officer and shall publish a manual of procedures to be distributed to agencies and to be revised upon issuance of amendments to such procedures.

2.2.7 [37-2-54(4)] The Chief Purchasing Officer shall require agencies to take and maintain inventories of plant and equipment and the Department of Administration shall conduct periodic physical audits of inventories.

2.2.8 [37-2-54(5)] The Department of Administration shall require all agencies to furnish an estimate of specific needs for supplies, materials and equipment to be purchased by competitive bidding for the purpose of permitting scheduling of purchasing in large volume. It shall establish and enforce schedules for purchasing supplies, materials, and equipment. In addition, all agencies shall submit to the Department of Administration prior to the beginning of each fiscal year an estimate of all needs for supplies, materials and equipment during that year which will have to be acquired through competitive bidding.

2.2.8.1 The Chief Purchasing Officer may require any agency to submit annual or multi-year plans for proposed procurements of supplies, material, equipment, and supplemental services.

2.2.8.2 The Chief Purchasing Officer may require the sub-mission of procurement plans with the submission of budget requests.

2.2.9 [37-2-54(6)] The Department of Administration shall have power, with the approval of the State Properties Committee, to transfer between departments, to salvage, to exchange, and to condemn supplies, equipment, and real property.

2.2.9.1 [37-2-45] Supply Disposition Process. - The Chief Purchasing Officer shall sell or otherwise dispose of all property (including any interest in real property) of the state which is not needed or has become unsuitable for public use, or would be more suitable consistent with the public interest for some other use, as determined by the Chief Purchasing Officer subject to the approval of the State Properties Committee and pursuant to the provisions of Title 37, Chapter 7 [RIGL]. The determination of the Chief Purchasing Officer shall be set forth in an order and shall be reached only after review of a written request by the agency desiring to dispose of the property. Such request shall describe the property and state the reasons why the agency believes disposal should be effected. All instruments required by law to be recorded which convey any interest in any

such real property so disposed of shall be executed and signed by the acquiring authority pursuant the provisions of Title 37, Chapter 7.

2.2.9.1.1 Disposal of equipment which has attained the end of its useful life, as determined by the Purchasing Agent, and is intended for use as a "one-for-one" trade-in applied to the procurement of new, similar equipment shall be exempted from review by the State Properties Committee.

## **2.3 STRUCTURE AND RESPONSIBILITIES FOR CENTRALIZED STATE AGENCY PROCUREMENT**

2.3.1 The Director of Administration/Chief Purchasing Officer shall be responsible for:

2.3.1.1 Policy formulation and dissemination;

2.3.1.2 Establishing standards;

2.3.1.3 Defining and promulgating procedures;

2.3.1.4 Monitoring and evaluating central purchasing activity to ensure that the state is attaining the most advantageous procurements possible; and

2.3.1.5 Determining courses of action when the policies and procedures outlined herein require interpretation and/or when situations arise where conflicts exist or occur.

2.3.2 The State Purchasing Agent shall be responsible for:

2.3.2.1 Assuring adherence to state procurement laws, regulations, rules, codes and procedures;

2.3.2.2 Supervising procurement activity within the Office of Purchases;

2.3.2.3 Assuring that delegated purchasing authority is exercised properly;

2.3.2.4 Establishing and maintaining good relations with suppliers and potential suppliers without conflicts of interest;

2.3.2.5 Assuring that procurements are made in a context which supports to the greatest extent possible:

2.3.2.5.1 competitive purchases,

2.3.2.5.2 opportunities for minority and women owned/operated businesses, and

2.3.2.5.3 opportunities for local Rhode Island enterprises;

2.3.2.6 Assuring that a pool of responsible, qualified suppliers is developed, maintained and utilized;

2.3.2.7 Assuring compliance with appropriate competitive bidding procedures throughout the state's procurement system;

2.3.2.8 Promoting standardization of requirements to increase opportunities for the economic advantages of combined purchasing;

2.3.2.9 Establishing and monitoring standards of quality;

2.3.2.10 Assuring that goods and services are delivered according to specified requirements; and

2.3.2.11 Supervising the state's warehousing and inventory activities.

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.

2.3.3 The State Budget Officer shall be responsible for reviewing all purchase documentation submitted by user agencies to the Office of Budget for certification as to the availability of the funds necessary to support a purchasing commitment and authorizing expenditures as requested.

2.3.4 The State Controller shall be responsible for:

2.3.4.1 Reviewing all purchase documentation submitted by user agencies to the Division of Accounts and Controls to assure compliance with promulgated rules, regulations, policies and procedures;

2.3.4.2 Forwarding all documents manifesting clear or suspected compliance violations to the Purchasing Agent for appropriate action;

2.3.4.3 Encumbering purchase obligations and processing payments for goods and services certified as delivered in accordance with the terms of purchase orders; and

2.3.4.4 Monitoring administration of imprest cash accounts.

2.3.5 All state agency chief executives shall be accountable to the Chief Purchasing Officer for the purpose of carrying out the state's procurement activities. User agency chief executives shall be responsible for:

2.3.5.1 Assuring the availability of funds to sustain purchase commitments;

2.3.5.2 Enforcing adherence to applicable policies and procedures;



2.3.5.3 Thoughtful planning which will:

2.3.5.3.1 promote opportunities for effective procurement, e.g., economies of scale, and

2.3.5.3.2 reduce the occurrence of crisis situations which detract from the state's ability to make the most advantageous purchases possible; and

2.3.5.4 Careful development of specifications to:

2.3.5.4.1 Promote speed of bid implementation,

2.3.5.4.2 Reduce misunderstanding and conflicts, and

2.3.5.4.3 Enhance quality, competition, and control.

2.3.5.5 Implementation of administrative control systems with respect to all procurement actions, including, but not limited to, verification of contract deliverables and contractor responsibilities, maintenance of records, and all other activities relating to contract administration.

2.3.5.6 Providing written documentation to the Purchasing Agent when a contractor fails to perform as a contract requires.

2.3.6 The Director of Economic Development shall be responsible for:

2.3.6.1 Certifying vendors as meeting state (Chapter 37-14.1-3) and/or federal legal and regulatory requirements to be considered Small Disadvantaged Businesses, e.g., minority- or women-owned and controlled businesses; and

2.3.6.2 Conducting programs to enhance the capability of small disadvantaged businesses to obtain state contracts by providing assistance in obtaining the skills and information necessary to compete successfully in response to state solicitations for bids.

2.3.7 The Attorney General shall be responsible for:

2.3.7.1 Investigation of cases involving breach of contract or suspected instances of criminal activity, e.g., collusion, fraud; and

2.3.7.2 Prosecution of cases involving criminal activity.

2.3.8 The Ethics Commission shall be responsible for:

2.3.8.1 Investigating cases of suspected violation of state Conflict of Interest laws and regulations and

2.3.8.2 Referring to the Attorney General cases where determinations of violations have been made.

## **2.4 RELATIONSHIP OF OFFICE OF PURCHASES AND USER AGENCIES.**

[37-2-14] The Purchasing Agent shall maintain a close and cooperative relationship with the using agencies of the state. Any using agency may at any time make recommendations concerning procurement to the Purchasing Agent.

2.4.1 Office of Purchases personnel shall be cognizant of the fact that they work for a service agency which other state agencies rely upon as a source for obtaining materials and services.

2.4.2 The Office of Purchases shall foster good relations with other departments and provide all reasonable assistance in accomplishing the objectives of these departments.

2.4.3 Personnel in the Office of Purchases shall maintain a close working relationship with other departments involved with the specification, ordering, inspection, storage, handling or use of material.

2.4.4 The Office of Purchases shall solicit advice from user agencies, as appropriate, on major or complex procurements, with regard to selection of bidders, evaluation of proposals, negotiation plans, and final source determination.

## **2.5 VIOLATIONS OF PURCHASING LAWS AND REGULATIONS**

2.5.1 Deliberate disregard for regulations, policies and procedures shall be subject to disciplinary action, including dismissal of state employees and debarment of vendors conducting business with the state.

2.5.2 Violations of the purchasing code of ethics set forth herein, shall be subject to appropriate sanctions including: censure, dismissal, suspension, and debarment.

2.5.2.1 The Chief Purchasing Officer shall have authority to impose sanctions, in accordance with personnel administration requirements, on any state agency employee who has been found to have violated the state purchasing code of ethics.

2.5.2.2 The Purchasing Agent shall have the authority to impose sanctions, in accordance with personnel administration requirements, on any employee of the Office of Purchases.

2.5.2.3 The Purchasing Agent shall have the authority to suspend or debar suppliers in accordance with the requirements set forth herein.

2.5.3 Suspected violations of state conflict of interest laws and regulations regarding procurement or the state procurement code of ethics set forth herein shall be reported in

confidence to the Chief Purchasing Officer and in accordance with the rules and regulations established by the State Ethics Commission.

2.5.4 Violations of purchasing laws, regulations, policies, and procedures shall be reported to the Chief Purchasing Officer or the Purchasing Agent who shall have authority to apply sanctions.

2.5.5 [37-2-36(1)] When for any reason collusion is suspected among any bidders or offerors, a written notice of the facts giving rise to such suspicion shall be transmitted to the Attorney General.

2.5.6 Suspected falsification of certifications shall be referred to the Attorney General for investigation and prosecution.

### **SECTION 3 - CODE OF ETHICS AND PROFESSIONAL BEHAVIOR**

**3.1 All state employees shall be subject to the provisions of Chapter 36-14 of the General Laws of Rhode Island and all regulations promulgated by the Rhode Island Ethics Commission, and any special provisions of this section.**

**3.2 [36-14-1] It is the policy of the state of Rhode Island that public officials and employees must adhere to the highest standard of ethical conduct, respect the public trust and the rights of all persons, be open, accountable and responsive, avoid the appearance of impropriety, and not use their positions for private gain or advantage.**

**3.3 [36-14-5] Prohibited Activities under the Rhode Island Conflict of Interest Statutes.**

3.3.1 No person subject to the code of ethics shall have any interest, financial or otherwise, direct or indirect, or engage in any business, employment, transaction or professional activity, or incur any obligation of any nature, which is in substantial conflict with the proper discharge of his duties or employment in the public interest and of his responsibilities as prescribed in the laws of this state.

3.3.2 No person subject to the code of ethics shall accept other employment which will either impair his independence of judgment as to his official duties or employment or require him, or induce him, to disclose confidential information acquired by him in the course and by reason of his official duties.

3.3.3 No person subject to the code of ethics shall wilfully and knowingly disclose, for pecuniary gain, to any other person, confidential information acquired by him in the course of and by reason of his official duties or employment or use any such information for the purpose of pecuniary gain.

3.3.4 No person subject to the code of ethics shall use in any way his public office or confidential information received through his holding any public office to obtain financial gain, other than that provided by law, for himself or spouse (if not estranged) or any dependent child or business associate or any business by which said person is employed or which said person represents.

3.3.5 No person subject to this code of ethics or spouse (if not estranged) or dependent child or business associate of such person or any business by which said person is employed or which such person represents, shall solicit or accept any gift, loan, political contribution, reward, or promise of future employment based on any understanding that the vote, official action or judgment of said person would be influenced thereby.

3.3.6 No person shall give or offer to any person covered by this code of ethics, or to any candidate for public office, or to any spouse (if not estranged) or dependent child or business associate of such person, or any business by which said person is employed or which such person represents, any gift, loan, political contribution, reward, or promise of future employment based on any understanding that the vote, official action or judgment of said person would be influenced thereby.

**3.4 In accordance with the provisions of Chapter 37-2-9(2)(o), RIGL, the following supplemental State Code of Procurement Ethics shall be adopted.**

3.4.1 Universal Code of Ethics applicable to all state employees involved in the procurement process:

3.4.1.1 To consider, first, the interests of the state in all transactions;

3.4.1.2 To support and carry out state policies;

3.4.1.3 To buy without prejudice;

3.4.1.4 To avoid any conflict of interest with respect to procurement, or the appearance thereof;

3.4.1.5 To obtain the maximum ultimate value for each dollar of expenditure;

3.4.1.6 To subscribe to and work for honesty and truth in buying and selling, and to denounce all forms and manifestations of commercial bribery; and

3.4.1.7 To respect obligation and to require that obligations to the state be respected, consistent with good business practice.

3.4.2 Relations With Suppliers - A primary responsibility of purchasing personnel shall be to maintain good relations with suppliers and potential suppliers. Relationships shall be maintained in a manner which assures that no conflict of interest situations arise.

3.4.2.1 All potential suppliers shall be afforded the courtesy of a fair opportunity to present their capabilities and products.

3.4.2.2 Reasonable effort shall be made to provide fair bidding opportunities to all qualified and interested suppliers.

3.4.2.3 [37-2-9(2)(g)] State officials shall observe a commitment to maintain the confidentiality of information submitted by suppliers and potential suppliers.

3.4.2.3.1 Supplier proposals shall be treated in confidence with regard to technical approach and terms and conditions.

3.4.2.3.2 Distribution of information contained in supplier proposals shall be limited to those having a "need to know" as determined by the Purchasing Agent.

3.4.2.3.3 Under no circumstances shall confidential information be made available to other vendors.

3.4.2.4 Personnel are prohibited from engaging in any conduct which may tend to cause any existing or prospective supplier of goods or services to believe that his relationship with the state will be affected by his purchasing or failing to purchase goods or services from any representative of the state.

3.4.2.5 Under no circumstances may a vendor provide to a procurement official nor may a purchasing agent (any person authorized by a state agency in accordance with procedures prescribed herein acting within the limits of authority to commit state funds to obtain goods and services) accept any goods or services, regardless of monetary value, for personal use for less than fair market value.

3.4.2.6 Personnel are prohibited from accepting gifts or gratuities in any form for themselves or their families (spouses, parents, children, sister, brothers, in-laws, etc.) from contractors, subcontractors or suppliers now furnishing or desiring to furnish supplies or services to the Office of Purchases.

3.4.2.6.1 Gifts or gratuities shall mean, but are not limited to money, merchandise, advertising media (any merchandise carrying a vendor's name or logo), gift certificates, trips (individually or in groups), cock-tail parties, dinners, evening entertainment, sporting events, etc.

3.4.2.7 Social interaction between personnel involved in the procurement process and any present or prospective contractors, subcontractors or suppliers and their representatives creating the impression of favoritism shall be avoided.

However, this regulation does not prohibit social interactions between state employees and representatives of suppliers which are clearly of a personal nature, in which the

parties involved would normally be expected to reciprocate, and in which no reimbursement from the state is sought by the employee. For example, the supplier's representative may be an acquaintance, neighbor, relative or former state employee. The responsibility rests on the individual employee to regulate his/her own actions and to seek advice from Purchasing Management or the Ethics Commission if concerned about an apparent conflict of interest.

3.4.3 It shall be the obligation of all state employees to avoid conflicts of interest with respect to procurement, and to report promptly to the Chief Purchasing Officer all instances where a conflict exists or is suspected to exist.

3.4.3.1 Conditions under which a conflict of interest may be held to exist include, but are not limited to the following:

3.4.3.1.1 Where a procurement official with a principal responsibility for a category of goods or services:

- receives personal enrichment as a result of an award, or

- holds a secured financial interest in a firm offering such goods or services, or,

- receives indirect or subsequent income, by way of employment, retainer, consultancy, or other remuneration from a firm offering such goods or services, or,

- has an immediate family member or blood relative holding an equity interest, or a management or directorial position in a firm offering such goods or services;

3.4.3.1.2 Where any state employee divulges or withholds information (including, but not limited to, price, design, or requirement information) with the intent or result that one vendor is competitively advantaged over another.

3.4.3.1.3 Under any circumstances described in Chapter 36-14 of the General Laws of Rhode Island.

3.4.4 The Chief Purchasing Officer shall have the responsibility to investigate all claims with respect to conflicts of interest in procurement, to issue determinations which define whether or not conflict, in fact, existed, and to take action to resolve such conflict.

3.4.4.1 Resolution of conflict may include, but shall not be limited to, the following measures:

- 3.4.4.1.1 Reassignment of the procurement official or other state employee involved;

- 3.4.4.1.2 Termination of employment of the procurement official or other state employee involved; and

3.4.4.1.3 Debarment of any and all vendors who may be involved.

3.4.5 All employees of the Office of Purchases shall be required to sign and submit annual disclosure statements with respect to Purchasing Conflicts of Interest. Any and all purposeful or willful withholding of knowledge of or disclosure of conflict shall be held to be fraudulent activity, and may result in the immediate termination of the employment of that individual.

3.4.6 Membership and active participation in the meetings and activities of local purchasing organizations are encouraged.

3.4.7 Samples provided by vendors shall be deemed to be the property of the state which the Chief Purchasing Officer may determine appropriate for donation to charitable organizations or needy individuals.

3.4.8 Promotional programs and campaigns available through airlines, rental companies, hotels, motels, etc., which provide bonuses and rebates, and result from state paid travel, shall be applied toward state use or benefit and not personal use.

3.4.9 Purchasing personnel shall not make purchases for personal use in the name of the state or through the use of any state procurement forms.

## **SECTION 4 - VENDOR QUALIFICATION, PREQUALIFICATION AND SOLICITATION**

### **4.1 DEFINITIONS**

4.1.1 "Bidder" shall mean any person submitting a competitive bid in response to a solicitation.

4.1.2 "Bidders Lists" shall mean lists maintained by the Purchasing Agent containing the names and addresses of suppliers of various goods and services from whom bids, proposals, and quotations may be solicited.

4.1.3 A "Handicapped Business Enterprise" shall mean a small business concern, owned and controlled by one or more handicapped persons certified by the Rhode Island Handicapped Products Committee to meet the definition established by Chapter 37-2.2-2 of the General Laws of Rhode Island.

4.1.4 A "Minority Business Enterprise" shall mean a small business concern, owned and controlled by one or more minorities or women certified by the Rhode Island Department of Economic Development to meet the definition established by Chapter 37-14.1 of the General Laws of Rhode Island. A "small disadvantaged business" shall mean a minority business enterprise.

4.1.5 "Offeror" shall mean an individual who proposes a specific offer to sell goods and services to the state, whether in response to a bid or request for proposals or unsolicited.

4.1.6 "Proposer" shall mean a person submitting a proposal in response to a Request for Proposal.

4.1.7 "Qualified Bidder" shall mean a bidder determined by the Purchasing Agent to meet standards of business competence, reputation, financial ability, and product quality.

4.1.8 [37-2-15(6)] "Responsible Bidder" shall mean a qualified bidder who has the capability in all respects including financial responsibility to perform fully the contract requirements, and the integrity and reliability which will assure good faith performance.

4.1.9 A "Small Disadvantaged Business" shall refer to either a "minority business enterprise" or a "handicapped business enterprise" as defined above.

4.1.10 "Supplier" shall mean an actual or potential contractor; a vendor.

4.1.11 "Vendor" shall mean a supplier or contractor.

#### **4.2 RESPONSIBILITY AND AUTHORITY OF THE PURCHASING AGENT –**

Unless notified in writing by the Chief Purchasing Officer to the contrary, the Purchasing Agent shall be authorized to act on behalf of the Chief Purchasing Officer in carrying out the responsibilities and authority set forth herein for selection, evaluation, approval, debarment, suspension, rejection, and restriction of bidders and offerors.

#### **4.3 RESPONSIBILITIES OF BIDDERS AND OFFERORS**

4.3.1 [37-2-24(1)] A reasonable inquiry to determine the responsibility of a bidder or offeror may be conducted. A written determination of responsibility of a bidder or offeror shall be made and it shall be made in accordance with regulations issued by the Chief Purchasing Officer. The failure of a bidder or offeror to supply information promptly in connection with an inquiry related to responsibility may be grounds for a determination of nonresponsibility.

4.3.1.1 "Prompt" shall mean five (5) working days unless otherwise specified by the Purchasing Agent.

4.3.1.2 [37-2-24(2)] Except as otherwise provided, by law, information furnished by a bidder or offeror pursuant to this Section may not be disclosed outside of the Division of State Purchasing or the purchasing agency administering the contract without prior written consent of the bidder or offeror.

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.

4.3.1.4 Ability to meet performance bond requirements set forth for public works contractor in Chapters 37-12 and 37-13-14 shall be valid criteria for determination of responsibility, provided that the Chief Purchasing Agent may waive such requirement for good cause for contracts not exceeding fifty thousand dollars (\$50,000).

4.3.1.4.1 "Public Works Contractor" shall mean a contractor, in accordance with Chapter 37-12-1 of the General Laws of Rhode Island, every person (including copartnerships, joint enterprises and corporations) being awarded contracts by the departments of administration or transportation for construction, improvement, completion or repair of any public building, or portion thereof.

4.3.1.5 The Purchasing Agent may require interested suppliers to submit completed state Bidder Registration Forms to the Office of Purchases for consideration by the Purchasing Agent.

4.3.1.5.1 A copy of the state's General Terms and Conditions for contracts shall be distributed with the Bidder Registration Form.

4.3.1.5.2 The Bidder Registration Form shall be signed by a representative of the supplier who has the capacity to enter into contracts. The signature shall be an original signature made in ink and dated by the signatory. The signature shall affirm that:

(a) any and all information on the Registration Form is true and accurate;

(b) the existence of relationship (blood, spousal, adoptive, financial, etc.) between a principal of the firm and any state employee where a conflict of interest may exist has been disclosed; and

(c) that falsification of information contained on a signed Registration Form may be grounds for criminal charges of perjury and that conviction of such charges may be grounds for debarment.

4.3.1.5.3 As a prerequisite condition for contract award, the Purchasing Agent may require any bidder to complete a Bidder Registration Form and/or submit current certifications of financial responsibility, affirmative action compliance, drug-free and barrier free environment, and status as small, women-owned and/or disadvantaged businesses.

#### **4.4 BIDDERS LISTS.**

Bidders Lists shall be maintained by the Purchasing Agent consisting of the names and addresses of suppliers of various goods and services from whom bids, proposals, and quotations can be solicited.

4.4.1 Bidders Lists shall be formatted in a manner which identifies those suppliers certified as small disadvantaged businesses by the Rhode Island Department of Economic Development or the Handicapped Products Committee.

4.4.2 The Purchasing Agent or his designee may add to or delete suppliers from Bidders Lists based on information made available to him.

4.4.3 Bidders Lists may consist of:

4.4.3.1 Registered Suppliers - the names of interested suppliers who have submitted completed Bidder Registration Forms to the Office of Purchases which have been reviewed and approved by the Purchasing Agent.

4.4.3.2 Unregistered Suppliers - suppliers which have not expressed interest in selling to the state by submitting a Bidder Registration Form, but who have been determined by the Purchasing Agent, due to the nature of the firm's status in the market, to be responsible and qualified with regard to particular commodities. Inclusion of any firm on the Bidders List without a supporting registration form shall be permitted with the written approval of the Purchasing Agent.

4.4.4 The Purchasing Agent may disqualify a supplier, contractor, or subcontractor from participating in State Bidding Lists. Just cause for such determination may include but shall not be limited to:

4.4.4.1 Lack of a properly prepared and submitted Bidder Registration Form;

4.4.4.2 Refusal to submit a Bidder Registration Form;

4.4.4.3 Falsification of information on Bidder Registration or Certification Forms;

4.4.4.4 Suspension or debarment by the federal government;

4.4.4.5 Conviction of fraud or perjury;

4.4.4.6 Lack of competence, financial responsibility, or other limitations related to the ability of a supplier to provide the goods and services indicated on his Bidder Registration Form; or

4.4.4.7 Any reason stipulated in Section 4.8 of these regulations.

4.4.5 Based on the Purchasing Agent's review of a supplier's level of financial responsibility and/or qualification, the Purchasing Agent may restrict the items or size of orders for which a supplier will be solicited. Restriction shall relate to:

4.4.5.1 limiting the kinds of goods and services for which the supplier may be solicited to a portion of those indicated on a Bidder Registration Form.

4.4.5.2 limiting the scope/amount of goods and services for which the supplier may be solicited (e.g., categorizing a contractor by the size of construction projects he is deemed capable of undertaking).

4.4.6 The Purchasing Agent may require registered suppliers to resubmit updated Bidder Registration Forms annually.

4.4.6.1 [37-2-9.1] Bidder registration fee. -- The Chief Purchasing Officer may adopt regulations to establish an annual fee, of not less than twenty-five dollars (\$25.00), which shall be paid by all potential bidders requesting to subscribe to solicitation mailings for public bids for specific types of supplies, services, and construction during a fiscal year, and may waive said fee for Rhode Island firms. Additionally, the Chief Purchasing Officer may delegate to the Purchasing Agent the authority to waive said fee for an individual solicitation and to include unregistered bidders in the solicitation in the interest of expanding competition. Nothing herein shall prevent any interested party from submitting a bid in response to any solicitation of which they become aware.

4.4.7 The Office of Purchases shall maintain Vendor Information Files for the following documentation purposes:

4.4.7.1 General.

4.4.7.1.1 Bidder Registration Forms.

4.4.7.1.2 Results of investigations for prequalification, responsibility, suspension, debarment, restriction, and nonperformance.

4.4.7.1.3 Certifications.

4.4.7.1.4 Correspondence.

4.4.7.2 Bidding history.

4.4.7.3 Performance history.

4.4.7.3.1 Solicited and unsolicited reports regarding contract performance (e.g., quality, responsiveness) shall be recorded in the Vendor Information File.

4.4.7.3.2 Complaints shall be investigated by Office Purchases staff, the results submitted to the Purchasing Agent for adjudication, and the results documented and maintained in the Vendor Information File.

4.4.8 Potential bidders who have been determined by the Purchasing Agent to be brokers or jobbers shall not be included on State Bidders Lists.

4.4.9 Firms bidding on construction or building renovation must demonstrate an ability to perform a substantial portion of the subject work using their own forces. Bidders who do not maintain permanent workforces, or who propose to subcontract a disproportionate percentage of project work shall be considered unqualified, and the Purchasing Agent reserves the right to reject their offers.

## **4.5 PREQUALIFICATION OF CONTRACTORS**

4.5.1 General Procurement - [37-2-25] The Chief Purchasing Officer may provide for prequalification of suppliers as responsible prospective contractors for particular types of supplies, services, and construction. Solicitation mailing lists of potential contractors of such supplies, services, and construction shall include but need not be limited to such prequalified contractors. Prequalification shall not foreclose a written determination:

(1) Between the time of the bid opening or receipt of offers and the making of an award, that a prequalified supplier is not responsible; or

(2) That a supplier who is not prequalified at the time of bid opening or receipt of offers is responsible.

4.5.2 Prequalification information may be submitted within a time period subsequent to a project bidder's conference, which period has been specified in the bid solicitation.

4.5.3 The Purchasing Agent may conduct supplementary prequalification examinations of registered bidders prior to solicitation or award which include, but are not limited to:

4.5.3.1 requirement for additional certification(s);

4.5.3.2 requirement for demonstration of additional licensure;

4.5.3.3 requirement for recent financial information;

4.5.3.4 submission of an affirmative action employment plan; and/or

4.5.3.5 submission of the names of proposed small disadvantaged business subcontractors and the value of such subcontracts.

4.5.4 Inclusion of a supplier on Bidders Lists shall not constitute a prequalification determination for a specific procurement.

4.5.5 [37-2-26] Roads - Prequalification for a contractor who bids on road work for the Department of Transportation shall be conducted as follows:

4.5.5.1 The Chief Purchasing Officer may delegate responsibility and authority for evaluation of all or a portion of the evaluation of road work contractor prequalification documentation to the Director of the Department of Transportation.

4.5.5.1.1 Such delegation shall authorize the publication and implementation of policies and procedures which conform to the rules and regulations promulgated by the Chief Purchasing Officer in accordance with Chapter 37-2-26 of the General Laws of Rhode Island.

4.5.5.1.2 Such delegation shall be made in writing.

4.5.5.1.3 The Chief Purchasing Officer shall monitor the appropriateness and effectiveness of such delegation on a regular basis.

4.5.5.1.4 The Chief Purchasing Officer may rescind such authorization at any time provided that the rescission of such authority shall be conveyed in writing to the Director of the Department of Transportation no less than thirty-five (35) working days prior to the effective date of the rescission.

4.5.5.2 Every bid solicitation shall include within the project specification document a description of the prequalification requirements set forth herein and any additional requirements established by the Department of Transportation.

4.5.5.3 Each bidder shall submit to the Office of Purchases with his bid, the following prequalification information:

4.5.5.3.1 [37-2-26(1)] A list of equipment in his possession and which he proposes to use on the contract if awarded to him. [The equipment listed shall be in operable condition.]

4.5.5.3.2 [37-2-26(2)] The name and qualifications of his superintendent or supervisory personnel to be assigned to the major features of the work.

4.5.5.3.3 [37-2-26(3)] His financial references and an original copy of his current financial statement.

4.5.5.3.4 [37-2-26(5)] The number of proposed trainees to be trained in each classification and training program as stated in the required contract provision for federal aid projects. (This information shall be submitted directly to the Department of Transportation External Equal Employment Opportunity Office for approval.)

4.5.5.3.5 [37-2-26(9)] Copies of letters directly from bonding and insurance companies indicating their willingness to furnish the required bonds and insurance for the work.

4.5.5.3.6 [37-2-26(7)] Four (4) copies on the company's letterhead of certification of nondiscrimination in equal employment opportunity.

4.5.5.3.7 [37-2-26(6)] The name of the individual who will act as equal employment opportunity officer for the company.

4.5.5.4 Prior to the Purchasing Agent executing a contract, the apparent successful contractor shall submit to and obtain approval from the Department of Transportation for the following:

4.5.5.4.1 [37-2-26(8)] The names of any proposed subcontractors and/or suppliers, indicating the phase and extent of the work which they will perform. If any proposed subcontractors have not performed similar work for the state, the contractor shall supply records of experience for work.

4.5.5.4.2 [37-2-26(4)] An executed contract agreement(s) between the contractor and the Department of Transportation approved qualified Disadvantaged Business Enterprise (DBE) to be utilized during the performance of the work.

4.5.6 Construction Management. In accordance with Chapter [37-2-27] a person who bids on a construction management contract shall provide the following information, which information shall constitute the prequalifications for a construction management contract:

4.5.6.1 Firm history - Name of the firm, location of principal and branch offices, length of time in business, firm ownership structure, and annual construction management volume for each of the past five (5) years including number of projects and total construction volume.

4.5.6.2 Personnel - Total number of the firm's personnel, other than secretarial/clerical, by professional or skill group and outside firms which will be used to provide such services as estimating, value engineering analysis, scheduling or computer services.

4.5.6.3 Experience - Information regarding projects which the firm has constructed during the past five (5) years, including those where the firm has served as construction manager: project name and address, year completed, type of project, construction cost, and a reference(s).

4.5.6.4 Project Staffing -

(a) The firm's proposed management staff for the project, including an organizational chart identifying the firm's key staff members and showing how each staff member interacts with other staff members assigned to the project, and

(b) A detailed resume for each key staff member which summarizes education, professional registration, professional society membership, construction experience, and construction management project experience.

4.5.6.5 Services -

(a) Scope of preconstruction phase services, including how such services are provided, with specific attention to the first budget estimate, methods of cost control, scheduling, value engineering and the method of reporting project status and schedule position;

- (b) Scope of construction phase services and how such services are to be provided;
- (c) The firm's method of working with the project architects, engineers, consultants and other planning team members; and
- (d) The firm's method of coordinating the efforts of various trade contractors.

#### **4.6 VENDOR DISQUALIFICATION**

4.6.1 The Purchasing Agent may disqualify a supplier, contractor, or subcontractor from participating in state procurements. Disqualification may result in any of the following actions being taken:

4.6.1.1 Debarment - permanent removal from State Bidders Lists and exclusion from all subsequent procurements, and termination of all outstanding contracts; or

4.6.1.2 Suspension - temporary removal from State Bidders Lists and exclusion from subsequent procurements, and termination of outstanding contracts (at the discretion of the Purchasing Agent) for a specified period of time; or

4.6.1.3 Removal - deletion from State Bidders Lists (only), without interruption of outstanding contracts or the ability to participate in subsequent procurements; or

4.6.1.4 Rejection - lack of inclusion on State Bidders Lists or non-consideration of an offer submitted for a particular procurement, based on lack of demonstrated responsibility or competency.

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.

#### **4.7 REJECTION AND REMOVAL**

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.

4.7.2 Failure to respond to three consecutive solicitations for products or services which a vendor has indicated an interest or ability in supplying on a Bidder Registration form, or a demonstrated lack of success in receiving awards, shall constitute grounds for removal from the Bidders List(s) in question.

## **4.8 DEBARMENT AND SUSPENSION**

### **4.8.1 Applicability**

4.8.1.1 A debarment or suspension judgment against a part of a corporate entity constitutes debarment or suspension of all of its divisions and all other organizational elements, except where the action has been specifically limited in scope and application, and may include all known corporate affiliates of a contractor, when such offense or act occurred in connection with the affiliate's performance of duties for or on behalf of the contractor, or with the knowledge, approval, or acquiescence of the contractor or one or more of its principals or directors, or where the contractor otherwise participated in, knew of, or had reason to know of the acts.

4.8.1.2 The fraudulent, criminal or other serious improper conduct of any officer, director, shareholder, partner, employee, or any other individual associated with a contractor may be imputed to the contractor when the conduct occurred in connection with the individual's performance of duties for or on behalf of the contractor, or with the contractor's knowledge, approval, or acquiescence. The contractor's acceptance of benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

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.

4.8.2 Just cause for debarment may include, but shall not be limited to:

4.8.2.1 Conviction or final adjudication by a court or administrative agency of competent jurisdiction of any of the following offenses:

4.8.2.1.1 Criminal offense incident to obtaining or attempting to obtain a public contract or subcontract, or the performance of such contract or subcontract, in any jurisdiction, or

4.8.2.1.2 Criminal offense involving embezzlement, theft, fraud, perjury, forgery, bribery, falsification or destruction of records, receiving stolen property (or any other offense indicating a lack of business integrity or honesty which seriously and directly affects the contractor's present responsibility as a public contractor), or

4.8.2.1.3 Violation of state or federal antitrust laws relative to the submission of bids or proposals (including those proscribing price fixing between competitors, allocation of customers between competitors, and bid rigging), or

4.8.2.1.4 Violation of state or federal laws regulating campaign contributions;



4.8.2.1.5 Violation of state or federal laws regulating equal employment opportunity or handicapped access;

4.8.2.2 Violation of the terms of a public agreement or transaction so serious as to affect the integrity of any agency program;

4.8.2.3 Falsification of information on a bid submission or Bidder Registration form, subcontracting plan, or affirmative action plan;

4.8.2.4 Substantial nonperformance on two or more contracts;

4.8.2.5 Debarment by the federal government; or

4.8.2.6 Withdrawal, without written permission of the Purchasing Agent, of two or more bids after an award has been announced.

4.8.3 Just cause for suspension may include, but shall not be limited to:

4.8.3.1 Any cause for debarment, depending on the severity of the violation;

4.8.3.2 An indictment or any information filed by a public agency charging a criminal offense as described above for debarment;

4.8.3.3 Substantial evidence of willfully supplying materially false information incident to obtaining or attempting to obtain or performing any public contract or subcontract, or willful failure to comply with requirements imposed upon contractors or subcontractors by law or regulation;

4.8.3.4 Suspension by the federal government;

4.8.3.5 Substantial nonperformance on at least one contract;

4.8.3.6 Lack of responsibility evidenced by:

4.8.3.6.1 Withdrawal of two or more bids within a two-year period, even with the consent of the Purchasing Agent, or

4.8.3.6.2 Correction following public or formal opening of two or more bids within a two-year period, even with the consent of the Purchasing Agent, or

4.8.3.6.3 Rejection for non-responsiveness of two or more bids within a two-year period.

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.

4.8.4 A vendor or contractor who knowingly engages as a subcontractor, for a contract awarded by the State, a vendor or contractor then under a ruling of suspension or debarment by the State shall be subject to disallowance of cost, annulment or termination of award, issuance of a stop work order, debarment or suspension, as may be judged to be appropriate by the State Purchasing Agent.

4.8.5 The Purchasing Agent may suspend a vendor for not less than a three-month and not more than a two-year period, depending on the severity of a particular violation, provided however that where the cause of the suspension is a criminal indictment as described above, the suspension shall remain in force until such time as the court has disposed of the indictment.

4.8.6 Pest Control Services [37-2-73] Upon receipt of an order from the Director of Environmental Management pursuant to section 23-25-28(a)(1) RIGL, the Purchasing Agent shall take such steps as are necessary to insure that the named business or commercial applicator shall not be eligible to receive state contracts for pest control services for the duration of the period enumerated in said Director's order.

#### **4.9 NOTIFICATION, PROTEST AND RECONSIDERATION**

4.9.1 The Purchasing Agent shall notify in writing any vendor whom he intends to debar or suspend. Such notice shall:

4.9.1.1 state the nature of and, in the case of suspension, the duration of the sanction,

4.9.1.2 provide the vendor with the rationale for the decision, and

4.9.1.3 establish a specific time for reconsideration not less than two weeks nor more than three weeks within which the vendor may provide justification for why such action should not be implemented.

4.9.2 Where reconsideration has been requested in writing by a vendor, the Purchasing Agent shall, upon expiration of the reconsideration period, notify the affected vendor of his final decision. Where no such request is received, the action shall be implemented without notice.

4.9.3 Where issuance of a purchase order or other award to a particular vendor may compromise the best interests of the State, nothing herein prevents the Purchasing Agent from directing that a suspension or debarment take effect immediately.

4.9.4 No notice shall be required where the Purchasing Agent rejects the offer of a bidder for an individual procurement, or removes a registered bidder from one or more Bidders List(s), as described above.

4.9.5 A vendor who has been suspended, or rejected from one or more Bidders List(s), shall not be reinstated until he has submitted a written request for reinstatement to the Purchasing Agent, with evidence that the reason for suspension, rejection, or removal has been corrected.

4.9.6 Protests of decisions rendered by the Purchasing Agent shall be administered in accordance with the requirements of section 37-2-52 RIGL.

## **SECTION 5 - COMPETITIVE REVIEW AND SOURCE SELECTION**

### **5.1 DEFINITIONS**

5.1.1 "Bid" shall mean an executed document submitted by a bidder in response to an Invitation for Bids or a Request for Quotation.

5.1.1.1 "Firm Bid" shall mean a bid that binds the bidder until a stipulated time of expiration.

5.1.1.2 "Sealed Bid" shall mean a bid which has been submitted in a sealed envelope to prevent its contents being revealed or known before the deadline for the submission of all bids to enhance fair competition.

5.1.2 "Bid Abstract" shall mean a summary of responsive bids to a solicitation.

5.1.3 "Bid Bond" shall mean an insurance agreement in which a third party agrees to be liable to pay a certain amount of money in the event that a specific bidder, if his bid is accepted, failed to accept the contract as bid.

5.1.4 "Bid Deposit" or "Bid Security" or "Bid Surety" shall mean a sum of money or check deposited with and as instructed by the prospective purchaser to guarantee the bidder (depositor) will, if selected, accept the contract in accordance with the bid.

5.1.5 "Bid Opening" shall mean the process through which bids are opened and the contents revealed for the first time to the state, other bidders and to the public.

5.1.6 "Bid Sample" shall mean a sample required of a bidder for examination, comparison, testing, and evaluation for the prospective purchaser.

5.1.7 "Collusive Bidding or Corrupt Combination" shall mean the response to bid invitations by two or more vendors who have secretly agreed to circumvent laws and rules regarding independent and competitive bidding.

5.1.8 "Commodity" shall mean an article of trade, a movable article of value, something that is bought or sold; any movable or tangible thing that is produced or used as the subject of barter or sale.

5.1.9 "Competition" shall mean the process by which two or more vendors vie to secure the business of a purchaser by offering the most favorable terms as to price, quality, delivery and/or service.

5.1.10 [37-2-15(2)] "Established catalogue price" shall mean the price included in the most current catalogue, price schedule or other form that:

(a) is regularly maintained by a 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 any category of buyers, or to 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.

5.1.11 [37-2-15(3)] "Evaluated bid price" shall mean 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.

5.1.12 "Evaluation of Bid" shall mean the process of examining a bid after opening to determine the bidder's responsibility, responsiveness to requirements, and to ascertain other characteristics of the bid that relate to determination of the successful bidder.

5.1.13 [37-2-15(4)] "Invitation for Bids" shall mean all documents, whether attached or incorporated by reference, utilized for soliciting proposals in accordance with the procedures set forth in section 37-2-18 of this chapter.

5.1.14 "Proposal Evaluation Criteria" shall mean factors, usually weighted, relating to management capability, technical capability, manner of meeting performance requirements, price and other important considerations used to evaluate which proposer in a competitive negotiation has made the most advantageous offer.

5.1.15 [37-2-76.1)] "Recycled product" shall mean a product containing pre-consumer content and post-consumer content.

5.1.15.1 "Pre-consumer content" shall mean any material generated during any steps in the production of an end product, but does not include any waste material or byproduct that can be reused or has been normally reused within the same plant or another plant of the same parent company.

5.1.15.2 "Post-consumer content" shall mean those materials generated by a business or consumer which have served their intended end uses and which have been separated or diverted from solid waste. Printer's waste, lathe wastes, and other wastes generated during production of an end product and undistributed finished products are not "post-consumer content."

5.1.15.3 "Office paper products" shall mean any paper used by the state for the purpose of writing, printing, copying, and/or typing, including, but not limited to, computer, bond, xerographic, forms and/or duplicator paper, envelopes, business cards, index cards, and writing pads, either white or colored.

5.1.16 "Request for Bids" shall mean a solicitation which consists of a specific description of the goods and services, to which necessary blueprints, specifications, and special conditions are appended.

5.1.17 "Request for Information (RFI)" shall mean a document used in informal, uncompetitive solicitation of information, data, comments, or reaction from possible suppliers preceding the issuance of a Request for Proposals or a multi-step bidding process.

5.1.18 In accordance with [37-2-15(5)] "Request for Proposal (RFP)" shall mean all documents, whether attached or incorporated by reference, utilized for soliciting (competitive) proposals.

5.1.19 "Request for Quotation (RFQ)" shall mean a document or oral solicitation used for seeking competition on small purchases or on any purchase lower than the amount that requires competitive bidding.

5.1.20 [37-2-7(17)] "Requisition" or a "purchase request" shall mean a document whereby a using agency requests that a contract be entered into to obtain goods and/or services for a specified need, and may include, but is not limited to, the technical description of the requested item, delivery requirements, transportation mode request, criteria for evaluation of proposals, and/or suggested sources of supply, and information supplied for the making of any written determination and finding required by section 37-2-6 of this chapter.

For the purposes of establishing rules and regulations pursuant the Chapter 37-2, a "requisition" shall also mean an internal document by which a using agency requests the Office of Purchases to initiate a procurement. The request may include, but is not limited to, a performance or technical description of the requested item, delivery schedule, transportation mode, criteria for evaluation, suggested sources of supply, and information related to the making of any written determination required by policy or procedure.

5.1.21 [37-2-15(7)] "Responsive Bidder" shall mean a person who has submitted a bid under section 37-2-20 of this chapter 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.

For the purposes of establishing rules and regulations pursuant the Chapter 37-2, a "responsive bidder" shall also mean a bid which conforms in all material respect to the terms and conditions, specifications and any other requirements of the Bid Invitation.

5.1.22 "Solicitation" shall mean the process of notifying prospective bidders or offerors that the state wishes to receive bids for furnishing goods and services. The process may consist of public advertising, mailing Invitations to Bid, posting notices, and/or telephone or telegraph messages to prospective bidders.

5.1.23 "Source Selection" shall mean the technique of appropriate selection by solicitation, i.e., competitive sealed bidding, multi-step competitive sealed bidding, competitive negotiation, small purchase procedure, sole source or emergency purchase.

5.1.24 "Specification" shall mean a description of what the purchaser seeks to buy, and consequently, what a bidder must be responsive to in order to be considered for award of a contract. A specification may be a description of the physical or functional characteristics, or the nature of, a supply or service. It may include a description of any requirements for inspecting, testing, or preparing a supply or service item for delivery; a purchase description.

5.1.24.1 "Standardization (of Specifications)" shall mean the process of examining characteristics and needs for items of similar end usage and developing a single specification that will satisfy the need for most or all purchases for the purpose.

5.1.24.2 "Restrictive Specification" shall mean a specification or purchase description that unnecessarily limits competition by precluding items that would be capable of satisfying the intended need.

5.1.25 "Spot Purchase" shall mean a one-time purchase occasioned by a small requirement, an unusual circumstance, or to take advantage of a favorable market condition.

5.1.26 "Standard" shall mean a characteristic or set of characteristics for an item that, for reasons of performance level, compatibility or interchangeability with other products, etc., is generally accepted by producers and by users of the item as a required characteristic of all items for the designed purpose.

5.1.27 [37-2-7(23)] "Supplies" shall mean all property, including but not limited to leases of real property, printing and insurance, except land or permanent interest in land.

5.1.28 "Vendor" shall mean a supplier or contractor.

**5.2 COMPETITION** - In accordance with the purposes set forth in Chapter [37-2-2(2)(f)], the Chief Purchasing Officer shall assure that all state agency procurement activities foster effective competition, such that economies in expenditure can be obtained. A competitive environment shall be considered to exist when the following conditions are met:

5.2.1 Two or more items or offers can be compared to determine relative merit;

5.2.2 Objective standards of comparison are fairly and impartially applied;

5.2.3 Offers are evaluated within a market context:

5.2.3.1 The lowest price offered may not be considered to be a competitive price when not supported by an evaluation of the market or market conditions within which the offer was rendered;

5.2.3.2 Market evaluation must be conducted using objective standards to assure fairness and to encourage participation;

5.2.4 An equal opportunity for participation in any procurement applies to all prospective offerors, and affirmative action to achieve participation in the procurement process as a means of achieving social objectives is accomplished without violation of these general principles.

## **5.3 CENTRALIZATION**

5.3.1 Except as otherwise provided for herein, the Purchasing Agent shall be responsible for the administration of all procurement activities and determinations with respect to the solicitation and evaluation of competitive offers, and to source selection.

5.3.2 Unless specifically authorized otherwise, the Office of Purchases shall be the sole point of contact with prospective and current offerors, relative to the business, financial and other commercial aspects of all solicitations and offers:

5.3.2.1 All other state employees shall be authorized to contact suppliers to obtain technical data only, prior to the award of a contract.

5.3.2.2 Representatives of the Office of Purchases shall be present at, or party to, all discussions with suppliers with respect to current solicitations, or with respect to price or delivery information, or with respect to modifications of any contract.

5.3.3 Delegated Purchases.

5.3.3.1 The following goods and services may be procured by user agencies without the express approval of the Purchasing Agent in accordance with the provisions set forth herein:

5.3.3.1.1 Items purchased through Master Pricing Agreements (MPA) - Schedule/Term Contracts Purchases. All agencies shall be authorized to order MPA items directly from vendors in accordance with procedures established by the Chief Purchasing Officer.

5.3.3.1.2 Items exempted from competition by law, regulation or determination by the Chief Purchasing Officer or his designee.

5.3.3.1.3 Grants in the form of general subsidies or assistance shall be administered by state agencies in accordance with legal mandates restricting or defining the use of such funds.

5.3.3.2 State officials designated by the Chief Operating Officer (Director) of an agency or department shall be authorized to obtain bids for procurements reasonably not expected to exceed an aggregate amount of one thousand dollars (\$1,000) in accordance with small purchase regulations promulgated herein by the Chief Purchasing Officer.

5.3.3.2.1 Violation of these regulations may result in withdrawal of such authority by the Purchasing Agent.

5.3.3.2.2 All bids and contract awards made under these provisions shall be documented in a central location.

#### 5.3.4 Violations of Purchase Authority

5.3.4.1 The Controller shall review all documents for which state agencies undertake purchasing actions and shall report suspected violations of delegated purchasing authority to the Purchasing Agent.

5.3.4.2 Transactions which are determined by the Purchasing Agent to be out of compliance with state purchasing regulations and procedures shall be returned to agencies for explanation and justification.

5.3.4.3 User agency abuses of limited delegated purchasing authority shall be reported to the Chief Purchasing Officer who will hold agency chief executives accountable for violations.

5.3.4.4 Deliberate disregard of state officials for purchasing regulations, policies and procedures shall be subject to disciplinary action, including dismissal.



5.3.5 Additional delegated authority may be granted by the Purchasing Agent upon reviewing written requests submitted by the chief executive officer of a department or agency in accordance to the provisions set forth in Section 2 of these regulations.

## **5.4 STANDARDS AND SPECIFICATIONS**

### **5.4.1 [37-2-38] Issuance of specifications.**

(1) The Chief Purchasing Officer shall have the responsibility for issuing and maintaining all standard specifications for supplies, services, and construction required by the state. Among its duties, it shall, to the greatest extent practicable:

(a) Prepare and issue standard specifications for supplies, services, and construction commonly required by the state.

(b) Revise all standard specifications to conform to all technical and scientific advances pertaining to the supplies, services, and construction described in those specifications, and to reflect changes in the state's requirements and user agencies; and

(c) Establish guidelines for drafting specifications.

(2) All specifications shall be drafted so as to maximize, to the extent practicable, competition in fulfillment of the state's requirements.

5.4.2 [37-2-38.1] Certification by building commissioner. -- The state controller shall order no payment to any person on account of any contract for any construction which is subject to the state building code, unless and until the state building commissioner has certified to the state controller in writing that: (i) All permits required under Sections 23-27.3 - 113.1 for the construction for which such payment has been requested have been issued and are valid; and (ii) The state building commissioner has, pursuant to Sections 23-27.3 - 113.3.1, verified that all construction work for which payment has been requested and which state law requires to be performed by licensed persons has been performed by persons so licensed.

5.4.3 Solicitations shall be prepared in a manner and form which enables suppliers to submit fully responsive and knowledgeable offers, and which clearly define the criteria to be used in evaluating responses.

5.4.4 All material submitted by requisitioners to the Office of Purchases for action shall be in sufficient detail and shall contain adequate supportive information to:

5.4.4.1 Adequately describe the purpose, use, or desired performance level of the requirement; and

5.4.4.2 Identify measurable criteria for evaluation of offers including, but not limited to, acceptance testing.

5.4.5 Wherever possible, solicitations shall incorporate a standard specification, describing the level of performance required, and measurable criteria which define acceptance.

5.4.5.1 In certain cases, following detailed evaluation, brand name or other designations may be defined as standard items, where it is determined to be in the best interest of the State with regard to economies of scale, or cost or value analysis.

5.4.5.2 The Office of Purchases shall develop Standards Committees (product advisory committees) to review, develop, and update specifications and standard item designations for frequently and/or extensively used products.

5.4.6 Selection and evaluation criteria shall be clearly defined in all solicitations.

5.4.6.1 [37-2-18(2)] The invitation for bids shall state whether award shall be made on the basis of the lowest bid price or the lowest evaluated or responsive 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.

5.4.6.2 Unless alternate offers are clearly requested or allowed, only those offers which are responsive, in all material respects, to the terms of the solicitation shall be considered.

5.4.6.2.1 Alternate specifications may be considered only where it has been determined that the alternate satisfies all objective performance characteristics of the procurement, and represents a reduction in expenditure;

5.4.6.2.2 Alternate terms and conditions may be considered only where consideration is determined to be in the best interest of the State to do so, and where they constitute a reduction in expenditure.

5.4.6.3 Used Items may be purchased to achieve financial benefit if the manufacturer will provide warranties for maintenance requirements and for the replacement of parts. Such certification/warranties shall be the same as that provided for new equipment. Purchase of used items which exceed a value of two hundred and fifty dollars shall require approval by the Office of Purchases.

5.4.6.4 [37-2-75] Prohibition against the use of lead based paints. -- When purchasing paint products or contracting or subcontracting for painting, construction, improvement, completion, or repair of any public building, any public road, any public bridge, or any public construction, all governmental bodies and public agencies, as defined by sections 37-2-7(11) and 37-2-7(16), shall be prohibited from the use of lead based paint.

5.4.6.5 [37-2-76] State purchase of recycled products. -- (a) The state shall, through its purchasing policy and practice, affirmatively promote the use of recycled products. The Department of Administration in conjunction with the Department of Environmental

Management shall, through regulations, establish a time table requiring increased utilization by the state of recycled products. In January of each year, the Department of Administration shall report to the General Assembly the State's progress in utilizing recycled products materials and supplies for the preceding twelve (12) months.

(b) With respect to office paper products, at least fifty percent (50%) of the expenditure for office paper products purchased by the state of Rhode Island, its agencies and departments, shall be recycled paper products by fiscal year 1995.

(c) The Department of Administration in conjunction with the Department of Environmental Management shall annually establish comprehensive technical specifications based on research by the Department of Environmental Management for the recycled products, materials and supplies to be purchased by the state under this section. These specifications shall include the minimum performance and quality attributes as well as minimum pre- and post-consumer content.

(d) The Director of the Department of Administration, acting as the Chief Purchasing Officer of the State, shall direct that all subsequent purchases of the subject recycled products, materials and supplies by the state, its agencies and departments shall meet the source specifications of pre-consumer and/or post-consumer content standards established under subsection (c) of this section.

(e) Subsequent discovery by the State, its agencies or departments that products delivered by vendors to the state as "recycled products" do not satisfy the specifications of "recycled" content stated in the award, shall be grounds for the return of all discrepant goods, refunds of all moneys paid, termination of all outstanding contracts and orders, and at the discretion of the Chief Purchasing Officer suspension of the vendor's involvement in state procurement for a period of up to twenty-four (24) months.

## **5.5 GENERAL PROVISIONS**

5.5.1 Except as otherwise authorized by law, or as specifically exempted herein, all state contracts shall be awarded as the result of:

5.5.1.1 [37-2-17(1)] competitive sealed bidding; or

5.5.1.2 [37-2-17(2)] competitive negotiation; or

5.5.1.3 [37-2-17(3)] non-competitive negotiation; or

5.5.1.4 [37-2-17(4)] small purchase procedures; or

5.5.1.5 Requests for Proposal; or

5.5.1.6 Where permitted by law, grants.

5.5.2 [37-2-8] When foodstuffs of good quality grown or produced in Rhode Island by Rhode Island farmers are available, the Purchasing Agent is hereby directed to purchase such foodstuffs at the prevailing market prices when any such foodstuffs are required by the state institutions.

5.5.3 The Office of Purchases shall establish and make available to participating agencies Master Pricing Agreements for goods and services where the nature and amount of demand is not specifically known in advance (e.g., office furniture, food, athletic equipment and emergency repair trades).

## **5.6 RULES FOR SOLICITATION**

5.6.1 In general, solicitations will be sent only to those suppliers who have formally expressed a desire to bid on the particular types of items which are the subject of the bid solicitation; however, the Purchasing Agent may determine that competition would be enhanced by soliciting bidders who are not on the established Bidders List.

5.6.2 Small and small disadvantaged businesses shall be solicited to maximum extent determined by the Chief Purchasing Officer to be practicable.

5.6.2.1 All solicitations described elsewhere under Small Purchase Procedure shall include solicitation from at least one responsible supplier certified by the Department of Economic Development as a small disadvantaged business, where suppliers have been identified for the product or service in question.

5.6.2.2 For all awards of \$250 or less, agencies shall be encouraged to utilize small, disadvantaged businesses as suppliers.

### **5.6.3 Notification and Advertising**

5.6.3.1 Notices shall be published in sufficient time to afford suppliers a fair opportunity to respond prior to the bid opening date and time.

5.6.3.2 Advertisements may be utilized in conjunction with requests for quotations or proposals for products or services at any estimated level of expenditure if the Purchasing Agent so determines:

5.6.3.2.1 that the commodity or service is of such special nature that opportunities for competition will be enhanced by extending invitations to other than known suppliers;

5.6.3.2.2 that a purchase will be of interest to supportive industries, e.g. construction projects;

5.6.3.2.3 that a purchase is unusually large or infrequent.

5.6.3.3 The Purchasing Agent may advertise in widely circulated newspapers and/or trade journals to promote effective competition.

5.6.3.4 The Purchasing Agent may place advertisements in publications directed to minority communities and/or women to enhance opportunities for disadvantaged businesses to participate in the bidding process.

5.6.3.5 The Purchasing Agent shall have the sole authority to place advertisements for contracts awarded under his aegis; however he may delegate such authority as circumstances dictate.

5.6.4 The Purchasing Agent may solicit offers from prospective suppliers who are not registered bidders upon written recommendation by a user agency, or where such solicitation is judged to be necessary in order to expand the field of competition.

5.6.5 The State of Rhode Island shall be under no obligation to consider an offer which has been submitted without solicitation.

## **5.7 BIDDER SECURITY**

5.7.1 [37-2-40(1)] Bidder's security shall be a bond provided by a surety company authorized to do business in the State of Rhode Island, or the equivalent in cash, in a form satisfactory to the state.

5.7.1.1 The bidder may submit a certified check, bank check (cashier's check or treasurer's check), or money order as surety instead of a bond.

5.7.1.2 All such sureties must be dated within 30 days of the bid opening date and shall be valid for no less than 60 days from the bid opening dates.

5.7.1.3 All such sureties shall be made payable to the State of Rhode Island General Treasurer.

5.7.1.4 All sureties shall contain an identification of the bid number for which the surety is intended.

5.7.2 [37-2-40(1)] Bidder security shall be required for all competitive sealed bidding for construction contracts when the estimated price exceeds twenty-five thousand dollars (\$25,000). Nothing herein prevents the requirement of such bonds on construction contracts under twenty-five thousand dollars (\$25,000) when circumstances warrant.

5.7.2.1 The Purchasing Agent may require bidder security for any procurement that he judges to be substantial, or where in his opinion the potential of capricious or artificial bidding exists, or where there is a risk of withdrawal of offers prior to an award being made, or where the interests of the State otherwise require protection.

5.7.2.2 Bidder security may be required for contracts involving blanket orders, services or high value items when the value of the contract exceeds two thousand five hundred dollars (\$2,500).

5.7.3 [37-2-40(2)] Bidder's security shall be in an amount equal to at least five percent (5%) of the amount bid.

5.7.4 [37-2-40(3)] When the invitation for bids requires that bid security be provided, noncompliance requires that the bid be rejected, provided, however, that the Chief Purchasing Officer may set forth by regulations exceptions to this requirement in the event of substantial compliance.

5.7.5 [37-2-40(4)] After the bids are opened, they shall be irrevocable for the period specified in the invitation for bids, provided that if a bidder is permitted to withdraw his bid before award because of a mistake in the bid as allowed by law or regulation, no action shall be taken against the bidder or the bidder's surety.

5.7.6 After the bid opening the Purchasing Agent shall return the sureties of all but the three (3) apparent lowest bidders. When the evaluation of the bid has been completed, the Purchasing Agent shall return all but the lowest bidder's surety.

5.7.7 After the low bidder has been notified of the state's intent to proceed with a contract, the low bidder's bid surety shall be returned. When performance, labor and/or material bonds are required, the bid surety shall be returned upon receipt of the appropriate bond(s).

**5.8 CANCELLATION OF INVITATION FOR BIDS AND REQUESTS FOR PROPOSALS.** - [37-2-23] An invitation for bids, a request for proposals, and other solicitation may be cancelled, or all bids or proposals may be rejected, if it is determined in writing that the action is taken in the best interest of the state and approved by the Chief Purchasing Officer.

5.8.1 If a solicitation results in none of the proposals being reasonably close to expectations, the Purchasing Agent may with the written approval of the Chief Purchasing Officer declare all bids unacceptable and resolicit the procurement.

5.8.2 If a solicitation results in only one proposal, the price of which is not reasonably close to expectations, the Purchasing Agent may recommend that the Chief Purchasing Officer declare the bid unacceptable and either resolicit the procurement or ask that the price be negotiated with the vendor.

5.8.3 The Purchasing Agent may eliminate bidders whose offers are clearly noncompetitive prior to resolicitation.

## **5.9 CORRECTION OR WITHDRAWAL OF BIDS**

5.9.1 [37-2-18(6)] Correction or withdrawal of bids may be allowed only to the extent permitted by regulations issued by the Chief Purchasing Officer.

5.9.2 The Purchasing Agent or his designee shall be the sole determiner of whether correction or withdrawal of bids may be made without penalty.

5.9.3 The Purchasing Agent shall respond to requests for correction or withdrawal within ten (10) working days, notifying the bidder of the status of his bid, bid surety and continued inclusion in the state's Bidders List.

5.9.4 Correction of a bid.

5.9.4.1 Correction of a bid at any time prior to bid opening may be permitted without penalty when a bidder requests that his bid be returned and he resubmits a corrected bid prior to the bid opening.

5.9.4.2 A vendor who fails to resubmit a corrected bid before the bid opening shall be considered nonresponsive.

5.9.4.3 Requests by the apparent low bidder for correction of bids identifying all error(s) and specifying corrective action shall be submitted in writing to the Purchasing Agent and shall be re-evaluated with all other offers within five (5) working days after the bid opening.

5.9.5 Withdrawal of bids.

5.9.5.1 Requests for withdrawal of bids shall be submitted in writing to the Purchasing Agent, providing an explanation for the action and advising the Purchasing Agent as to why the bidder should not be suspended from the state's Bidders List.

5.9.5.2 Withdrawal of bids without the written consent of the Purchasing Agent shall result in forfeiture of bid sureties and shall result in suspension or debarment from the state's Bidders List, depending upon the severity of the violation.

## **5.10 SOLICITATION CRITERIA**

5.10.1 [37-2-58] At least every three (3) years the Chief Purchasing Officer shall review the prevailing costs of labor and materials and may make recommendations to the next regular session of the General Assembly for the revision of the then current threshold amounts contained in this chapter [37-2] as justified intervening changes in the cost of labor and materials.

5.10.1.1 The Chief Purchasing Officer may make recommendations to the General Assembly for changes to solicitation criteria based on factors other than the cost of labor and materials.

5.10.2 [37-2-22] Small Purchases. Procurements not to exceed an aggregate amount of five thousand dollars (\$5,000) for construction and two thousand five hundred dollars (\$2,500) for all other purchases may be made in accordance with small purchase regulations promulgated by the Chief Purchasing Officer. Procurement requirements shall not be artificially divided so as to constitute a small purchase under this section.

5.10.2.1 Competitive offers shall be solicited for all procurements with a value greater than \$250 except under specifically prescribed circumstances set forth herein.

5.10.2.2 Small construction purchases shall include building, altering, repairing, improving or demolishing buildings or other improvements to real property. Small construction purchases shall not include routine maintenance or repair of existing structures, buildings, or real property performed by salaried employees of the State in the usual course of their job.

5.10.3 Competitive bids shall be obtained from a sufficient number of suppliers to be considered representative of the industry cited. Although three bids shall be considered the minimum, the Purchasing Agent may in some instances declare the existence of two bids to be considered to provide adequate price competition. The determination shall be made in writing and placed in the bid file.

## **5.11 SOLICITATION METHODOLOGY**

5.11.1 Public Competitive Bids. [37-2-18(1)/22] Sealed written competitive bids shall be required for purchase orders exceeding five thousand dollars (\$5,000) for construction contracts and two thousand five hundred dollars (\$2,500) for all other purchases unless such method is not practicable.

5.11.1.1 [37-2-18(1)] Factors to be considered in determining if competitive sealed bidding is practicable shall include whether specifications can be prepared which permit award on the basis of either the lowest bid price or the lowest evaluated bid price, the available sources, the time and place of performance, and other relevant circumstances appropriate for the use of competitive sealed bidding.

5.11.1.2 [37-2-18(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 consist of a written invitation soliciting quotations from suppliers on the State's approved vendors list. Such notice may include publication in a newspaper of general circulation in the state as determined by the Chief Purchasing Officer 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 there is a need to waive the twenty-one (21) day limitation. 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.



5.11.1.3 [37-2-18(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.

#### 5.11.2 Formal Competitive Bids.

5.11.2.1 Except under emergency circumstances, competitive bids shall be obtained in the form of sealed written quotations for all procurements exceeding one thousand dollars (\$1,000).

5.11.2.2 A formal bid shall be distinguished by:

- (a) a specific date and time by which sealed written bids must be submitted;
- (b) an opening of all bids at a specified time at the Office of Purchases;
- (c) the solicitation of a minimum of three selected bidders who are potential suppliers for the commodity or service to be procured.

5.11.2.3 All Formal Competitive Bids shall be issued by the Office of Purchases.

#### 5.11.3 Informal Competitive Bids.

5.11.3.1 Oral quotations (including telephone) may be solicited for purchase orders with a value less than one thousand dollars (\$1,000). If the Office of Purchases is unable to verify prices using published lists/catalogs or by market analysis, the lowest quotation obtained by telephone solicitation for procurements exceeding two hundred and fifty dollars (\$250) shall be confirmed in writing.

5.11.3.2 An informal bid shall be distinguished by:

- (a) lack of a specific time by which bids must be submitted;
- (b) lack of sealed written bids; quotes may be oral on the spot or by telephone and confirmed at a later date in writing;
- (c) lack of an opening and reading of bids;
- (d) the solicitation of selected registered or unregistered bidders who are potential suppliers for the commodity or service to be procured and/or vendors suggested for consideration by the user agency.

5.11.3.3 Informal bids shall be solicited from a minimum of three suppliers.

5.11.3.4 All informal bid invitations shall be conducted in such fashion as to maximize the opportunity for participation of all responsible suppliers.

5.11.3.5 For those purchases not affected by regional considerations, requests for quotations (RFQ's) shall be distributed equitably among various responsible suppliers. Where practical, a quotation will be solicited from other than the previous supplier prior to placing a repeat order.

5.11.3.6 When informal competitive bids are received in accordance with the provisions contained herein and award is not made to the low bidder, the Purchase Order File shall be annotated with statements of how the supplier was selected and why the price is fair and reasonable.

5.11.3.7 Purchasing management shall audit the use of informal competitive bids. As a minimum, quarterly review of performance by buyers should be conducted to sample (on a random basis) the reasonableness and effectiveness of buyer use and documentation of the informal bid process.

#### 5.11.4 Requests for Proposal

5.11.4.1 Requests for Proposal (RFP) shall be utilized to solicit competitive offers in all cases where:

5.11.4.1.1 Lowest price is not the sole or primary consideration to be used in determining an award; or

5.11.4.1.2 Performance is neither specific nor objective, and open to the offeror's interpretation; or

5.11.4.1.3 It is otherwise anticipated that offers may be substantially different and that there is insufficient common ground for objective comparison; or

5.11.4.1.4 It is anticipated that changes will be made after proposals are opened and that the nature of the proposals and/or prices offered will be negotiated prior to award.

5.11.4.2 Wherever possible, the Request for Proposal shall define the performance or benefit required and shall set forth specific criteria to be utilized in evaluation of offers.

5.11.4.3 Offers shall be evaluated by a committee comprised of a representative of the Office of Purchases, representative of the user agency, and other appropriate parties on the basis of:

5.11.4.3.1 The qualifications of the offerors, established by professional accomplishment and previous experience;

5.11.4.3.2 Aspects of offers which provide benefit, other than those based on cost; and

5.11.4.3.3 Other provisions of offers which are determined to serve the best interests of the State.

5.11.4.4 Nothing herein shall be construed to preclude the possibility of determining an award solely on the basis of cost.

5.11.4.5 The evaluation of offers, including the weight assigned to various aspects of the offerors, and all award determinations, including the reasons for a selection recommendation, shall be fully documented.

## **5.12 SOURCE SELECTION AND CONTRACT AWARD**

5.12.1 [37-2-18(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 or responsive bid price.

5.12.1.1 Awards shall be made within sixty (60) days of the bid opening unless expressly provided for to the contrary in the solicitation. Bids may not be withdrawn during this period without penalty without the express permission of the Purchasing Agent.

5.12.1.2 In accordance with Chapter 37-14.1, RIGL, the Purchasing Agent may, after considering the overall cost to the state prior to making a final determination of award, apply special consideration to the offers of minority business enterprises when:

5.12.1.2.1 the solicitation provides for such consideration;

5.12.1.2.2 the offer is fully responsive to the terms and conditions of the solicitation; and

5.12.1.2.3 the price offer made by the MBE is determined to be within a competitive range (not to exceed five percent (5%) higher than the lowest responsive price offer) for the product or service; and

5.12.1.2.4 the firm making the offer conforms to the definition of a minority business enterprise as set forth in Section 4 herein (Vendor Qualification).

5.12.2 In accordance with the provisions of Chapter 37-14.1-7 ten percent (10%) of the dollar value of the work performed against contracts for construction exceeding five thousand dollars (\$5000) shall be performed by Minority Business Enterprises where it has been determined that subcontract opportunities exist, and where certified MBE contractors are available.

5.12.2.1 Award of such contracts shall be subject to approval by the Director of Administration, based on the bidder's subcontracting plan. Such plan shall be submitted to the Director of Administration prior to or upon tentative notification of award by the Purchasing Agent.

## **SECTION 6 - NEGOTIATION**

### **6.1 GENERAL PROVISIONS**

#### **6.1.1 Definitions**

6.1.1.1 In accordance with [37-2-7(13)] "negotiation" shall mean contracting by the provisions set forth in sections 37-2-19, 37-2-20, and 37-2-21. These sections refer to competitive negotiation, noncompetitive negotiation, and sole source and emergency procurements.

6.1.1.2 "Negotiation" shall mean the process of establishing contractual provisions and of gaining contractual acceptance, other than solely as the result of normal competitive bidding (described elsewhere herein). For the purpose of this definition, two distinct categories of negotiation shall be recognized:

6.1.1.2.1 "Competitive negotiation" shall mean a specialized bidding procedure characterized by modifications to the offers of at least two vendors and/or alteration of the specifications for which, or the terms and conditions under which, the state has solicited offers.

6.1.1.2.2 "Noncompetitive negotiation" shall mean the establishment of contractual terms and conditions, including but not limited to contract price, by discussions with a single vendor, outside of the procedures established for competitive bidding.

6.1.2 The objective of negotiation shall be to secure advantageous terms and conditions, and/or to exact improvements in terms and conditions offered to the state, and/or to reduce potential cost to the state.

6.1.3 Negotiation shall be used to establish or modify contractual provisions in all cases where:

6.1.3.1 Responsive firm, fixed pricing is not the sole determinant for award;

6.1.3.2 Responses to competitive bidding suggest that lower pricing, or other improvements in offers, are achievable;

6.1.3.3 Single or sole source procurements are made;

6.1.3.4 Responses to Requests for Proposal do not permit effective comparison, due to the differing nature of the responses;

6.1.3.5 The scope of a contract changes during the performance period, such that modification of price, or of other provisions, may be called for; or

6.1.3.6 The Purchasing Agent has determined in writing that a product, or the market in which a product is sold, is noncompetitive in nature.

6.1.4 Delegation. The Chief Purchasing Officer may delegate authority for directing and negotiating change orders for highway and air transportation construction contracts to the Director of Transportation. Such delegation shall be in accordance with specific limitations defined by the Chief Purchasing Officer.

## **6.2 COMPETITIVE NEGOTIATION**

6.2.1 Applicability [37-2-19(1)] When, under regulations issued by the Chief Purchasing Officer, the Purchasing Agent determines in writing that the use of competitive sealed bidding is not practicable, and except as provided in Sections 37-2- 21 and 37-2-22 of the General Laws of Rhode Island, a contract may be awarded by competitive negotiation. (See Exceptions to Competitive Bidding Requirements.)

6.2.2 [37-2-19(3)] Contracts may be competitively negotiated when it is determined in writing by the Purchasing Agent that the bid prices received by competitive sealed bidding 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.

6.2.2.1 "Competitive bidder/offeror" shall mean responsible bidder or offeror.

6.2.3 Competitive negotiation may be used in any case where the scope, term, or other requirements of the procurement has not been determined at the time that a requisition is issued, or where optional offers are desired and encouraged, or where the value of the procurement has not been definitively established.

## **6.3 PROCEDURES**

### **6.3.1 Request for Proposal**

6.3.1.1 [37-2-19(2)] Adequate public notice of the request for proposals shall be given in the same manner as provided for Competitive Sealed Bidding.

6.3.1.2 Requests shall describe and enumerate the item(s) covered, their specification(s), contract terms(s), and any other special provisions or requirements.

6.3.1.2.1 [37-2-19(4)] The request for proposals shall indicate the relative importance of price and other evaluation factors.

6.3.1.3 At a public opening of responses to RFPs, the Purchasing Agent shall not be required to reveal other than the names of those responding. The nature of responses shall not be subject to public disclosure until a contract has been awarded.

### 6.3.2 Review and Discussion

6.3.2.1 [37-2-19(6)] Written or oral discussion shall be conducted with all responsible offerors who submit proposals determined in writing 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 discussions; 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.

6.3.2.2 Responses to the Request for Proposal shall be evaluated:

6.3.2.2.1 To determine nonresponsive offers, which shall be eliminated from further consideration,

6.3.2.2.2 To determine the lowest-cost combination of options, terms, and conditions, establishing a base-line, and

6.3.2.2.3 To establish a cost ranking of responses to that base-line.

6.3.2.3 [37-2-20(2)] Where there is more than one bidder, competitive negotiations 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.

(b) A request for proposals, based upon revised specifications or quantities, shall be issued as promptly as possible, shall provide 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.

6.3.2.3.1 The provisions of 37-2-20(2) may be waived in any case where the lowest-cost response is ten percent (10%) or more lower than the next lowest cost offered.

6.3.3 [37-2-54(2)] The Chief Purchasing Officer is not prohibited from negotiating with vendors who maintain a General Service Administration price agreement with the United States of America or any agency thereof, provided, however, that no contract executed under this provision shall authorize a price higher than is contained in the contract between General Service Administration and the vendor affected.

#### 6.3.4 Request for Best and Final Offer

6.3.4.1 On the basis of discussions with offerors, a request for Best and Final Offer, which describes the requirements of the procurement in the final form, shall be issued to all offerors still under consideration.

6.3.4.2 Each offeror shall submit a Best and Final Offer, which defines their best price, and other terms, for the procurement.

6.3.4.3 Best and Final Offers shall be evaluated in the same fashion as a normal competitive bid.

6.3.4.3.1 [37-2-19(5)] Award shall be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to the state taking into consideration price and the evaluation factors set forth in the request for proposals.

### **6.4 NONCOMPETITIVE NEGOTIATION**

6.4.1 [37-2-20(1)] In the event that all sealed bids submitted through a formal solicitation result in bid prices in excess of the funds available for the purchase, and the Chief Purchasing Officer determines in writing that there are no additional funds available from any source so as to permit an award to the lowest responsive and responsible bidder and the best interest of the state will not permit the delay attendant to a resolicitation under revised specification, or for revised quantities, under competitive sealed bidding, then a negotiated award may be made as set forth in this Section.

6.4.2 Noncompetitive negotiation may be used to improve the price offered of the evaluated lowest-cost response to any competitive bid.

6.4.3 The Chief Purchasing Officer may authorize the award of a contract on the basis of noncompetitive negotiation, where the Purchasing Agent has determined in writing that:

6.4.3.1 A single or sole source procurement is involved, or

6.4.3.2 The product, or market in which a product is sold, is noncompetitive in nature, or

6.4.3.3 Collusive or exclusionary selling practices are in evidence.

6.4.4 Noncompetitive negotiation may be used to modify a contract during its performance, provided that no attempt is made to reduce the contractual obligations of the supplier, vendor, or contractor, or the contract term is not extended except in response to a request by the supplier, vendor, or contractor in consideration for other substantive changes, and where such extension of term of contract is determined in writing by the Purchasing Agent to be in the best interest of the state.

6.4.5 In all negotiation, the conduct of noncompetitive negotiation including, but not limited to, issues discussed, options considered, the rationale applied to decisions made and agreements reached shall be documented in summary form and placed in the purchase order file.

## **6.5 TRUTH IN NEGOTIATIONS REQUIREMENTS - COST OR PRICING DATA**

6.5.1 [37-2-28(1)] A contractor shall submit cost or pricing data and shall certify that, to the best of his knowledge and belief, the cost or pricing data submitted were 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 dollars (\$50,000); or

(b) The pricing of any change order or contract modification which is expected to exceed twenty-five thousand dollars (\$25,000), or such lesser amount in either instance as may be prescribed by the Purchasing Agent and approved by the Budget Office.

### **6.5.2 Applicability**

6.5.2.1 The requirements of the law apply to all purchase order supplements over \$25,000 incorporating an aggregate of changes equal to this value, e.g., an additive charge of \$20,000 and a deductive change of \$11,000 are equal to an aggregate change value of \$31,000 and thus are subject to the requirements of this section.

6.5.2.2 [37-2-28(3)] The requirements of this section need not be applied to contracts where the price negotiated is based on adequate price competition, established catalogue 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 it is determined in writing by the Chief Purchasing Officer that the requirements of this section may be waived, and the reasons for such waiver are stated in writing.

6.5.3 Cost or pricing data may include such verifiable factors as all vendor quotations, nonrecurring costs, changes in production methods and production or procurement volume, data in support of contractor projection of business prospects and objectives,



together with related costs of operations, unit cost trends such as those associated with labor efficiency, make-or-buy decisions and estimated resources to attain business goals and any other management decisions which reasonably could be expected to have a significant bearing on costs under a proposed contract.

6.5.4 The requirement for submission of cost or pricing data is met when all data reasonably available to the contractor have been submitted or identified in writing at the time of agreement on price. The availability of books, records, and other documents without specific identification and explanation shall not be considered submission for the purposes of verification and agreement.

## **6.6 SUBCONTRACTING REQUIREMENTS**

6.6.1 Prime contractors shall require subcontractors to submit cost or pricing data for procurements in excess of fifty thousand dollars (\$50,000) unless exempted herein.

6.6.2 Certification - Prime contractors shall require subcontractors to certify that cost and pricing data submitted are accurate, complete, and current as of the date of agreement on price.

6.6.3 [37-2-28(2)] Any contract, change, or modification thereto under which a certificate is required shall contain a provision that the price to the state, including profit or fee, shall be adjusted to exclude any significant sums by which the Purchasing Agent finds that such price was increased because the contractor furnished cost or pricing data, as of the date agreed upon between the parties, was inaccurate, incomplete, or not current.

6.6.4 Prime contractors must agree that the prime contract price shall be reduced in any significant amounts by which the prime contract price was overstated because a subcontractor did not submit accurate, complete, and current cost or pricing data when required by law.

## **6.7 GUIDELINES IN NEGOTIATIONS**

6.7.1 The purchasing official responsible for the negotiation shall prepare a written statement at the conclusion of each negotiation phase setting forth the principal elements of the price negotiation.

6.7.1.1 Sufficient detail shall be recorded to reflect the most significant considerations controlling the establishment of the price.

6.7.1.2 If cost and pricing data were not required, a statement detailing the basis for determining that the price was fair and reasonable and the extent to which the data submitted were not a factor in the price negotiated shall be recorded.

6.7.2 Contracts shall contain an audit clause which provides that if, after award, the Purchasing Agent obtains information that submitted data were inaccurate, incomplete or

not current, or if the data were not adequately verified at the time of negotiation, then a post-award audit shall be undertaken.

6.7.3 Contracts shall contain to the extent possible language which provides for unit pricing for potential change orders.

6.7.4 The Office of Purchases shall conduct or shall obtain price analyses to ascertain whether the price quoted is fair and reasonable in relation to comparable procurements when the absence of open market competition precludes the use of competitive sealed bidding.

6.7.5 In the negotiation of settlements of contracts which have been terminated:

6.7.5.1 Contract settlement shall be made in accordance with terms specified in the purchase order.

6.7.5.2 In the absence of appropriate contract language, the vendor shall be paid for costs incurred, plus a reasonable profit, until the contract was terminated.

6.7.5.3 Penalties due to the state in accordance with a contract may be deducted from any payment to which a vendor is entitled.

6.7.6 To determine the allowability of incurred costs for the purpose of reimbursing costs under contract provisions which provide for the reimbursement of costs, reimbursements shall be made only upon the presentation of documented, auditable evidence to the State that the vendor has incurred an eligible expense.

## **SECTION 7 - SUPPLEMENTAL SERVICES**

### **7.1 DEFINITIONS**

7.1.1 In accordance with [37-2-7(26)] "Architect" shall mean a person who, under the provisions of Chapter 5-1-2, by reason of his knowledge of the mathematical and physical sciences, and the principles of architecture and architectural design, acquired by professional education, practical experience, or both, is qualified to engage in the practice of architecture as attested by his licensing as an architect in this state.

7.1.1.1 "Practice of architecture" shall mean rendering or offering to render any of these services normally provided by practicing architects. The services normally provided may include any of the following practices or professional services: advice, consultation, evaluation, site planning, aesthetic design, structural design, and the administration of construction contracts which require expert knowledge and skill in connection with the erection, enlargement, or alteration of any building or buildings, or the provision of equipment or utilities therefore, or accessories thereto, wherein the safeguarding of life, health, or property is concerned or involved also constitutes the practice of architecture.

7.1.1.2 "Licensure" as an architect shall mean the possession of an "architect's stamp" in accordance with Chapter 5-1-1, which indicates professional certification by the Rhode Island Board of Examination and Registration of Architects.

7.1.2 In accordance with [37-2-7(26)] "consultant", shall mean any person with whom the state and/or a public agency has a contract which contract provides for the person to give direction or information as regards [a] particular area of knowledge in which the person is a specialist and/or has expertise.

7.1.3 In accordance with [37-2-7(26)] "Engineer", shall mean a person who, under the provisions of Chapter 5-8-2, by reason of his special knowledge and use of the mathematical, physical and engineering sciences and the principles and methods of engineering analysis and design, acquired by engineering education and engineering experience, is qualified to practice engineering, as hereinafter defined, and as attested by his registration as an engineer.

7.1.3.1 "Practice of Engineering", in accordance with Chapter 5-8-2, shall mean any service or creative work, the adequate performance of which requires engineering education, training and experience in the application of special knowledge of the mathematical, physical and engineering sciences to such services or creative work as consultation, investigation, evaluation surveys, planning and design of engineering systems, and the supervision of construction for the purpose of assuring compliance with specifications; and embracing those services or work in connection with any public or private utilities, structures, buildings, machines, equipment, processes, work, or projects wherein the public welfare or the safeguarding of life, health, or property is involved or concerned, and including such architectural work as is incidental to the practice of engineering.

7.1.3.2 "Professional Engineer" shall mean a person who has been duly registered and licensed by the state Board of Registration for Professional Engineers and Land Surveyors.

7.1.4 "A Professional Service Provider" shall mean an independent contractor who is a specialist and/or has the expertise, as demonstrated by professional licensing or certification and experience, necessary to carry out tasks regarding that particular field of expertise.

7.1.4.1 "Professional service products" shall mean activities which directly implement programs established by state officials.

7.1.4.2 Professional services shall be characterized by specific activities and/or the attainment of measurable outcomes.

7.1.4.3 Examples of professional services include: (1) client services (medical treatments, hospital staff coverage, counseling, therapy, individual rehabilitation plans), (2) legal

representation in litigation and administrative advice (interpretation of law, contracts, etc.), (3) computer programming, (4) education (training, teaching), (5) construction management, and arbitration.

7.1.4.4 "Special services" shall mean services which the state deems necessary or desirable to purchase provided by individuals or firms possessing special knowledge or skills for which formal licensing or certification is not necessarily required. Examples of special services include: (1) expert witness testimony, (2) art, music, and dance, (3) interpretation (languages, deaf), (4) public information (drug and alcohol abuse), and (5) training (foster parenting).

7.1.4.5 "Personal services" shall mean services provided by persons who are paid directly by the state but are not on the state payroll. Personal services may consist of the following relationships:

7.1.4.5.1 [37-2-7(10)] "Employee" shall mean an individual drawing a salary from a governmental body or public agency, whether elected or not, and any non-salaried individual performing personal services for any governmental body or public agency.

7.1.4.5.2 A "leased employee" shall mean a person hired through a contract with an agency which is responsible for paying all salary and benefits compensation to which the individual is entitled. Leased employees would usually be temporary replacements for, or supplements to, the existing workforce provided on an as needed basis.

7.1.4.5.3 An "employee contractor" shall mean a person on a state or public agency payroll who has been employed by a state agency in an advisory capacity. (An example of such employment would be URI professors employed by MHRH to develop policy analyses.)

7.1.4.5.4 An "employee service contractor" shall mean a person on a state or public agency payroll who has been employed by a state agency in a service capacity. (Examples of such employment include: Court stenographers employed by DEM to provide transcripts for public hearings, MHRH staff physicians paid for hospital coverage in addition to their assigned responsibilities, RIC professors hired by DCF to provide social worker training.)

7.1.5 "A Professional Consultant" shall mean an individual or a firm which is a specialist and/or has the expertise, as demonstrated by the possession of appropriate professional licensing, certification, and/or experience, necessary to give advice, direction or information regarding that particular area of knowledge.

7.1.5.1 "Professional consultant products" shall mean advisory opinions expressed as reports, written or oral, used by state officials to render policy decisions.

7.1.5.2 Consultant services shall be characterized by research and analysis, recommended courses of action, identification of priorities, and unspecified outcomes.

7.1.5.3 Examples of professional consultations include: (1) systems analysis (computer, personnel, management review), (2) program analysis (medical program planning), and (3) policy recommendations (abandonment or adoption of programs, establishment of decision criteria).

7.1.6 "Supplemental Services" shall mean all services performed in a capacity which supplements the basic staffing of state agencies.

## **7.2 GENERAL PROVISIONS**

7.2.1 User agencies shall recommend the final selection of providers of legal, medical, and dental services. Agencies shall not commit funds for proposed services prior to receiving approval of the recommended provider from the Chief Purchasing Officer or his designee.

7.2.2 The Chief Purchasing Officer may delegate to the Office of Personnel all or a portion of responsibility for evaluation of the need for supplemental services and for verification/validation of qualifications of proposed service providers.

7.2.3 The Purchasing Agent shall review proposed change orders to professional consultant contracts (other than medical, dental and legal) which are (reasonably) estimated to exceed twenty thousand dollars (\$20,000) and shall determine whether such changes constitute a scope of service requiring open competition.

7.2.4 To the extent practicable, selection of supplemental service providers shall be based upon competition. The Purchasing Agent shall require that, whenever possible, a scope of services be defined in terms for which a bid or a response to a request for proposals may be solicited.

7.2.5 In accordance with the provision of Chapters 5-1 and 5-8 of the General Laws of Rhode Island, no contract shall be awarded to a person practicing architecture or engineering who has not been professional certified by the appropriate registration boards.

7.2.6 Requirements for the selection of construction management contractors shall be the same as those for the selection of architects and engineers.

**7.3 PROCUREMENT PLANNING FOR SUPPLEMENTAL SERVICES.** Annually, at a date which coincides with the development of the State Budget, user agencies shall submit to the Chief Purchasing Officer a Supplemental Service Utilization Plan.

7.3.1 Plans shall provide the following information about proposed services:

7.3.1.1 number of services;

7.3.1.2 estimated cost of each contract/relationship;

7.3.1.3 anticipated effective period of each relationship;

7.3.1.4 whether activities are ongoing or new endeavors;

7.3.1.5 whether the agency is proposing to continue each relationship into the next fiscal year; and

7.3.1.6 if an ongoing relationship, the initial date of the relationship.

7.3.2 Amendments to plans shall be submitted and approved by the Chief Purchasing Officer prior to the commitment of funds

7.3.3 Except for legal, medical, dental and special services (as defined herein), when a determination is made in writing by the Purchasing Agent that the scope of work for a professional services contract does not permit selection based upon competitive bidding or request for proposal procedures, the service shall be deemed to be of a consulting nature and subject to all requirements set forth for the selection of consultants.

**7.4 ARCHITECTURAL, ENGINEERING AND CONSULTANT SERVICES SELECTION COMMITTEE.** In accordance with Chapter 37-2-59(2) a committee shall select persons or firms to render professional consultant services other than medical, dental and legal services which are reasonably estimated to exceed twenty thousand dollars (\$20,000).

7.4.1 The State Architectural, Engineering and Consultant Services Selection Committee (Committee) shall consist of the following individuals: (1) the Chief Purchasing Officer or his designee, who shall be chairman of the Committee, (2) a representative of the user agency, and (3) a public member, who shall be appointed by the Governor to represent the interests of the general public and whose term shall be concurrent with that of the Governor. The Public member shall be paid twenty-five dollars (\$25.00) for each meeting attended, not to exceed one thousand two hundred dollars (\$1,200) annually.

7.4.2 A quorum shall require the presence of the entire membership of the Committee and must be present to conduct business.

7.4.3 The Committee may utilize the services of such other persons it deems necessary to provide technical advice in evaluating consultant proposals.

7.4.3.1 Such technical advisors shall not be considered members of the Committee and shall not be entitled to vote on the selection of candidates to be recommended for consideration by the Chief Purchasing Officer.

7.4.3.2 Technical advisors shall not be entitled to payment for their services.

**7.5 SUPPLEMENTAL SERVICES NOT EXCEEDING \$5000.** The Chief Purchasing Officer may delegate authority for selection of supplemental service providers to agency chief executives when the total annual (fiscal year) value of any such relationship does not exceed five thousand dollars (\$5,000).

**7.6 ARCHITECTURAL, ENGINEERING AND CONSULTANT SERVICES SELECTION PROCESS FOR SERVICES NOT EXCEEDING \$20,000.** When a professional consultant contract is estimated (reasonably) to be between five thousand dollars (\$5000) and twenty thousand dollars (\$20,000) the Purchasing Agent may establish a technical review committee in conjunction with the user agency to evaluate the qualifications of potential suppliers. Membership shall be determined on a case by case basis. The technical committee shall recommend no more than three candidates to the Purchasing Agent, who shall forward his recommendations to the Chief Purchasing Officer.

**7.7 ARCHITECTURAL, ENGINEERING AND CONSULTANT SERVICES SELECTION PROCESS FOR SERVICES EXCEEDING \$20,000**

**7.7.1 Solicitation**

7.7.1.1 Public Announcement [37-2-60]. The Chief Purchasing Officer shall give public notice of the need for professional architectural, engineering or consultant services.

7.7.1.2 Such notice shall be published sufficiently in advance of the date when responses must be received in order that interested parties have an adequate opportunity to submit a statement of qualifications and performance data.

7.7.1.3 The notice shall: (1) contain a brief statement of the services required, (2) describe the project, (3) specify how specific information on the project may be obtained and, (4) be published in a newspaper of general circulation in the state and in such other publications as in the judgment of the Committee shall be desirable.

7.7.1.4 [37-2-61] The solicitation shall describe the state's requirements and set forth evaluation criteria for the selection of the successful candidate and shall be distributed to interested persons.

7.7.2 A bidder's conference shall be held at which the following shall be provided: (1) a description of the criteria to be used in evaluating a bidder's statement of qualification and performance data for the purpose of selecting a firm, (2) a discussion and further definition of the scope of work and (3) an on-site review, if appropriate.

7.7.3 Chapter [37-2-63] requires that the Committee shall select no more than three (3) firms evaluated as being professionally and technically qualified.

7.7.4 [37-2-63] The firms selected, if still interested in providing the services, shall make a representative available to the Chief Purchasing Officer at such time and place as he shall determine, to provide such further information as he may require.

7.7.5 [37-2-63] The Chief Purchasing Officer, or his designee shall negotiate with the highest qualified firm for a contract for architectural[,] engineering, or consultant services for state departments and agencies at [a level of] compensation which he determines to be fair and reasonable. In making such determination, the Chief Purchasing Officer shall take into account the following: professional competence, technical merits, and price.

7.7.6 Final Selection - In accordance with [37-2-63] the Chief Purchasing Officer shall be responsible for the final selection and shall so inform the user agency, the Division of Purchasing, and the Division of Budget.

## **7.8 EVALUATION FOR SELECTION**

7.8.1 Criteria for evaluation of candidates for supplemental services shall include, but shall not be limited to:

7.8.1.1 Competence to perform the services as reflected by technical training and education, general experience, experience in providing the required services, and the qualifications and competence of persons who would be assigned to perform the services;

7.8.1.2 Ability to perform the services as reflected by workload and availability of adequate personnel, equipment, and facilities to perform the services expeditiously;

7.8.1.3 Past performance as reflected by the evaluation of private persons and officials of other governmental entities which have retained the services of the firm with respect to such factors as control of costs, quality of work, and ability to meet deadlines; and

7.8.1.4 In the case of consultant services, the vendor's proposed approach to the project/assignment shall be an additional criterion.

7.8.2 The Committee shall evaluate the following in light of the criteria set forth in the solicitation: statements submitted in response to the solicitation of consultant services and other required statements of qualifications and performance data.

## **7.9 REQUIREMENTS FOR OTHER SUPPLEMENTAL SERVICES**

7.9.1 Independent Auditing

7.9.1.1 In accordance with [37-2-59(3)] independent auditing shall be subject to the provision of Section 22-13-6 of the General Laws of Rhode Island which requires that the Auditor General shall review and approve the proposed scope of services for an independent audit and the firm selected to conduct the audit.



7.9.1.2 Requisitions for independent audit services shall be submitted to the Office of Purchases with written verification of the Auditor General's approval of the proposed purchase of services. Copies of correspondence from the Auditor General to the Agency shall be considered sufficient authorization to proceed.

7.9.1.3 Contract amendments which increase the original approved scope of work shall also require the Auditor General's authorization.

## 7.9.2 Legal, Medical and Dental Services

7.9.2.1 In accordance with Chapters 37-2-69 and 37-2-71 of the RIGL, prior to procuring the services of an attorney, physician or dentist user agencies must provide to the Chief Purchasing Officer the following:

7.9.2.1.1 Justifications for need - which may include, but need not be limited to, consideration of: (1) legal mandates/court orders or consent decrees, (2) licensing/certification requirements, (3) health and safety concerns, (4) minimum standards of service and (5) union workload agreements.

7.9.2.1.2 Presentations shall include copies of relevant laws, standards or other citations used for justification.

7.9.2.1.3 The scope of services shall describe the time period for the proposed contract and services or outcomes (tasks, reports, or other products).

7.9.2.1.4 Presentations shall indicate whether the proposed contracted work involves supplemental functions or is for temporary staff coverage.

7.9.2.1.5 If such services are proposed to be provided on a supplemental basis by employees of the same or other state entities, the presentation shall indicate whether the services are in addition to, or an extension of, the employees' normal duties.

7.9.2.2 Demonstration to the satisfaction of the Chief Purchasing Officer that professionals meet minimum requirements may be accomplished using the following:

7.9.2.2.1 User agencies may obtain annual verification of the status of an attorney(s) from the Supreme Court listing of members of the Rhode Island Bar.

7.9.2.2.2 User agencies may obtain annual verification of the status of medical doctors and medical professionals from the Department of Health.

7.9.2.2.3 The Chief Purchasing Officer may delegate authority to determine the appropriateness of qualifications to agency chief executives subject to the following: (1) such delegation shall be at the request of and justified by the chief executive of the agency, (2) a complete description of the evaluation procedure is provided, (3) and the

names, qualifications and official capacity of the persons participating in the evaluation process or as members of professional review boards are provided.

7.9.2.3 [37-2-70] Professional services -- Legal -- State.-- Before a state department procures the services of an attorney, it shall demonstrate to the satisfaction of the chief purchasing officer the following:

(A) 1. The need for the services required including the scope of the services to be performed;

2. That no legal personnel employed by the state on a full-time basis is available to perform such services;

3. That funding is available, indicating from which sources such funding is to be provided;

4. That attorneys to be engaged meeting the following minimum requirements: (a) appropriate professional licensing and, (b) 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, and (c) ability to perform the services as reflected by workload and availability of adequate personnel, equipment and facilities to perform the services expeditiously.

(B) The attorney shall enter into a letter of engagement with the state. 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/her preferred public or private clients. A letter of engagement shall not be for more than one (1) year.

7.9.2.4 37-2-72. Professional services -- Medical and dental services. -- Before a state department, board or commission or a public agency procures the services of a physician or dentist, it shall demonstrate to the satisfaction of the chief purchasing officer the following:

(A) For Medical/Dental Consultant Services:

(1) The need for the services required including the scope of the services to be performed:

(2) That no medical/dental personnel employed by the state on a full-time basis is available to perform such services:

(3) That funding is available, indicating from which sources such funding is to be provided;

(4) That medical/dental consultants to be engaged meet the following minimum requirements: (a) appropriate professional license or certification and (b) competence to perform such services as reflected by formal training and education, general experience and experience in providing the required services.

(B) For medical/dental services where such services are readily definitized and the required services are clearly defined:

(1) The need for such services, including the detailed scope of work, to be performed;

(2) That no full-time state employee(s) is/are available to perform such services;

(3) That funding is available, indicating from which sources such] funding is to be provided;

(4) That such medical/dental service providers meet the following minimum requirements: (a) possess appropriate professional Rhode Island licenses and certifications and (b) competence to perform such services as reflected by formal training and education, general experience and expertise in providing the required services

(C) For medical/dental services, or for temporary services, generally definable over a definite period of time but on an as needed basis to provide coverage for full-time state employees (doctors, dentists, nurses, etc.) during their absence. Such procurements for those services shall be obtained through the use of a blanket-type contract arrangement. Requesting agencies shall provide to Purchasing Division fully authorized, funded and described requirement via a blanket-type purchase requisition. Requesting agencies shall provide to the satisfaction of the chief purchasing officer or his designee the following:

(1) Rationale that such services are required; and

(2) certification that medical/dental personnel to be employed possess the appropriate state license or certification, competence to perform such services as reflected by formal training, education and experience in providing the required service.

(D) Nothing in this law shall prohibit nor shall anything in this law be interpreted to prohibit appropriate action by the director or his designee to provide needed medical services whether on a regular or emergency basis.

## **SECTION 8 - CONTRACTS**

### **8.1 DEFINITIONS**

8.1.1 [37-2-7(7)] "Change order" shall mean a written order signed by the purchasing agent, or the contractor directing or allowing the contractor to make changes which the changes clause of the contract authorizes the purchasing agent or contractor to order without the consent of the contractor or purchasing agent.

8.1.2 [37-2-7(5)] "Contract" shall mean all types of agreements, including grants and orders, for the purchase or disposal of supplies, services, construction, or any other items. It shall include awards, contracts of a fixed price, cost, cost-plus-a-fixed-fee, or incentive type; contracts providing for the issuance of job or task orders, leases, letter contracts, purchase orders and construction management contracts. It also includes supplemental agreements with respect to any of the foregoing. With respect to the procurement regulations set forth herein, "contract" shall not apply to labor contracts with employees of state agencies.

8.1.3 [37-2-7(6)] "Contract Modification" shall mean 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 change orders, administrative changes, notices of termination, and notices of the exercise of a contract option.

8.1.4 "Contract Addendum" shall mean an alteration in the terms and/or scope of an agreement accomplished by mutual action of the parties, permissible under emergency purchases, construction work, sole source procurement, and otherwise where competition is not required.

8.1.5 [37-2-7(7)] "Contractor" shall mean any person having a contract with a governmental body.

8.1.6 An "independent contractor" shall mean a person (individual or firm) who, in various degrees and/or combinations:

8.1.6.1 is available to the general public on a regular and consistent basis; and

8.1.6.2 is free to work when and for whom he/she pleases; and

8.1.6.3 is employed by more than one person or company at a time; and

8.1.6.4 makes a significant investment in facilities not typically maintained by an employee; and

8.1.6.5 can realize a profit or loss as a result of providing services or products.

8.1.7 In accordance with [37-2-15(1)] "cost-reimbursement contract" shall mean a contract under which the state reimburses the contractor for those contract costs, within a

stated ceiling, which are allowable and allocable in accordance with cost principles established by the Chief Purchasing Officer herein, and a fixed fee.

8.1.8 "Prime contractor" shall mean a contractor who engages subcontractors in the course of satisfying the requirements of fulfilling a contract.

8.1.9 In accordance with Chapter 37-13-1 "Public works contract" shall mean a contract for grading, clearing, demolition, improvement, completion, repair, alteration or construction of any public road or any bridge, or portion thereof, or any public building or portion thereof, or any heavy constructions, or any public works projects of any nature or kind whatsoever.

8.1.10 "Punitive Termination" shall mean termination at the discretion of the state for failure of the contractor to perform with no liability on the part of the state.

8.1.11 "Renegotiation" shall mean deliberation, discussion, or conference to change or amend the terms of an existing agreement.

8.1.12 "Subcontractor" shall mean any person undertaking part of the work under the terms of the contract, by virtue of an agreement with the prime contractor, who, prior to such undertaking, receives in writing the consent and approval of the state.

8.1.13 [37-2-7(7)] "Supplemental Agreement" shall mean any contract modification which is accomplished by the mutual action of the parties.

**8.2 FUNDAMENTAL REQUIREMENTS AND PRINCIPLES FOR STATE CONTRACTS** - A contract shall mean a promise, or a set of promises, for breach of which the law gives a remedy, and the performance of which the law recognizes as a duty.

8.2.1 [37-2-54(3)] No purchase or contract shall be binding on the state or any agency thereof unless approved by the Department [of Administration] or made under general regulations which the Chief Purchasing Officer may prescribe.

8.2.1.1 The terms and conditions of a valid Purchase Order and its supplements, as issued by the Office of Purchases and signed by the Purchasing agent or his designee, shall constitute the primary contractual instrument of the state.

8.2.1.1.1 Unless specifically established by law, regulation or procedures published by the Chief Purchasing Officer, no other instrument shall constitute a state purchasing contract.

8.2.1.1.2 Oral Agreements - Any alleged oral agreement or arrangements made by a bidder or contractor with any agency or an employee of the Office of Purchases may be disregarded and shall not be binding on the state.

8.2.1.2 "Purchasing Contract Authority" shall mean the authority to act on behalf of the state to commit funds, enter into binding agreements or contracts, dispose of state property, or in any other manner control procurement or obligate the State.

8.2.1.2.1 No state agency official shall have the right (capacity) to exercise purchasing contract authority through written or oral agreements or contracts or, in any other way, financially or otherwise obligate the State without the express written consent of the Chief Purchasing Officer.

8.2.1.2.2 No state agency may place orders or negotiate with suppliers or potential suppliers without the participation or express approval of the Chief Purchasing Officer.

8.2.2 [37-2-13(4)] No state purchasing regulation shall change in any way a contract commitment by the state nor of a contractor to the state which was in existence on the effective date of the regulation.

8.2.3 [37-2-13(5)] The provisions of state purchasing regulations shall be considered to be incorporated by operation of law in all state contracts.

8.2.4 [37-2-13(6)] Contract provisions and contracts entered into in violation of state purchasing regulations shall be void "ab initio" [from inception].

8.2.5 Supplemental Principles of Law - Obligation of Good Faith.

8.2.5.1 [37-2-3(1)] Unless displaced by the particular provisions of this chapter [37-2], the principles of law and equity, including the uniform commercial code, the law merchant, and the law of contracts, including, but not limited to, agency, fraud, misrepresentation, duress, coercion, mistake, and bankruptcy, shall supplement these provisions.

8.2.5.2 [37-2-3(2)] Every contract or duty under this chapter shall impose upon both parts the obligation of good faith in its performance and/or enforcement. "Good faith" shall mean honesty in fact in the conduct or transaction concerned and the observance of reasonable commercial standards of fair dealing.

8.2.6 In accordance with Chapter 37-2-9(p), contractors must comply with state and federal Equal Opportunity requirements for all contracts for supplies and services exceeding ten thousand dollars (\$10,000). Failure to comply will be considered a substantial breach of contract subject to penalties prescribed in regulations issued and administered by the State Equal Opportunity Office and set forth herein.

8.2.7 [37-2-41] Contractor's Bonds. - The provisions of chapter 37-12 of the general laws shall apply to all construction contracts awarded under this chapter.

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.

8.2.7.1 "Performance Bond" shall mean a contract of guaranty executed subsequent to award by a successful bidder to protect the state from loss due to contractor inability to complete a contract.

8.2.7.2 Chapter 37-12 requires that every person awarded a public works contract shall furnish to the state good and sufficient surety (performance bond) not less than fifty percent (50%) and not more than one hundred percent (100%) of the contract price conditioned that the contractor, principal in said bond, the person's executors, administrators or successors, shall keep and perform the covenants, conditions and agreements in the contract. However, provided that good cause is shown, the Director of the Department of Administration may waive the requirements for contracts not in excess of fifty thousand dollars (\$50,000).

8.2.7.3 In accordance with Chapter 37-13-14 a contractor's performance bond required for contracts exceeding one thousand dollars (\$1000) under 37-12 must be furnished by a surety company authorized to do business in the state.

### **8.3 GENERAL CHARACTERISTICS OF STATE CONTRACTS**

8.3.1 General Terms and Conditions - The Office of Purchases shall develop and make available to potential suppliers and state officials a document stating the general terms and conditions applicable to all quotations and state purchasing contracts. The General Terms and Conditions shall (1) be referenced and made a part of all solicitations for proposals and quotations; all state purchase orders, contracts, and letters of authorization; and bidder registration documentation and (2) provide notice to bidders that contract award may be subject to the bidder signing an affirmation (certification) regarding certain legal requirements or restrictions relating to foreign corporations, goods produced in South Africa, disadvantaged business enterprises, labor rates, local product preference, etc., as required by the Purchasing Agent.

8.3.2 When a contract has been entered into between the state and another party, neither party shall have the legal right to add new terms or conditions without the consent of the other, unless the contract so specifies.

8.3.3 All contract pricing shall be firm and fixed unless contract language provides for reconsideration.

8.3.4 Issuance of purchase orders shall not be made on the basis of "advise pricing" (or "pricing to be determined") agreements. All commitments shall be on the basis of estimated prices with a "not to exceed" maximum authorization when firm, fixed pricing agreements are not possible.

8.3.5 Changes in scope, price, and length of contract period shall require contract amendments which are specified in writing.

8.3.5.1 Unanticipated changes may be considered with the express consent of both parties.

8.3.5.2 The issuance of a Purchase Change Order in accordance with the provisions of the contract and other requirements specified herein shall be considered a binding contract.

8.3.6 Termination - As appropriate, state contracts shall include clauses which address special conditions/procedures for termination of contract not contained in the state's General Terms and Conditions; e.g., provisions for penalties or forfeitures for contract noncompliance may be included; a convenience termination clause which permits the state to terminate, at its own discretion, the performance of work in whole or in part, and to make a settlement of the vendor's claims in accordance with appropriate regulations and applicable contractual conditions.

8.3.7 Mutual Agreement - The agreement shall consist of an offer by one party, called the offeror, and an acceptance by the other party, called the state.

8.3.7.1 When a purchase order is issued which does not differ from the bid submitted by an offeror, mutuality shall be assumed.

8.3.7.2 In accordance with the General Terms and Conditions which notify offerors that the Purchasing Agent reserves the right to make partial bid awards, mutuality shall be assumed when a purchase order does not differ from the elements of a bid submitted by an offeror.

8.3.7.3 Any offer, whether in response to a solicitation for proposals or bids, or made without a solicitation, which is accepted in the form of an order made by the Purchasing Agent, or a state official with purchasing authority delegated by the Purchasing Agent, shall be considered a binding contract.

8.3.8 Consideration - Although consideration to support a contract may assume other forms, generally it shall mean the agreement to pay a sum of money for the delivery of the desired item or services rendered. It shall not be essential that the consideration be of a substantial consequence, but shall have some value. Compensation shall be specified and shall include but not be limited to: (a) terms of payment for partial delivery or completion; (b) unit of cost (hourly rate, per report rate), if appropriate; (c) frequency/conditions for payment - weekly, monthly, upon completion of percentage of work, etc.; and (d) retainage, when appropriate.

8.3.9 Capacity of Parties - The contracting parties shall have the legal authority to enter into contracts.



8.3.10 Competence of Parties - The contracting parties shall be of legal age and of sound mind.

8.3.11 Length of contract period shall be specified.

8.3.12 A state official (or position) from whom the contractor shall obtain direction shall be named and/or a format for written authorization to deliver (e.g., request for delivery form for master pricing agreement) shall be specified.

8.3.13 Public Works/Construction Contracts shall provide for the following additional considerations:

8.3.13.1 Certificates of insurance to protect the general public or state property from injury or loss arising from actions or inaction of the contractor during the progress of a contract.

8.3.13.2 Each contractor shall be responsible for providing satisfactory evidence of complete coverage of all insurances, permits, and licenses required by state, city or town statutes, ordinances, and/or regulations.

#### **8.4 THE PURCHASE ORDER CONTRACT**

8.4.1 "Purchase Order" shall mean a document issued by the Purchasing Agent to formalize a purchase transaction with a vendor. The purchase order shall contain statements as to the quantity, description, and price of the goods or services ordered, applicable terms as to payment, discounts, date of performance, transportation, and other factors or suitable references pertinent to the purchase and execution by the vendor. Purchase orders shall include blanket orders, master pricing agreements, and utility purchase orders.

8.4.2 The entire agreement with the supplier shall, at all times, reside solely in the purchase order and its referenced supplements.

8.4.3 Purchase Order Supplements shall consist of all of the following documents:

8.4.3.1 The state's General Terms and Conditions;

8.4.3.2 The state's request for quotations or proposals, including specifications;

8.4.3.3 The contractor's offer which is responsive to the solicitation; and/or

8.4.3.4 As appropriate, additional contract provisions.

#### **8.5 MULTI-YEAR CONTRACTS**

8.5.1 [37-2-33(1)] Unless otherwise provided in the statute making appropriations therefor, multi-year contracts for supplies and services may be entered into for periods not extending beyond the end of the biennium in which the contract was made, if funds for the first fiscal year of the contemplated contract are available at the time of contracting. Payment and performance obligations for succeeding fiscal years shall be subject to the availability of funds therefor.

8.5.1.1 "Biennium" shall mean a period of time equal to two fiscal years.

8.5.1.2 "Fiscal year" shall mean a period of time beginning on the first day of July in one calendar year and ending on the last day of June of the subsequent calendar year.

8.5.1.3 Multi-year contracts which extend beyond a biennium shall be permitted provided that:

8.5.1.3.1 funds for the first year of the biennium have been appropriated; and

8.5.1.3.2 contracts shall contain a standard clause which states that implementation of the contract beyond the first fiscal year shall be subject to the availability of funds; and

8.5.1.3.3 a written justification is placed in the purchase order file or the category of procurement has by regulation or policy been identified by the Chief Purchasing Officer as appropriate for multi-year contracting, e.g., property leases.

8.5.1.4 Multi-year contracts shall specify the annual costs and total value of each contract.

8.5.2 [37-2-33(2)] Prior to the utilization of a contract as described in subsection 37-2-33(1), it shall be determined in writing by the Chief Purchasing Officer:

(a) That estimated requirements cover the period of the contract and are reasonably firm and continuing; and

(b) That such contract will serve the best interests of the state by encouraging effective competition or otherwise promoting economics in state procurement.

8.5.2.1 The Chief Purchasing Officer may delegate to the Purchasing Agent all or a portion of the responsibility and authority to make such determinations.

8.5.3 In accordance with [37-2-33(3)] when funds are not appropriated or otherwise made available to support continuation of performance in a subsequent year of a [multi-year] contract, the contract for such subsequent year may be cancelled and the contractor shall be reimbursed for the reasonable value of nonrecurring costs incurred but not amortized in the price of the supplies or services delivered under the contract. The cost of cancellation may be paid from:

- (a) Appropriations currently available for performance of the contract; or
- (b) Appropriations currently available for procurement of similar supplies or services and not otherwise obligated; or
- (c) Appropriations made specifically for the payment of such cancellation costs.

8.5.4 Multi-year contracts shall be appropriate purchasing instruments for transactions for which the nature of the goods and services will remain relatively stable over time; and for which potential changes in price can be predicted and agreed to in advance, including provisions for mandated escalation requirements, such as:

8.5.4.1 Lease and lease-purchase agreements for equipment, real property, and facilities;

8.5.4.2 Maintenance and repair of specialized equipment;

8.5.4.3 Special licensing agreements (computer, communication);

8.5.4.4 Special services for which the contract award is based on a request for proposals, such as residential treatment programs;

8.5.4.5 Supplemental services, the approval of which is based upon the recommendation of the State Architectural, Engineering and Consultant Selection Committee and selection by the Chief Purchasing Officer; and

8.5.4.6 Any other contractual relationship where it has been determined in writing by the Chief Purchasing Officer that a long-term agreement shall be the most costeffective method of procurement.

8.5.5 User agencies shall specify on requisitions and shall submit justification whether multi-year contracts should be considered by the Purchasing Agent for the supply or service requisitioned.

**8.6 LETTER OF AUTHORIZATION** - When the Chief Purchasing Agent determines in writing that it is absolutely essential that the vendor be given a binding commitment so that work can be commenced immediately and that negotiation of a definitive contract cannot be accomplished in sufficient time, the Purchasing Agent may issue a Letter of Authorization.

8.6.1 A Letter of Authorization (LA) shall mean a written instrument binding only when signed by the Purchasing Agent, which authorizes immediate commencement of implementation of the delivery of supplies or the performance of services.

8.6.2 Such instrument shall:

8.6.2.1 Represent a preliminary authorization subject to the subsequent issuance of a Purchase Order.

8.6.2.2 Be superseded by a definitive contract at the earliest practicable date not later than the greater of the following: (1) the expiration of 180 days from the date of the LA or delivery of 40% of the contract.

8.6.2.3 Be specifically negotiated and shall address the following contractual requirements that:

8.6.2.3.1 The vendor will proceed immediately with performance of the contract, including procurement of necessary materials;

8.6.2.3.2 the extent and method of payments in the event of termination for the convenience of the state or for default;

8.6.2.3.3 the vendor is not authorized to expend monies or incur obligations in excess of the maximum liability of the state as set forth in the letter contract;

8.6.2.3.4 the type of definitive contract contemplated;

8.6.2.3.5 as many definitive contract provisions as possible;

8.6.2.3.6 the vendor shall provide such price and cost information as may reasonably be required by the state; and

8.6.2.3.7 the vendor and the state shall enter into negotiations promptly and in good faith to reach agreement and execute a definitive contract.

## **8.7 CHANGES TO PURCHASE ORDERS**

8.7.1 All agreements and changes to scope of work, price, or other terms shall be incorporated into purchase orders via "change order" documents incorporating contract amendments.

8.7.2 Change Orders issued by the Office of Purchases shall be the only binding documents which may create a change in a purchase order.

8.7.3 Personnel shall not commit the state to technical/contractual changes to purchase orders without first securing all necessary approvals.

8.7.4 All discussions of potential changes (oral or written) may be disclaimed as not being binding on the supplier or the state until formally incorporated in the purchase order.

8.7.5 In general, change orders shall be issued by the Office of Purchases following receipt of quotations and discussions of price and delivery with the supplier. If circumstances preclude immediate issuance of a formal change order, interim direction to the supplier may be made via a letter of authorization signed by the Purchasing Agent.

## **8.8 TERMINATION OF CONTRACT**

8.8.1 If required bidder certifications are determined to be invalid, the Purchasing Agent shall declare the purchase order void.

8.8.2 Notice of termination by either party shall be submitted in writing to the other party in accordance with the termination clause of the contract.

### **8.8.3 Cancellation of a Contract by the State**

8.8.3.1 Cancellations of Purchase Order Contracts or Master Pricing Agreements shall require the signature of the Purchasing Agent or his designee.

8.8.3.2 A contract may be cancelled or annulled at the contractor's expense upon determination by the Purchasing agent that a condition of nonperformance exists.

8.8.3.3 "Nonperformance" shall mean lack of compliance with the contract specifications and/or terms and conditions.

8.8.3.4 Cancellation by the Purchasing Agent for nonperformance shall be subject to the following rules:

8.8.3.4.1 A formal complaint of nonperformance or unsatisfactory performance shall be submitted by an authorized state official to the Purchasing Agent. Such complaint shall provide a description of and justification for the complaint.

8.8.3.4.2 The Purchasing Agent shall direct the complaint to the Standards and Inspection Unit (SIU) of the Office of Purchases.

8.8.3.4.3 The SIU inspector, in conjunction with the Office of Purchases official (buyer) responsible for the contract, shall be authorized to attempt to resolve the problem to the satisfaction of the user agency.

8.8.3.4.4 The inspector and buyer shall report in writing to the Purchasing Agent whether the problem requires formal action, and if the problem has not been resolved, the Purchasing Agent shall notify the contractor in writing that he/she is not in compliance with the contract. Such notice of nonperformance shall: (1) specify the nature of the complaint, (2) direct the contractor to take corrective action, (3) direct the contractor to respond in writing to the notice of nonperformance within a specified time period, and (4) notify the contractor that failure to respond as directed may result in cancellation of the order.

8.8.3.5 If a contractor fails to take corrective action and/or respond to a notice of nonperformance, the Purchasing Agent may issue a change order canceling the contract.

8.8.3.6 If, after reviewing the contractor's response, the Purchasing Agent determines that the contractor is not out of compliance with the contract requirements, he shall so notify the user agency and the contractor in writing, providing a rationale for his decision.

8.8.3.7 If the Purchasing Agent determines that valid extenuating circumstances out of the control of the contractor have prevented compliance with the contract requirements, he shall so inform the user agency and may amend the contract to provide for a reasonable opportunity for the vendor to perform the contract, if necessary.

8.8.3.8 If the Purchasing Agent believes that a contractor's action or lack thereof presents a clear and immediate danger to the public interest, he may request in writing that the Chief Purchasing Officer authorize immediate termination of the contractual relationship.

8.8.3.9 Copies of all communications with a contractor regarding nonperformance shall be sent to the contractor's bonding company, power of attorney and the Department of Administration legal counsel.

8.8.3.10 If the Purchasing Agent determines that a contractor is unwilling or unable to perform a contract, he shall:

8.8.3.10.1 direct the contractor's bonding company to assume responsibility for the performance of the contract if a performance bond has been issued; and

8.8.3.10.2 so notify the user agency and contractor; and

8.8.3.10.3 notify the contractor whether he/she has been temporarily suspended or permanently debarred from the state Bidders List and shall be responsible for any costs incurred by the state in the completion of the contract.

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.

## **8.9 TYPES OF PURCHASE ORDER CONTRACTS**

### **8.9.1 Fixed Price (FP)**

8.9.1.1 The Firm Fixed Price (FFP) contract shall mean one which provides for a price which is not subject to any adjustment by reason of the seller's cost experience in the performance of the contract. This type of contract should be used when the price is based on credible cost data for the completion of the order.

8.9.1.2 The Fixed Price with Economic Price Adjustment (FP W/EPA) contract shall mean one which provides for the upward or downward revision of the stated price upon the occurrence of certain economic conditions which are specifically defined in the contract. These conditions are limited to those beyond the control of the seller.

8.9.1.3 A Fixed Price Redeterminable (FPR) contract shall mean one which permits reconsideration of price at a stated time after contract initiation when the only supplier capable of performing a job cannot quote a fixed price with full assurance that it will be fair and reasonable.

8.9.1.4 The Fixed Price Incentive (FPI) contract shall mean one which provides for the adjustment of profit (fee) and price according to a sharing arrangement based on the relationship which final negotiated total cost bears to the negotiated target cost.

### **8.9.2 Cost Reimbursement**

8.9.2.1 A Cost No Fee (CNF) contract shall mean one under which the seller receives no fee.

8.9.2.2 A Cost Sharing (CS) contract shall mean one under which the seller not only receives no fee but is reimbursed for only an agreed upon portion of its allowable costs.

8.9.2.3 A Cost Plus Fixed Fee (CPFF) contract shall mean one which provides for the payment of a fixed fee to the seller. The fixed fee negotiated does not vary with actual cost, but may be adjusted as a result of any subsequent changes in the work or service to be performed under the purchase order.

8.9.2.4 A Cost Plus Incentive Fee (CPIF) contract shall mean one which provides for a fee which is adjusted by formula in accordance with the relationship which total allowable costs bear to target costs, a target fee, a minimum and maximum fee, and a fee adjustment formula. Upon completion of the order, the fee is determined in accordance with the established formula as an incentive for performance efficiency; however, there is

no ceiling price specified and the seller is under no obligation to complete the order once the funds obligated have been exhausted.

8.9.2.5 A Cost Plus Percentage of Cost (CPPC) contract shall mean one which provides for a fee which is adjusted by percentage formula in accordance with the relationship to total cost. The percentage formula may be fixed, but fee paid may be adjusted as a result of any subsequent changes in the work or service to be performed under the purchase order.

8.9.2.6 A Time and Materials (T/M) contract shall mean one which provides for the purchase of supplies or services on the basis of (1) direct labor hours at specified fixed hourly rates (which rates include direct and indirect labor, overhead and profit) and (2) material at cost. Material handling costs may be included to the extent they are clearly excluded from any factor of the charge computed against direct labor hours (L/H).

8.9.3 A To Be Determined (TBD) contract shall mean one which enables the buyer and the seller to enter into a relationship with no predetermined terms at the initiation of the contract.

8.9.4 A Blanket Order shall mean an arrangement under which a purchaser contracts with a vendor to provide the purchaser's requirements for an item(s) or a service, on an as-required and often over-the-counter basis. Such an arrangement sets a limit on the period of time it is valid and the maximum amount of money which may be spent at one time or within a specified period. (Usually, but not always, the funds for agency blanket orders will be encumbered.)

8.9.4.1 A Pricing Agreement (PA) shall mean a special blanket order which establishes the terms and conditions under which a specific item or a specific category of items in an indefinite quantity, are to be purchased for a specific period of time, usually one year.

8.9.4.2 A Master Pricing Agreement (MPA) shall mean a pricing agreement which has been established on behalf of more than one entity. (Usually, funds for MPA contracts are not encumbered.)

8.9.4.3 A "Term Contract" shall be synonymous with an MPA contract.

**8.10 PRINCIPLES FOR SELECTION OF TYPE OF PURCHASE ORDER CONTRACT** - The selection of the appropriate type of contract is a matter which requires the exercise of judgment in order to obtain fair and reasonable prices in accordance with the circumstances of the procurement.

8.10.1 In determining the type of contract to be used, consideration shall be given but not limited to such factors as:

8.10.1.1 Type and complexity of the item or scope of work to be performed;



8.10.1.2 Urgency of the requirement;

8.10.1.3 Prospective period of contract performance;

8.10.1.4 Degree of competition present;

8.10.1.5 Extent of completion of baseline and detail design; which in turn may influence other considerations as the adequacy and firmness of specifications, and the availability of relevant historical pricing data and prior experience;

8.10.1.6 Availability of comparative price data, or lack of firm market prices or wage levels;

8.10.1.7 Prior experience with the supplier;

8.10.1.8 Extent and nature of subcontracting contemplated;

8.10.1.9 Assumption of business risk;

8.10.1.10 Supplier technical capability and financial responsibility;

8.10.1.11 Administrative costs;

8.10.1.12 Adequacy of the supplier's accounting system; and

8.10.1.13 Other concurrent contracts.

8.10.2 [37-2-32] Approval of Accounting System. - Except with respect to firm fixed price contracts, no contract type shall be used unless it has been determined in writing 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 generally accepted accounting principles.

8.10.2.1 The firm fixed price contract shall be used in applications and under limitations hereinafter set forth, unless the use of another type of contract is more appropriate.

8.10.3 [37-2-31] Subject to the limitations on entering into cost plus percentage of cost and cost reimbursement contracts set forth herein, any type of contract which will promote the best interests of the state may be used.

8.10.4 Cost Reimbursement Contracts.

8.10.4.1 [37-2-29] The Cost Plus a Percentage of Cost (CPPC) contract is prohibited.

8.10.4.2 [37-2-30(1)] No contract providing for the reimbursement of the contractor's cost plus a fixed fee (cost reimbursement) may be made through negotiation or in sole source or emergency procurements unless it is determined in writing by the Chief Purchasing Officer that such contract is likely to be less costly to the state than any other type of contract, or that it is impracticable to obtain supplies or service of the kind or quality required except under such a contract.

8.10.4.3 [37-2-30(2)] Each contractor under a cost reimbursement type contract shall obtain consent from the Chief Purchasing Officer, as provided for in the contract, before entering into:

(a) a cost reimbursement subcontract; or

(b) any other type of subcontract involving more than ten thousand (\$10,000) or ten percent (10%) of the estimated cost of the prime contract[whichever is greater].

8.10.4.4 [37-2-30(3)] All cost reimbursement contracts shall contain a provision that only costs recognized as allowable, in accordance with cost principles set forth in regulations issued by the Chief Purchasing Officer will be reimbursed.

8.10.5 When a FP W/EPA contract is employed, provisions shall be included for downward adjustment of the contract price in those instances where the prices or rates may be expected to fall below the base price agreed to by contract.

8.10.5.1 Types of economic adjustments shall include but shall not be limited to:

8.10.5.1.1 Price Adjustment - a modification of the base purchase order price on the basis of increases or decreases in published or established prices of specific items.

8.10.5.1.2 Labor and Material Adjustment - a modification of the contract base price on the basis of increases or decreases of wage rates, specific material costs, or both, using agreed upon standards or indices.

8.10.5.2 This type of contract may be appropriate where valid doubt exists as to the predictability of economic conditions which will exist during a multi-year contract period. Price adjustment provisions shall not be used to provide protection to contractors against contingencies which arise from inaccurate estimates of the quantities of labor or materials required for completion of a contract.

8.10.6 When FPR contracts are employed the basis for adjustments shall be established when the contract is negotiated and a cost baseline shall be established.

8.10.6.1 The following data shall be secured from each source before placing a redeterminable order: number of estimated hours and method used in arriving at hours; direct labor rates per hour; material cost, including both quantities and unit prices;

overhead rates (categorized by element); profit, any other data deemed pertinent for analysis of the prices quoted.

8.10.6.2 The establishment of a redeterminable type of contract shall require the written authorization of the Chief Purchasing Officer. Upon analysis conducted jointly by the user agency and the Purchasing Agent, a request and justification for considering redeterminable pricing provisions shall be submitted in writing by the Purchasing Agent to the Chief Purchasing Officer.

8.10.7 When FPI contracts are employed:

8.10.7.1 There shall be an initially negotiated firm target cost, a target profit, a price ceiling and a final profit and price adjustment formula. After completion, a final cost shall be negotiated and a final price established in accordance with the predetermined formula.

8.10.7.2 The circumstances must be such that targets are reasonably free of contingencies and provided that a fair and reasonable incentive formula can be established at the time of initial contract negotiation and the contract is of sufficient duration to permit achievement of substantial cost reductions.

8.10.7.3 The same supplier cost data shall be required as for a redetermination contract.

8.10.8 A CNF contract may be used for research and development work – particularly with nonprofit organizations and educational institutions.

8.10.9 A CS contract is suitable for:

8.10.9.1 Jointly sponsored research and development with educational institutions or other nonprofit organizations or

8.10.9.2 Other research and development work where the results of the contract may have commercial benefit to the seller.

8.10.10 A CPPF contract is suitable when:

8.10.10.1 The scope and nature of work cannot be definitely specified.

8.10.10.2 Definite specifications exist but the seller lacks a valid basis for estimating costs because the supplies called for are not items regularly manufactured, or the services called for have not been previously performed, or partial experience will not reveal a proper pricing basis for the remainder of the contract.

8.10.10.3 Specifications are not complete or major changes substantially affecting the scope of production or construction work are expected.

8.10.10.4 Work is to be performed in a state-owned facility with the use of state-owned equipment, materials, or personnel.

8.10.11 A T/M contract shall include the establishment of a cost limitation which the seller may not exceed (except at his/her own risk). A T/M contract shall be used only in situations when:

8.10.11.1 It is not possible at the time of placing the order to estimate the extent of the work or to anticipate final costs with any reasonable degree of accuracy such as: (1) engineering and design services, (2) certain repair, maintenance or overhaul work, (3) emergencies.

8.10.11.2 Provision is made for appropriate surveillance by state personnel during performance.

8.10.12 L/H contracts based solely on labor hours shall be considered a subcategory of T/M contracts, subject to the same restrictions as the T/M contract and shall be used only after the Purchasing Agent has determined that no other type of contract is suitable for meeting the needs of the requisitioner.

8.10.13 Employment of TBD contracts shall be prohibited.

8.10.14 Considerations for use of a MPA contract:

8.10.14.1 The MPA shall specifically state the term and probable volume consideration of the agreement.

8.10.14.2 The seller shall be authorized to ship to the state only those items specified by a delivery request (on a form to be provided) issued under the authority of the Master Pricing Agreement. The state is obligated for payment only to the extent of the specific quantities set forth in the delivery request or for express considerations applicable to the contract itself.

8.10.14.3 The specific category of items to be purchased may be listed in a catalog prepared specifically for the agreement, a catalog of items offered for sale by a supplier, a national catalog published by a catalog publishing firm, or such other lists of items as may, from time to time, be determined as being a legally sufficient description of the item or items being purchased.

8.11 Selection of Methods of Construction Contracting Management

8.11.1 Construction Contract Management. The intent of Rule 8.11 is to specifically identify alternative methods of management of construction and the criteria to be used in selecting such methods. In addition, the intent of this Rule is to clarify that the method of source selection used to award a state contract for a particular construction project shall continue to be governed by all the

applicable provisions of chapter 2 of title 37, entitled "State Purchases", also referred to as the "State Purchases Act". These provisions include but are not limited to sections 37-2-17 "Methods of source selection"; 37-2-18 "Competitive sealed bidding"; 37-2-19 "Competitive negotiation"; 37-2-20 "Negotiations after unsuccessful competitive sealed bidding"; 37-2-21 "Noncompetitive procurements"; 37-2-22 "Small purchases" and 37-2-59 "Professional services – Architectural, engineering, and consultant services – Committee". Provided, however, the provisions of Rules 8.11.3 and 8.11.4 shall not apply to road, bridge and heavy construction projects which are funded in whole or in part by federal funds.

8.11.2 Road, Bridge and Heavy Construction Projects. The provisions of Rules 8.11.3 and 8.11.4 shall not apply to road, bridge and heavy construction projects that are managed by the Rhode Island Department of Transportation and are funded in whole or in part by federal funds. Road, bridge and heavy construction projects are subject to the methods of management of construction contracting, including the criteria for selecting such methods, that are set forth in applicable federal law, including but not limited to 23 U.S.C. 112(b)(i) as amended, and regulations promulgated thereunder.

8.11.3 Construction Contract Management Methods and Criteria. For all other construction projects not included in Rule 8.11.2, the methods below, along with the criteria for each method, are the alternative methods of construction contract management deemed feasible by the Chief Purchasing Officer. The methods below are not mutually exclusive and may be combined on a project.

8.11.3.1 General Contractor Method. The general 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 general contractor has entered into subcontracts.

The general contractor method is the generally preferred method of construction work and may be selected for a project when it is determined that the following criteria will be met:

- (a) the project requires timely completion of the construction work in accordance with drawings and/or specifications provided by the State and/or the State's agent.

- (b) the project work may be performed by specialty sub-contractors under the control and supervision of a general contractor.
- (c) the project does not require direct supervision or coordination between the contractor and project engineering/design professionals other than as normally performed by State employees.
- (d) the construction project is estimated to cost in excess of ten thousand dollars (\$10,000).
- (e) sufficient time exists to complete the design, bid the project and construct the work by the desired occupancy date.

8.11.3.2 Multiple Prime Contractors. Under the multiple prime contractor method, the State or its agent contracts directly with any number of contractors, often representing different trades, to complete portions of the project in accordance with the State's drawings and specifications. The State and/or its agent shall have primary responsibility for successful completion of the entire project.

The multiple prime contractor method may be selected for a project when it is determined that the following criteria will be met:

- (a) the State or its agent is able to coordinate job site activities of any number of contractors and/or subcontractors with varying areas of construction expertise to complete portions of the project in accordance with the State's drawings and specifications, and the State or its agent will contract directly with such contractors and/or subcontractors.
- (b) the State and/or its agent is able to assume primary responsibility for successful completion of the entire project.
- (c) the construction project is for the rehabilitation or renovation of a building or buildings.
- (d) the contract(s) for the rehabilitation or renovation of any building(s) in the aggregate are estimated to cost less than two million dollars (\$2,000,000).

8.11.3.3 Design-Build. In a design-build project, a person or firm 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 and construction are both the responsibility of the design-build contractor. This method can include projects where the design-build contractor supplies the site as part of the design-build package.

The design-build method may be selected for a project when it is determined that the following criteria will be met:

- (a) the State does not have the ability to prepare the requisite design or engineering specifications, bridging documents, or scope of work.
- (b) the State cannot manage or supervise the work of specialty trade contractors and it is not in the State's best interest to contract directly with such specialty contractors.
- (c) the State determines that it is in its best interest for a design-build firm to assume responsibility for both final design and construction of the project.
- (d) due to time constraints and the need to complete the project on an expedited basis, it is in the State's best interest to select a design-build contractor rather than a general contractor for the project.
- (e) construction work on the project has an estimated cost equal to or greater than two-million five-hundred thousand dollars (\$2,500,000).
- (f) the State desires to have a single firm responsible for both design and construction.

8.11.3.4 Construction Manager at Risk. A Construction Manager at Risk is a person or firm 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. Without limitation, the construction manager at risk shall 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 competitively negotiated bid packages as the design is developed. 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.

The Construction Manager at Risk method may be selected for a project when it is determined that the following criteria will be met:

- (a) the State lacks the resources to evaluate and implement drawings and specifications as they affect time, cost, and quality of construction and lacks the ability to coordinate the construction of the project, including the administration of change orders.
- (b) the State requires professional assistance in the development of a cost effective design (also known as the construction document phase) for the project.
- (c) it is in the State's best interest to hire a construction manager who can guarantee that the project will be completed on time and will not exceed a specified guaranteed maximum price for construction for the scope of the work, as defined by the drawings, specifications, and other pertinent information known at the time the guaranteed maximum price was set.
- (d) it is in the State's best interest not to retain the services of a general contractor for the project and not to directly hold contracts with subcontractors, but rather to retain the services of a construction manager, who shall be required to directly retain subcontractors through issuance of multiple, competitively negotiated bid packages.
- (e) it is in the State's best interest to pay a single management fee which may be either a lump sum or a combination of other fees, except that said fees shall not be calculated as a percentage of construction costs, with a guaranteed maximum cost for construction.
- (f) it is in the State's best interest to hire a construction manager who can provide construction services, management services, accounting services, and retain specialty subcontractors as deemed necessary to successfully complete the project.



- (g) the project has an estimated cost equal to or greater than twenty-five million dollars (\$25,000,000).

8.11.3.5 Owner Program Management. Owner Program Management is a method of procurement in which the program manager acts as the owner's agent in all aspects of the construction project including architectural programming, planning, design and as well as construction. The owner's program manager provides services ranging from early feasibility studies to post-construction facilities management. The program manager typically provides services that include: a) the establishment and management of cost and time parameters, b) value engineering input and cost analysis, c) preparation of bid packages, d) establishment and maintenance of quality control standards, e) project reporting and, f) project accounting services. Other specific services may be contracted to the owner's program manager.

The Owner Program Management method may be selected for a project when it is determined that the following criteria will be met:

- (a) the State does not have the ability to prepare the requisite design or engineering specifications, bridging documents, or scope of work;
- (b) the State cannot manage or supervise the work of specialty trade contractors and will not contract directly with such specialty trade contractors;
- (c) it is in the State's best interest to retain a program manager to supervise and or monitor the activities of a general contractor; and/or
- (d) it is in the State's best interest to retain a program manager to supervise and or monitor the engineering and architectural services for a project;
- (e) the construction project has an estimated cost equal to or greater than ten thousand dollars (\$10,000).

8.11.4 Construction Contract Management Selection Information. In addition to criteria set-forth in Rule 8.11.3, the following information for a particular project shall be submitted to the Chief Purchasing Officer under Rule 8.11.5:

- 8.11.4.1 when the project must be completed or ready for occupancy or use;
  - 8.11.4.2 the specific nature of the project and its specialized needs, e.g. housing, offices, laboratories, and specialized construction;
  - 8.11.4.3 the extent to which the requirements of the procuring agency and the ways in which said requirements are to be met are known;
  - 8.11.4.4 the location of the project;
  - 8.11.4.5 the size, scope, complexity, and economics of the project;
  - 8.11.4.6 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;
  - 8.11.4.7 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;
  - 8.11.4.8 the availability, experience and qualifications of outside consultants and contractors to complete the project under the various methods being considered;
  - 8.11.4.9 the method of source selection under the State Purchases Act that will be used to award a contract to a vendor for this particular project.
- 8.11.5 Documentation of Selection Determination. Using and including the information in Rule 8.11.4, 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 forth in Rule 8.11.2 or 8.11.3 and the information required in Rule 8.11.4. 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 the purchasing agency.
- 8.11.6 Protest. Any actual or prospective bidder, offeror, or contractor, who is aggrieved in connection with the solicitation or selection for award of a contract, may file a protest with the Chief Purchasing Officer pursuant to RIGL section 37-2-52.

**8.12 CONTRACT ADMINISTRATION** - Subsequent to the award of any contract for goods or services and continuously over the life of any contract, each agency shall determine and verify that service(s) provided or goods received match exactly all contract specifications as to kind, quality, quantity, or frequency and price. Each Agency shall document in detail all deviation(s) and submit formal complaint(s) to the Office of Purchases for followup action.

8.12.1 Attestation and approval of payment vouchers by duly authorized agents of the agency shall constitute acceptable evidence of such verification.

## **SECTION 9 - EXCEPTIONS TO COMPETITIVE BIDDING REQUIREMENTS**

**9.1 AUTHORITY TO MAKE EXCEPTIONS TO THE REQUIREMENT FOR COMPETITION.** In certain circumstances competitive bidding for purchases may not be the most cost-effective approach to procurement. The Purchasing Agent may, with the approval of the Chief Purchasing Officer, waive requirements for competitive sealed bidding in accordance with the grounds permitted by law.

**9.2 CIRCUMSTANCES PRESCRIBED BY LAW:** In accordance with Chapter [37-2-54], the following exceptions to competitive bidding are permitted by statute; however, the Chief Purchasing Officer may require competitive bidding in any circumstance where he deems that competition may enhance the state's ability to attain cost savings:

9.2.1 Contractual services where no competition exists, such as telephone service, electrical energy, and other public utility services;

9.2.2 When, in the judgment of the Department of Administration, food, clothing, equipment, supplies, or other materials to be used in laboratory and experimental studies can be purchased otherwise to the best advantage of the state;

9.2.3 Instructional materials available from only one source;

9.2.4 Where rates are fixed by law or ordinance;

9.2.5 Library books;

9.2.6 Commercial items purchased for resale;

9.2.7 Professional, technical, or artistic services; (Contracts exempted by this provision shall be referred to the Governor for review and approval.)

9.2.8 Interests in real property.

**9.3 GOODS OR SERVICES OBTAINED BY ONE STATE AGENCY FROM ANOTHER**, such as printing from Prison Industries or use of Central Service Accounts, shall be exempt from competition. However, internal service fund purchases shall be made in accordance with all policies and procedures for competitive procurements. NOTE: Purchases of services from state higher educational institutions are subject to competitive review and require the submission of requisitions.

**9.4 SMALL PURCHASES NOT EXCEEDING \$250:** Competitive bids shall not be required for purchase orders up to \$250 in value if the prices are considered to be reasonable; however, agency officials shall be encouraged to obtain informal quotes.

9.4.1 It shall be the responsibility of agency personnel to exercise good judgment as to what is a fair and reasonable price.

9.4.2 Specific action to verify the reasonableness of a price shall be taken when it is suspected that the price may not be reasonable, e.g., comparison to previous price paid or personal knowledge of the item involved.

9.4.3 Agency Chief Executives shall establish guidelines to evaluate periodically the reasonableness of pricing for purchase orders up to \$250.

9.4.4 Purchase orders up to \$250 in value shall be distributed equitably among suppliers. Quotations should be solicited from the previous supplier and other bidders prior to placing a repeat order so as to ensure equitable distribution and enhance competition. Additional bidders should be different from previously unsuccessful bidders. When practicable, effort shall be made to solicit small disadvantaged minority or women-owned businesses.

9.4.5 Under no circumstance shall purchases exceeding \$250 be artificially divided into component parts to circumvent the competitive process. User agency abuses of this limitation will be reported to the Chief Purchasing Officer who will hold agency chief executives accountable for violations.

**9.5 SOLE SOURCE.** [37-2-21(a)] A contract may be awarded for a supply, service, or construction item without competition when, under published regulations, the Chief Purchasing Officer or member of the executive department, above the level of purchasing officer determines, in writing, that there is only one source for the required supply, service, or construction item.

9.5.1 The Chief Purchasing Officer may delegate the authority for determination of sole source to the Purchasing Agent.

9.5.2 Sole source categories may include:

(a) items of a unique nature which are unavailable from other sources due to patents or proprietary processes;

(b) books, maps, periodicals, and technical pamphlets, films, video and audio cassettes obtained from publishers;

(c) certain computer software;

(d) licenses - computer software, electronic transmittal;

(e) specialized replacement/repair parts or expansion parts necessary to maintain the integrity of system or function, e.g. scientific research;

(f) works of art for museum or public display;

(g) specialized services for which there is only one documented accepted source, such as transactions involving unique professional services and/or educational institutions, e.g., visiting speakers or professors, and performing artists; repair/maintenance agreements with manufacturers;

(h) advertisements, public notices in magazines, trade journals, newspapers, television;

NOTE: Purchase of advertising and public relations campaign services must be established through a competitive selection process.

9.5.3 This provision excepting sole source procurements from competitive bidding shall not be interpreted to reduce the responsibility of the Office of Purchases and/or user agencies to evaluate the market continuously to research product alternatives and develop additional sources (distributors).

9.5.4 In attempting to achieve the goal of maximizing competition to the greatest extent possible, alternative distributors and manufacturers shall be pursued to sole source items by using compatible replacement parts as long as warranties are not affected by substitution.

9.5.5 Because certain manufacturers may not be either a sole source for obtaining an item nor offer the most competitive price, agencies shall submit requisitions for sole source purchases in excess of \$250 unless specifically delegated such authority by regulation or by the Purchasing Agency.

9.5.6 Maintenance contracts based upon sole source determination shall be subject to the following:

9.5.6.1 Annual maintenance contracts in excess of \$1000 shall require approval by the Office of Purchases.

9.5.6.2 All multi-year contracts shall require approval by the Office of Purchases.

9.5.6.3 To achieve better pricing, when the total amount for all contracts with the same supplier exceed one thousand dollars (\$1000), the agency shall submit a single purchase requisition consolidating all requirements.

9.5.7 The Chief Purchasing Officer or his designee may, at his initiation or upon the review of a justified request and/or recommendation from the chief executive officer of an agency, make a determination that a category of nonprofit providers constitutes sole source suppliers for certain types of service.

**9.6 EMERGENCIES [37-2-21(b)]** Notwithstanding any other provision of Chapter 37-2, the Purchasing Agent may make or authorize others to make emergency procurements when there exists a threat to public health, welfare or safety under emergency conditions as defined in regulations; 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 contractor shall be included in the contract file.

9.6.1 In accordance with procedures established by the Purchasing Agent, authorized officials in user agencies shall be permitted to react quickly to critical situations when the cost for a remedy or repair is in excess of \$250 and there is not sufficient time to undertake a public, formal, or informal bidding process.

9.6.2 An emergency shall mean a situation to which an urgent response is required. Immediate dangers to health and safety, threats to property and necessary functions, and failures of critical equipment constitute emergencies.

9.6.3 Inadequate anticipation of need shall not be considered justification for "emergency" purchases.

9.6.4 Commitments which extend beyond the immediate response to the dysfunctional emergency shall be prohibited, i.e. prevention of future problems by corrective measures other than the immediate restoration of function must be pursued through the Office of Purchases competitive purchasing process.

9.6.5 The Office of Purchases shall establish, through competitive bidding, a list of emergency response vendors and shall make such list available to user agencies.

9.6.5.1 When possible, agencies shall obtain services from a list of vendors selected by competitive process to provide specialized trade in emergencies.

5.5.5.2 If an emergency cannot be addressed by a designated vendor, the Office of Purchases shall assist in obtaining names and telephone numbers of responsible vendors.

9.6.6 Under determination of the existence of an emergency, the user agency's designated emergency response officer shall consult with the Office of Purchases before committing to a particular vendor. Office of Purchases officials shall maintain logs of all oral confirmations of authorization to proceed.

9.6.7 If the emergency occurs outside of business hours for the Office of Purchases, the user agency shall be authorized to proceed in accordance with the principles and policies of sound procurement practices outlined herein.

9.6.8 All emergency purchases shall be documented in accordance with procedures established by the Purchasing Agent. The user agency shall submit documentation for the emergency situation and response action in writing to the Purchasing Agent with the voucher for payment. All emergency documentation forms shall be signed by either the agency director or the designated emergency response official.

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.

**9.7 STANDARD OR ESTABLISHED CATALOGUE ITEMS** may be identified by the Chief Purchasing Officer as exceptions to competitive bidding. Agencies officials may submit requests and justification for Delegated Purchase Authority for the acquisition of such items to the Purchasing Agent, who shall recommend an appropriate course of action to the Chief Purchasing Officer.

**9.8 SPOT PURCHASES** of certain items (e.g., food, heating oil) sold on the basis of posted market prices may be exempted from competition by the Purchasing Agent when market analysis indicates that such procurements are in the best interest of the state. Opportunities to take advantage of seasonal and supply/demand influences shall be taken into account when determining whether to pursue formal competitive procedures.

## **SECTION 10 - EXPENDITURES WHICH ARE NOT PROCUREMENTS**

### **10.1 DEFINITIONS**

10.1.1 "Benefits" shall mean monies or gifts provided by the state to or on behalf of individuals or entities (clients, patients, inmates, employees, nonprofit service providers) the distribution of which may not be prescribed by statute, regulation, or program provisions.

10.1.2 "Concession" shall be defined as the granting of a license to a commercial entity for the conduct of a commercial enterprise on state premises, in consideration of which the state receives a regular rent and/or a percentage or other share in net proceeds.

10.1.3 "Grants" shall mean monies provided by the state to or on behalf of individuals or entities to underwrite specific costs of services or programs. Although grants may be distributed for specific purposes, payment is not based upon supply of specific units of service or products.

10.1.4 "Entitlements" shall mean monies or gifts provided by the state as part of subsidy programs for which the distribution of funds is determined in accordance with specific eligibility criteria or by formula. Examples included but shall not be limited to: food stamps, general public assistance, medical assistance payments, and school aid formula funds.

10.1.5 "Purchase of Services" shall mean monies expended for the provision of specific units of time and effort rather than an end product.

10.1.6 "Reimbursement" shall mean monies paid to a beneficiary, client, or claimant to make restoration for expenses such person has undertaken.

10.1.7 "Subsidies" shall mean monies provided by the state to or on behalf of individuals or entities to assist in defraying general expenses.

## **10.2 RESPONSIBILITY TO PROMOTE COMPETITION IN AWARDING CONTRACTS**

10.2.1 Concessions. In general, awards on concession agreements shall be made to the offeror whose proposal represents the greatest cash benefit to the state. The Purchasing Agent shall be responsible for the issuance of publicly advertised solicitations for such opportunities, and shall refer the responses to the requesting agency chief executive and the State Properties Committee for review, selection, endorsement, and execution of a concession agreement.

10.2.2 Grants. State agencies may obtain services or provide programs on behalf of clients through grants to nonprofit or other entities; however, when the payment of "grant" funds is subject to the provision of services or programs, determination of contract award shall be obtained by a request for proposal procedure to obtain the advantages of competition.

10.2.2.1 Nonprofit status shall not automatically exempt organizations from being subject to competitive purchasing principles.

10.2.2.2 Agencies may utilize the Office of Purchases to undertake Request for Proposal procedures; however, agency representatives shall be responsible for assisting in the



establishment of evaluation criteria and shall participate in the review and evaluation of responses to the RFP.

10.2.2.3 All grant contracts entered into by agencies shall be subject to an audit of competitive practices.

10.2.2.4 Grants in the form of subsidies or general assistance shall be administered by state agencies in accordance with legal mandates restricting or defining the use of such funds.

**10.3 EXCEPTIONS TO COMPETITION.** For the purpose of administering Chapter 37-2, grants, benefits, entitlements, subsidies and reimbursements shall not be considered procurements. The following types of expenditures shall not be subject to the provisions of Chapter 37-2 for competitive procurement:

10.3.1 Reimbursement to local governments (e.g., for educational expenses or public works projects).

10.3.2 Reimbursements of third parties for client-demand services, e.g., payments for medical services when the client selects the physician shall be considered benefits for which competitive solicitation is not required.

10.3.3 Entitlements for specific recipients or categories of recipients as prescribed by legislative mandate (including federal programs).

10.3.4 Grants, subsidies, entitlements or benefits purchased.

10.3.5 Grants in the form of subsidies or general assistance shall be administered by state agencies in accordance with legal mandates restricting or defining the use of such funds.

10.3.6 Grants, subsidies, entitlements or benefits purchased on behalf of, or paid directly to, individuals. Examples include but shall not be limited to:

(a) transportation services - public bus, taxicab, ferry);

(b) education and recreation benefits;

(c) fees - tuition costs, registration; and

(d) medical, dental, food stamps, etc.

10.3.7 Employee expenses, subsidies and benefits. Examples include but shall not be limited to:

(a) meals, parking, mileage and travel not covered by state contract;

- (b) allowances (e.g., tools, clothing) per union contract;
- (c) fees - dues/membership, tuition costs, conference registration.
- (d) tuition; and
- (e) tests/examinations/certifications.

10.3.8 Claims - reimbursement for damages. Vouchers for tort claims authorized by the General Assembly, accompanied by a copy of the appropriate legal decision and authorized by the Budget Office may be submitted directly to the Controller for payment.

#### **10.4 SPECIAL PROVISIONS AND REQUIREMENTS FOR GRANTS.**

##### 10.4.1 Contracting Authority.

10.4.1.1 Grantor agency directors may request delegation of contracting authority to enter into agreements for the purpose of distributing grants.

10.4.1.1.1 Such authority shall be subject to written documentation/explanation as to why the nature of the relationship between the agency and the payee does not constitute a procurement.

10.4.1.1.2 Delegated contracting authority does not require the issuance of a purchase order.

10.4.1.2 Grants for the provision of programs, services, and facility improvements shall not be authorized without agreements or contracts which:

10.4.1.2.1 specify the purpose for the grant;

10.4.1.2.2 specify method and terms of payment;

10.4.1.2.3 define service or product, if required;

10.4.1.2.4 outline any legal limitations on the funding;

10.4.1.2.5 set a time limit for distribution of funds;

10.4.1.2.6 require maintenance of records for a specified period of time;

10.4.1.2.7 provide for auditing; and

10.4.1.2.8 provide for termination of the agreement/contract.

#### **SECTION 11 - INVENTORY WAREHOUSING MANAGEMENT**

**11.1 Authority for the centralization of management and control of warehousing is set forth in RIGL [37-2-12(1)].**

11.1.1 Under the jurisdiction of the Chief Purchasing Officer or his designee, action as appropriate shall be taken and continuously maintained to assure least cost availability of supplies, foodstuffs, and other commodities necessary to the efficiency of Agency services and State Government.

11.1.2 A decision to classify a storage facility as a storeroom or as a warehouse shall be at the discretion of the Chief Purchasing Officer.

**11.2 Each agency, within its jurisdiction, shall be responsible for assessment of current systems and procedures and to assure compliance with these regulations. Requests for assistance in the implementation of these procedures shall be addressed to the Chief Purchasing Officer.**

**11.3 Cost effective controls, either manual or computerized, shall be implemented and maintained to achieve appropriate inventory and warehousing objectives.**

11.3.1 The following inventory control techniques, as defined in a glossary published by the American Production and Inventory Control Society (APICS), and held to be widely accepted practices relative to inventory control, shall be implemented where appropriate.

11.3.1.1 Reorder point determination based on factors of delivery lead time and safety stock to assure timely order without incurring stock-outs of critical supplies, foodstuffs, or other commodities.

11.3.1.2 Inventory classification procedure to stratify inventory items by value based on factors of unit cost and usage, with controlling inventory policy dependent upon value. Such inventory classification is known as "ABC" inventory classification or "Pareto" distribution.

11.3.1.3 Economic lot sizing for determination of replenishing order quantity utilizing one or more of a variety of proven techniques and incorporating factors of usage, lead time, acquisition cost inventory, carrying costs, and unit cost.

11.3.1.4 Safety stock calculation based upon inventory cost and criticality of stock-out situations. Factors of even/uneven usage and varying replenishment lead time shall be determined and applied as appropriate.

11.3.2 Efficient warehouse operation shall require, but is not limited to, the following procedures as appropriate:

11.3.2.1 Physical lot control procedures or methods shall be used to prevent or minimize economic loss of inventory due to deterioration in storage, obsolescence, or expired data code or shelf life.

11.3.2.2 Cycle counting of inventory or periodic physical inventories as prescribed shall be taken to reconcile inventory balances and assure highest inventory accuracy.

11.3.2.3 Inventory Accuracy objectives shall be established based upon inventory stratification by value (ABC analysis) and accuracy levels. These shall be published and monitored. Any required corrective action as a result of these procedures shall be taken by appropriate supervisory personnel.

11.3.2.4 Inventory location systems as appropriate shall be implemented to maximize space utilization and efficiency of order picking, inventory accessibility, and prevention of accidental injury.

11.3.2.5 Safety rules shall be developed, communicated and enforced to prevent accidental injury due to improper operation of material handling equipment, to ensure routine use of personal safety equipment, and to preclude other breach of safety rules.

11.3.2.6 Housekeeping and general warehouse cleanliness shall be maintained to a high standard.

11.3.2.7 Security of warehouse facilities shall be of a quality to prevent loss of inventory due to theft or pilferage, or damage or destruction to facility due to fire or other external causes resulting from failure to properly secure the facility.

**11.4 At any time, the Chief Purchasing Officer may direct or require reports, presentations, or field audits to measure levels of compliance and shall direct correction of deficiencies discovered.**

**11.5 As required under routine established procedure or as directed by the Chief Purchasing Officer or his designee, user agencies of supplies, foodstuffs and other warehoused commodities shall prepare periodic forecasts of requirements to identify and report upward or downward shifts in projected usage, thereby mitigating inventory surpluses or shortages resulting from inventory replenishment decisions or techniques based solely on historical usage.**

## **ATTACHMENT "A"**

### **STATE OF RHODE ISLAND GENERAL CONDITIONS OF PURCHASE**

Note: The Office of Purchases may, from time to time, make amendments to the General Terms and Conditions when the Purchasing Agent determines that such amendments are in the best interest of the State. Amendments shall be made available for public inspection at the Office of the Secretary of State but

shall not require formal public notice and hearing. Copies of the Terms and Conditions shall be provided to any individual or firm requesting to become a registered bidder. Applicants shall be required, as part of the application process, to certify that they have read the General Terms and Conditions and understand that they apply to all State Purchases.

## **STATE OF RHODE ISLAND OFFICE OF** **PURCHASES** **GENERAL CONDITIONS OF PURCHASE**

All State Purchase Orders, Contracts, Solicitations, Delivery Orders and Service Requests shall incorporate and be subject to the provisions of Title 37 Chapter 2 of the General Laws of the State of Rhode Island, the Regulations adopted pursuant thereto, all other applicable provisions of the Rhode Island General Laws, specific requirements described in the Request or Contract, and the following General Conditions of Purchase:

**1. GENERAL** - All purchase orders, contracts, solicitations, delivery orders, and service requests are for specified goods and services, in accordance with express terms and conditions of purchase, as defined herein. For the purposes of this document, the terms "bidder" and "contractor" refer to any individual, firm, corporation, or other entity presenting a proposal indicating a desire to enter into contracts with the State, or with whom a contract is executed by the State's Purchasing Agent, and the term "contractor" shall have the same meaning as "vendor".

**2. ENTIRE AGREEMENT** - The State's Purchase Order, or other State contract endorsed by the State Office of Purchases, shall constitute the entire and exclusive agreement between the State and any contractor receiving an award. In the event any conflict between the bidder's standard terms of sale, these conditions or more specific provisions contained in the solicitation shall govern. All communication between the State and any contractor pertaining to any award or contract shall be accomplished in writing.

- **a.** Each proposal will be received with the understanding that the acceptance, in writing, by contract or Purchase Order by the Purchasing Agent of the offer to do work or to furnish any or all the materials, equipment, supplies or services described therein shall constitute a contract between the bidder and the State. This shall bind the bidder on his part to furnish and deliver at the prices and in accordance with the conditions of said accepted proposal and detailed specifications and the State on its part to order from such contractor (except in case of emergency) and to pay for at the agreed prices, all materials, equipment, supplies or services specified and delivered. A contract shall be deemed executory only to the extent of funds available for payment of the amounts shown on Purchase Orders issued by the State to the contractors.

**b.** No alterations or variations of the terms of the contract shall be valid or binding upon the State unless submitted in writing and accepted by the Purchasing Agent. All orders and changes thereof must emanate from the Office of Purchases; no oral agreement or arrangement made by a contractor with an agency or employee will be considered to be binding on the Purchasing Agent, and may be disregarded.

**c.** Contracts will remain in force for the contract period specified or until all articles or services ordered before date of termination shall have been satisfactorily delivered or rendered and accepted and thereafter until all terms and conditions have been met, unless

1. terminated prior to expiration date by satisfactory delivery against orders of entire quantities, or

2. extended upon written authorization of the Purchasing Agent and accepted by the contractor, to permit ordering of the unordered balances or additional quantities at the contract price and in accordance with the contract terms, or

3. canceled by the State in accordance with other provisions stated herein.

**d.** It is mutually understood and agreed that the contractor shall not assign, transfer, convey, sublet or otherwise dispose of this contract or his right, title or interest therein, or his power to execute such contract, to any other person, company or corporation, without the previous consent, in writing, of the Purchasing Agent.

**e.** If, subsequent to the submission of an offer or issuance of a purchase order or execution of a contract, the bidder or contractor shall merge with or be acquired by another entity, the contract may be terminated, except as a corporate resolution prepared by the contractor and the new entity ratifying acceptance of the original bid or contract terms, condition, and pricing is submitted to the Office of Purchases, and expressly accepted.

**f.** The contractor or bidder further warrants by submission of an offer or acceptance of a purchase order or other contract that he has no knowledge at the time of such action of any outstanding and delinquent or otherwise unsettled debt owed by him to the State, and agrees that later discovery by the Purchasing Agent that this warranty was given in spite of such knowledge, except where the matter is pending in hearing or from any appeal therefrom, shall form reasonable grounds for termination of the contract.

**3. SUBCONTRACTS** - No subcontracts or collateral agreements shall be permitted, except with the State's express consent. 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.

**4. RELATIONSHIP OF PARTIES** - The contractor or bidder warrants, by submission of an offer or acceptance of a purchase order or other contract, that he is not an employee, agent, or servant of the State, and that he is fully qualified and capable in all material regards to provide the specified goods and services. Nothing herein shall be construed as creating any contractual relationship or obligation between the State and any sub-bidder, subcontractor, supplier, or employee of the contractor or offeror.

**5. COSTS OF PREPARATION** - All costs associated with the preparation, development, or submission of bids or other offers will be borne by the offeror. The State will not reimburse any offeror for such costs.

**6. SPECIFIED QUANTITY REQUIREMENT** - Except where expressly specified to the contrary, all solicitations and contracts are predicated on a specified quantity of goods or services, or for a specified level of funding.

- **a.** The State reserves the right to modify the quantity, scope of service, or funding of any contract, with no penalty or charge, by written notice to the contractor, except where alternate terms have been expressly made a part of contract.

- b.** The State shall not accept quantities in excess of the specified quantity except where the item is normally sold by weight (where sold by weight, the State will not accept quantities greater than ten per cent [10%] of the specified quantity), or where the Request or Contract provides for awards for other than exact quantities.

- c.** Purchase Orders or other contracts may be increased in quantity or extended in term without subsequent solicit with the mutual consent of the contractor and the State, where determined by the Purchasing Agent to be in the State's best interest.

**7. TERM AND RENEWAL** - Where offers have been requested or contracts awarded for terms exceeding periods of twelve (12) months, it is mutually understood and agreed that the State's commitment is limited to a base term not to exceed twelve (12) months, subject to renewal annually at the State's sole option for successive terms as otherwise described, except where expressly specified to the contrary. Purchase orders appearing to commit to obligations of funding or terms of performance may be executed for administrative convenience, but are otherwise subject to this provision, and in such cases the State's renewal shall be deemed to be automatic, conditional on the continued availability of appropriated funds for the purpose, except as written notice of the State's intent not to renew is served.

**8. DELIVERY** - Delivery must be made as ordered and in accordance with the proposal. If delivery qualifications do not appear on the bidder's proposal, it will be interpreted to mean that goods are in stock and that shipment will be made within seven (7) calendar

days. The decision of the Purchasing Agent, as to reasonable compliance with the delivery terms, shall be final. Burden of proof of delay in receipt of order shall rest with the contractor. No delivery charges shall be added to invoices except when authorized on the Purchase Order.

**9. FOREIGN CORPORATIONS** - In accordance with Title 7 Chapter 1.1 of the General Laws of Rhode Island, no foreign corporation shall have the right to transact business in this state until it shall have procured a certificate of authority so to do from the Secretary of State.

**10. PRICING** - All pricing offered or extended to the State is considered to be firm and fixed unless expressly provided for to the contrary. All prices shall be quoted F.O.B. Destination with freight costs included in the unit cost to be paid by the State, except, where the Request or Contract permits, offers reflecting F.O.B. Shipping Point will be considered, and freight costs may then be prepaid and added to the invoice.

**11. COLLUSION** - Bidder or contractor warrants that he has not, directly or indirectly, entered into any agree participated in any collusion or otherwise taken any action in restraint of full competitive bidding. In special circumstances, an executed affidavit will be required as a part of the bid.

**12. PROHIBITION AGAINST CONTINGENT FEES AND GRATUITIES** - Bidder or contractor warrants that he has not paid, and agrees not to pay, any bonus, commission, fee, or gratuity to any employee or official of the State for the purpose of obtaining any contract or award issued by the State. Bidder or contractor further warrants that no commission or other payment has been or will be received from or paid to any third party contingent on the award of any contract by the State, except as shall have been expressly communicated to the State Purchasing Agent in writing prior to acceptance of the contract or award in question. Subsequent discovery by the State of non-compliance with these provisions shall constitute sufficient cause for immediate termination of all outstanding contracts and suspension or debarment of the bidder(s) or contractor(s) involved.

**13. AWARDS** - Awards will be made with reasonable promptness and by written notice to the successful bidder (only); bids are considered to be irrevocable for a period of sixty (60) days following the bid opening unless expressly provided for to the contrary in the Request, and may not be withdrawn during this period without the express permission of the Purchasing Agent.

- **a.** Awards shall be made to the bidder(s) whose offer(s) constitutes the lowest responsive price offer (or lowest responsive price offer on an evaluated basis) for the item(s) in question or for the Request as a whole, at the option of the State. The State reserves the right to determine those offers which are responsive to the Request, or which otherwise serve its best interests.



**b.** The State reserves the right, before making award, to initiate investigations as to whether or not the materials, equipment, supplies, qualifications or facilities offered by the bidder meet the requirements set forth in the proposal and specification, and are ample and sufficient to insure the proper performance of the contract in the event of award. If upon such examination it is found that the conditions of the proposal are not complied with or that articles or equipment proposed to be furnished do not meet the requirements called for, or that the qualifications or facilities are not satisfactory, the State may reject such a bid. It is distinctly understood, however, that nothing in the foregoing shall mean or imply that it is obligatory upon the State to make any examinations before awarding a contract; and it is further understood that if such examination is made, it in no way relieves the contractor from fulfilling all requirements and conditions of the contract.

**c.** Qualified or conditional offers which impose limitations of the bidder's liability or modify the requirements of the bid, offers for alternate specifications, or which are made subject to different terms and conditions than those specified by the State may, at the option of the State, be

1. rejected as being non-responsive, or
2. set aside in favor of the State's terms and conditions (with the consent of the bidder), or
3. accepted, where the State Purchasing Agent determines that such acceptance best serves the interests of the State.

• Acceptance or rejection of alternate or counter-offers by the State shall not constitute a precedent which shall be considered to be binding on successive solicitations or procurements.

**d.** Bids submitted in pencil, or which do not bear an original signature, in ink, by an owner or authorized agent thereof, will not be accepted.

**e.** Bids must be extended in the unit of measure specified in the Request. In the event of any discrepancy between unit prices and their extensions, the unit price will govern.

**f.** The Purchasing Agent reserves the right to determine the responsibility of any bidder for a particular procurement.

**g.** The Purchasing Agent reserves the right to reject any and all bids in whole or in part, to waive technical defects, irregularities, and omissions, and to give consideration to past performance of the offerors where, in his judgement the best interests of the State will be served by so doing.

**h.** The Purchasing Agent reserves the right to make awards by items, group of items or on the total low bid for all the items specified as indicated in the detailed specification, unless the bidder specifically indicates otherwise in his bid.

**i.** Preference may be given to bids on products raised or manufactured in the State, other things being equal.

**j.** The impact of discounted payment terms shall not be considered in evaluating responses to any Request.

**k.** The Purchasing Agent reserves the right to act in the State's best interests regarding awards caused by clerical errors by the Office of Purchases.

**14. SUSPENSION AND DEBARMENT** - The Purchasing Agent may suspend or debar any vendor or potential bidder, for good cause shown:

• **a.** A debarment or suspension against a part of a corporate entity constitutes debarment or suspension of all of its divisions and all other organizational elements, except where the action has been specifically limited in scope and application, and may include all known corporate affiliates of a contractor, when such offense or act occurred in connection with the affiliate's performance of duties for or on behalf of the contractor, or with the knowledge, approval, or acquiescence of the contractor or one or more of its principals or directors (or where the contractor otherwise participated in, knew of, or had reason to know of the acts).

**b.** The fraudulent, criminal or other serious improper conduct of any officer, director, shareholder, partner, employee, or any other individual associated with a contractor may be imputed to the contractor when the conduct occurred in connection with the individual's performance of duties for or on behalf of the contractor, or with the contractor's knowledge, approval or acquiescence. The contractor's acceptance of benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

**c.** A vendor or contractor who knowingly engages as a subcontractor for a contract awarded by the State to a vendor or contractor then under a ruling of suspension or debarment by the State shall be subject to disallowance of cost, annulment or termination of award, issuance of a stop work order, or debarment or suspension, as may be judged to be appropriate by the State Purchasing Agent.

**15. PUBLIC RECORDS** - Contractors and bidders are advised that all documents, correspondence, and other submissions to the Office of Purchases may be accessible as public records, pursuant to Title 38, Chapter 2 of the General Laws, absent specific notice that portions of such submittals may contain confidential or proprietary information, such that public access to those items should be withheld.

**16. PRODUCT EVALUATION** - In all specifications, the words "or equal" are understood after each article when manufacturer's name or catalog are referenced. If bidding on items other than those specified, the bidder must, in every instance, give the trade designation of the article, manufacturer's name and detailed specifications of the item the bidder proposes to furnish; otherwise, the bid will be construed as submitted on the identical commodity described in the detailed specifications. The Purchasing Agent reserves the right to determine whether or not the item submitted is the approved equal the detailed specifications.

- **a.** Any objections to specifications must be filed by a bidder, in writing, with the Purchasing Agent at least 96 hours before the time of bid opening to enable the Office of Purchases to properly investigate the objections.

- b.** All standards are minimum standards except as otherwise provided for in the Request or Contract.

- c.** Samples must be submitted to the Office of Purchases in accordance with the terms of the proposals and detailed specifications. Samples must be furnished free of charge and must be accompanied by descriptive memorandum invoices indicating whether or not the bidder desires their return and specifying the address to which they are to be returned (at the bidder's risk and expense), provided they have not been used or made useless by tests; and absent instructions, the samples shall be considered to be abandoned. Award samples may be held for comparison with deliveries.

- d.** All samples submitted are subject to test by any laboratory the State Purchasing Agent may designate.

**17. PRODUCT ACCEPTANCE** - All merchandise offered or otherwise provided shall be new, of prime manufacture, and of first quality unless otherwise specified by the State. The State reserves the right to reject all nonconforming goods, and to cause their return for credit or replacement, at the State's option. Contract deliverables specified for procurements of services shall be construed to be work products, and subject to the provisions of this section.

- **a.** Failure by the State to discover latent defect(s) or concealed damage or non-conformance shall not foreclose the State's right to subsequently reject the goods in question.

- b.** Formal or informal acceptance by the State of non-conforming goods shall not constitute a precedent for successive receipts or procurements.

- c.** Where the contractor fails to promptly cure the defect or replace the goods, the State reserves the right to cancel the Purchase Order, contract with a different contractor, and to invoice the original contractor for any differential in price over the original contract price.

d. When materials, equipment or supplies are rejected, the same must be removed by the contractor from the premises of the State Agency within forty-eight (48) hours of notification. Rejected items left longer than two days will be regarded as abandoned and the State shall have the right to dispose of them as its own property.

**18. PRODUCT WARRANTIES** - All product or service warranties normally offered by the contractor or bidder shall accrue to the State's benefit, in addition to any special requirements which may be imposed by the State. Every unit delivered must be guaranteed against faulty material and workmanship for a period of one year unless otherwise specified, and the State may, in the event of failure, order its replacement, repair, or return for full credit, at its sole option.

**19. PAYMENT** - Unless otherwise provided for by the Request or Contract, payment shall not be made until delivery has been made, or services performed, in full, and accepted. Payment shall not be due prior to thirty (30) working days following the latest of completion, acceptance, or the rendering of a properly submitted invoice.

• a. Payment terms other than the foregoing may be rejected as being nonresponsive.

b. No partial shipments will be accepted, unless provided for by the Request or Contract.

c. Where a question of quality is involved, payment in whole or part against which to charge back any adjustment required, shall be withheld at the direction of the Purchasing Agent. In the event a cash discount is stipulated, the withholding of payments, as herein described, will not deprive the State from taking such discount.

d. Payments for used portion of inferior delivery will be made by the State on an adjusted price basis.

e. Payments on contracts under architectural or engineering supervision must be accompanied by a Certificate of Payment and Statement of Account signed by the architect or engineer and submitted to the Agency involved for approval.

**20. THIRD PARTY PAYMENTS** - The State recognizes no assigned or collateral rights to any purchase agreement except as may be expressly provided for in the bid or contract documents, and will not accede to any request for third party or joint payment(s), except as provided for in specific orders by a court of competent jurisdiction, or by express written permission of the Purchasing Agent. Where an offer is contingent upon such payment(s), the offeror is obligated to serve affirmative notice in his bid submission.

**21. SET-OFF AGAINST PAYMENTS** - Payments due the contractor shall be subject to reduction by the State Controller equal to the amount of unpaid and delinquent state taxes (or other just debt owed to the State), except where notice of delinquency has not been served or while the matter is pending in hearing or from any appeal therefrom.

**22. CLAIMS** - Any claim against a contractor may be deducted by the State from any money due him in the same or other transactions. If no deduction is made in such fashion, the contractor shall pay the State the amount of such claim on demand. Submission of a voucher and payment, thereof, by the State shall not preclude the Purchasing Agent from demanding a price adjustment in any case when the commodity delivered is later found to deviate from the specifications and proposal.

- a. The Purchasing Agent may assess dollar damages against a vendor or contractor determined to be non-performing or otherwise in default of their contractual obligations equal to the cost of remedy incurred by the State, and make payment of such damages a condition for consideration for any subsequent award. Failure by the vendor or contractor to pay such damages shall constitute just cause for disqualification and rejection, suspension, or debarment.

**23. STATE CONTROLLER'S CERTIFICATION OF FUNDING** - Certification as to the availability of funds to support the procurement for the current fiscal year ending June 30th only. Where delivery or service requirements extend beyond the end of the current fiscal year, such extensions are subject to both the availability of appropriated funds and a determination of continued need.

**24. UNUSED BALANCES** - Unless otherwise specified, all unused Blanket Order quantities and/or unexpended funds shall be automatically canceled on the expiration of the specified term. Similarly, for orders encompassing more than one State fiscal year, unexpended balances of funding allotted for an individual fiscal year may be liquidated at the close of that fiscal year, at the State's sole option.

**25. MINORITY BUSINESS ENTERPRISES** - Pursuant to the provisions of Title 37 Chapter 14.1 of the General Laws, the State reserves the right to apply additional consideration to offers, and to direct awards to bidders other than the responsive bid representing the lowest price where:

- a. the offer is fully responsive to the terms and conditions of the Request, and
- b. the price offer is determined to be within a competitive range (not to exceed 5% higher than the lowest responsive price offer) for the product or service, and
- c. the firm making the offer has been certified by the R.I. Department of Economic Development to be a small business concern meeting the criteria established to be considered a Minority Business Enterprise. Ten per cent [10%] of the dollar value of the work performed against contracts for construction exceeding \$5,000 shall be performed by Minority Business Enterprises where it

has been determined that subcontract opportunities exist, and where certified Minority Business Enterprises are available. A contractor may count towards its MBE, DBE, or WBE goals 60% of its expenditures for materials and supplies required under a contract and obtained from an MBE, DBE, or WBE regular dealer, and 100% of such expenditures when obtained from an MBE, DBE, or WBE manufacturer. Awards of this type shall be subject to approval, by the Director of Administration, of a Subcontracting Plan submitted by the bidder receiving the award.

**26. PREVAILING WAGE REQUIREMENT** - In accordance with Title 37 Chapter 13 of the General Laws of Rhode Island, payment of the general prevailing rate of per diem wages and the general prevailing rate for regular, overtime and other working conditions existing in the locality for each craft, mechanic, teamster, or type of workman needed to execute this work is a requirement for both contractors and subcontractors for all public works.

**27. EQUAL OPPORTUNITY COMPLIANCE, HANDICAPPED ACCESS AND AFFIRMATIVE ACTION** - Contractors of the State are required to demonstrate the same commitment to equal opportunity as prevails under federal contracts controlled by Federal Executive Orders 11246, 11625, 11375 and 11830, and Title 28 Chapter 5.1 of the General Laws of Rhode Island. Affirmative action plans shall be submitted by the contractor for review by the State Equal Opportunity Office. A contractor's failure to abide by the rules, regulations, contract terms and compliance reporting provisions as established shall be grounds for forfeiture and penalties as shall be established, including but not limited to suspension.

**28. DRUG-FREE WORKPLACE REQUIREMENT** - In accordance with Executive Order No. 91-14, Contractors who do business with the State and their employees shall abide by the State's drug-free workplace policy and the contractor shall so attest by signing a certificate of compliance.

**29. GOODS PRODUCED IN THE REPUBLIC OF SOUTH AFRICA** - In accordance with Chapters 35-10-12 and 37-2-57 of the General Laws, goods which are known to be wholly produced in the Republic of South Africa may not be accepted for any procurement the State of Rhode Island; the offeror attests by his submission of a bid or offer, or acceptance of a purchase order or other contract, that these prohibitions do not apply to material or goods which form the basis for his offer or contract.

**30. TAXES** - The State of Rhode Island is exempt from payment of excise, transportation and sales tax imposed by the Federal or State Government. These taxes should not be included in the proposal price. Exemption Certificates will be furnished upon request.

**31. INSURANCE** - All construction contractors, independent tradesmen, or firms providing any type of maintenance, repair, or other type of service to be performed on state premises, buildings, or grounds are required to purchase and maintain coverage with a company or companies licensed to do business in the state as follows:

- a. Comprehensive General Liability Insurance -
  - 1) Bodily Injury \$1,000,000 each occurrence
    - \$1,000,000 annual aggregate
  - 2) Property Damage \$500,000 each occurrence
- \$500,000 annual aggregate
  - Independent Contractors
  - Contractual - including construction hold harmless and other types of contracts or agreements in effect for insured operations
  - Completed Operations
  - Personal Injury (with employee exclusion deleted)
- b. Automobile Liability Insurance -
- Combined Single Limit \$1,000,000 each occurrence
  - Bodily Injury
  - Property Damage, and in addition non-owned and/or hired vehicles and equipment
- c. Workers' Compensation Insurance -
- Coverage B \$100,000

The Purchasing Agent reserves the right to consider and accept alternate forms and plans of insurance or to require additional or more extensive coverage for any individual requirement. Successful bidders shall provide certificates of coverage, reflecting the State of Rhode Island as an additional insured, to the Office of Purchases, forty-eight (48) hours prior to the commencement of work, as a condition of award. Failure to comply with this provision shall result in rejection of the offeror's bid.

**32. BID SURETY** - When requested, a bidder must furnish a Bid Bond or Certified Check for 5% of his bid, or for the stated amount shown in the solicitation. Bid Bonds must be executed by a reliable Surety Company authorized to do business in the State of Rhode Island. Failure to provide Bid Surety with bid may be cause for rejection of bid. The Bid Surety of any three bidders in contention will be held until an award has been made according to the specifications of each proposal. All others will be returned by mail within 48 hours following the bid opening. Upon award of a contract, the remaining sureties will be returned by mail unless instructed to do otherwise.

**33. PERFORMANCE AND LABOR AND PAYMENT BONDS** - A performance bond and labor and payment bond of up to 100% of an award may be required by the Purchasing Agent. Bonds must meet the following requirements:

- a. Corporation: The Bond must be signed by an official of the corporation above his official title and the corporate seal must be affixed over his signature.
- b. Firm or Partnership: The Bond must be signed by all of the partners and must indicate that they are "Doing Business As (name of firm)."
- c. Individual: The Bond must be signed by the individual owning the business and indicate "Owner."

- d. The Surety Company executing the Bond must be licensed to do business in the State of Rhode Island or Bond must be countersigned by a company so licensed.
- e. The Bond must be signed by an official of the Surety Company and the corporate seal must be affixed over his signature.
- f. Signatures of two witnesses for both the principal and the Surety must appear on the Bond.
- g. A Power of Attorney for the official signing of the Bond for the Surety Company must be submitted with the Bond.

**34. DEFAULT AND CANCELLATION** - A contract may be canceled or annulled at the contractor's expense upon non-performance of contract, or breach, by the contractor, of any of his obligations. Failure of contractor to cure such non-performance or breach within ten working days after the receipt of notice, shall be sufficient cause for the cancellation of the contract in question, the cancellation of all outstanding contracts or sub-contracts held by the contractor, and the suspension or debarment of the contractor from future procurements.

- a. Failure of a contractor to deliver or perform within the time specified, or within reasonable time as interpreted by the Purchasing Agent or failure to make replacement of rejected articles, when so requested, immediately or as directed by the Purchasing Agent, will cause the Purchasing Agent to purchase in the open market to replace those rejected or not delivered. The Purchasing Agent reserves the right to authorize immediate purchase in the open market against rejections on any contract when necessary. On all such purchases, the contractor, or his surety, agrees to promptly reimburse the State for excess costs occasioned by such default. Should the cost be less, the contractor shall have no claim to the difference.
- b. A contractor who fails to commence within the time specified or complete an award made for repairs, alterations, construction, or any other service will be considered in default of contract. The Purchasing Agent may contract for completion of the work with another contractor and seek recourse from the defaulting contractor or his surety.
- c. If contractor consistently fails to deliver quantities or otherwise perform as specified, the Purchasing Agent reserves the right to cancel the contract and purchase the balance in the open market at the contractor's expense.

**35. INDEMNITY** - The contractor guarantees:

- a. To save the State, its agents and employees, harmless from any liability imposed upon the State arising from the negligence, either active or passive, of the contractor, as well as for the use of any copyrighted or uncopyrighted composition, secret process, patented or unpatented invention, article or appliance furnished or used in the performance of the contract of which the contractor is not the patentee, assignee or licensee.
- b. To pay for all permits, licenses and fees and give all notices and comply with all laws, ordinances, rules and regulations of the city or town in which the installation is to be made and of the State of Rhode Island.



c. That the equipment offered is standard new equipment, latest model of regular stock product with all parts regularly used with the type of equipment offered; also, that no attachment or part has been substituted or applied contrary to manufacturer's recommendations and standard practice.

**36. CONTRACTOR'S OBLIGATIONS** - In addition to the specific requirements of the contract, construction and building repair contractors bear the following standard responsibilities:

- a. To furnish adequate protection from damage for all work and to repair damages of any kind, for which he or his workmen are responsible, to the building or equipment, to his own work, or to the work of other contractors;
- b. To clear and remove all debris and rubbish resulting from his work from time to time, as directed or required, a completion of the work leave the premises in a neat unobstructed condition, broom clean, and in satisfactory order and repair;
- c. To store equipment, supplies, and material at the site only upon approval by the State, and at his own risk;
- d. To perform all work so as to cause the least inconvenience to the State, and with proper consideration for the rights of other contractors and workmen;
- e. To acquaint themselves with conditions to be found at the site, and to assume responsibility for the appropriate dispatching of equipment and supervision of his employees during the conduct of the work; and
- f. To ensure that his employees are instructed with respect to special regulations, policies, and procedures in effect for any State facility or site, and that they comply with such rules.

**37. FORCE MAJEURE** - All orders shall be filled by the contractor with reasonable promptness, but the contractor shall not be held responsible for any losses resulting if the fulfillment of the terms of the contract shall be delayed or prevented by wars, acts of public enemies, strikes, fires, floods, acts of God, or for any other acts not within the control of the contractor and which by the exercise of reasonable diligence, the contractor is unable to prevent.

**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 Section 14. Suspension and Debarment and/or Section 34. Default and Cancellation of the general terms and conditions.

The within amended Rules and Regulations were adopted by me as Director of the Department of Administration on the \_\_\_\_\_ day of January, 2009.

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Jerome F. Williams  
Director, Department of Administration