

**Employees' Retirement System of Rhode Island
and
Municipal Employees' Retirement System**

Regulation No. 1

November, 1995

General Administrative Rules of the Retirement Board

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Section (1) Board Administration

(A) General

(1) Definitions.

(a) the word “board “ means the Employees Retirement Board of Rhode Island;

(b) the word “member” means a member of the Employees Retirement Board of Rhode Island;

(c) the word “fiduciary “ means any person who exercises any discretionary authority or discretionary control respecting management of the funds of any retirement system or exercises any authority or control respecting management or disposition of its assets, including, without limitation: any retirement board member; any retirement board staff member who exercises such authority or control.

(2) Creation and Purpose.

There is created an Employees Retirement System of Rhode Island for the purpose of providing retirement, survivor and disability benefits for state employees, public school teachers and participating municipal employees. The system is governed by a board which is chaired by the General Treasurer.

Statutory References: 36-8-2, 36-8-3; 42-35-18.

(3) Membership.

The board is composed of fifteen members in accordance with state law who by virtue of their duties are to be considered fiduciaries of the system. Its membership includes as ex-officio members:

- (1) the General Treasurer;
- (2) the Director of Administration or his/her designee;
- (3) the Budget Officer or his/her designee;
- (4) the House Fiscal Advisor or his/her designee;
- (5) the president of the RI League of Cities & Towns or his/her designee;
- (6) the chairperson of House Finance Committee or his/her designee;
- (7) the chairperson of the Senate Finance Committee or his/her designee;

and as elected members:

- (1) two active state employee members of the system or officials from state employee unions;
- (2) two active teacher members of the system or officials from teachers unions;
- (3) one active municipal employee member of the system or an official from a municipal employee union;
- (4) one retired member of the system; and

as members appointed by the Governor:

- (1) two (2) public representatives one of whom shall be a Chartered Life Underwriter.

Statutory References: 36-8-4.

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(4) Board Terms.

(a) Ex-officio members serve until such time as their successors are named. All elected and appointed members serve a term of 4 years or until such time as their successors are named.

Statutory Reference: 36-8-4

(5) Board Authority and Duties.

The board shall:

- (1) establish all rules and regulations for the administration of the system;
- (2) appoint an Executive Director and Assistant Executive Director who shall serve at its pleasure and make recommendations as to the compensation levels of such positions;
- (3) subscribe to the code of Fiduciary Responsibility as outlined in these rules;
- (4) approve all applications for ordinary and accidental disability retirement;
- (5) rule on administrative decisions as provided for in Regulation No. 4 of the promulgated rules of the Employees' Retirement System;
- (6) submit to the governor on or before December 1st of each year, an annual financial report for the prior fiscal year;
- (7) approve any agreement negotiated after January 1, 1992 between a state or municipal department and employees whose conditions are be considered contrary to the rules and regulations and policies of the retirement system;
- (8) secure the services of an actuary and physicians;
- (9) approve the assumptions for the yearly preparation of an actuarial valuation;
- (10) approve a yearly budget of the retirement system, excluding those monies allocated for Treasury personnel assigned to the retirement system;
- (11) review yearly audits of the retirement system;
- (12) serve on such Sub-Committees as assigned by the Chair.

Statutory Reference: 36-8-4, 36-8-8, 36-8-9, 36-8-10, 36-8-19.

(6) Reimbursement of Board Expenses

Board members may be reimbursed for special expenses incurred as a result of his/her membership on the board, but may not be reimbursed for travel to and from all regular meetings of the Board and its sub-committees.

Statutory Reference: 36-8-7.

(7) Board Education and Professional Development.

The Executive Director shall notify all Board members of selected conferences and workshops that will increase understanding of public pension administration and the Board's role as fiduciaries of the retirement system.

The Board shall approve attendance by members at such conferences.

Board members shall be reimbursed for attendance at such conferences and workshops, but in no event shall such expenses exceed \$1,500 per fiscal year per member unless advance approval is obtained by the General Treasurer.

(8) Duties of the Executive Director.

The Executive Director shall:

- (1) serve as the Executive Secretary to the Board and be responsible for the formulation of a monthly agenda and board minutes;
- (2) be responsible for the day-to-day administration of the retirement system including the promulgation of administrative decisions;
- (3) submit to the Board for its approval an annual budget for the administrative operation of the retirement system;
- (4) provide an organizational chart of the retirement system to the board;
- (5) make available to the Board the findings of all external and internal audits of the retirement system;
- (6) secure the services of a medical advisor and such physicians, as required, to conduct medical examinations as required by law or as requested by the Disability Committee;

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- (7) secure the services of lawyers, as necessary, to serve as hearing officers in conjunction with Regulation No. 4 of the promulgated rules of the Employees' Retirement System;
- (8) to represent the system as necessary before the Legislature and the State Investment Commission (SIC);
- (9) to represent the system and the State of Rhode Island within the National Association of State Retirement Administrators and other national public retirement organizations.

Statutory Reference: 36-8-9.

(9) Officers

There shall be a Vice-Chairperson of the board who shall be elected by the Board membership no later than July of the year following the Board elections. The Vice-Chairperson shall serve a four-year term.

Statutory Reference: 36-8-4, 36-8-9.

(10) Committees.

- (a) The chairperson will appoint five board members to the standing committees and special committees and shall serve on all committees ex-officio. Each committee shall select a chairperson and vice chairperson. The chairperson shall preside at all meetings. In the absence of the chairperson, the vice chairperson shall preside. All board members except the public representatives will be allowed to send a designee to represent him/her on such standing committees and to vote provided a written proxy statement has been entered. In the case of all elected members, the designee must be a member of the membership group of the elected member. At any time the Board may increase or decrease the number of members to standing or special committees.

Committee assignments shall be made no later than July following an election of elected retirement board members. Committee assignments shall be made every two years or at other times as deemed necessary by the Chairperson.

To facilitate the operation of the Board, the following standing committees are established:

- (a) Disabilities:** the Committee on Disabilities shall review all applications for ordinary and accidental disability allowances, and make recommendations for the disposition of claims, and shall conduct hearings as required;

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(b) Rules and Regulations: the Committee on Rules and Regulations formulates rules and regulations that govern the policy, practices, and procedures of the Retirement System, and periodically reviews such.

(c) Legislative: the Legislative Committee shall review all such recommendations and suggestions regarding amendments to the retirement law and shall make such recommendations to interested legislators for consideration by the General Assembly.

(c) Procurement: the Procurement Committee as provided for in Regulation No. 4 of the promulgated rules of the Employees' Retirement System. For purchases of over \$20,000 up to \$50,000, the Procurement Committee has the responsibility of the Chief Purchasing Officer of the system.

Statutory Reference: 36-8-4, 36-8-9.

(11) Special Committees

The chair may establish special committees to deal with particular issues as they arise. The committee will be discharged once its tasks have been completed.

Statutory Reference: 36-8-4, 36-8-9.

(12) Code of Ethics for Fiduciaries

Anyone deemed to be a fiduciary shall subscribe and conform to the following code of ethics:

(1) Fiduciaries should conduct themselves with integrity and act in an ethical manner in their dealings with the public, retirement board, employers, employees, and fellow fiduciaries.

(2) Fiduciaries should conduct themselves and should encourage other fiduciaries to perform their functions in an professional and ethical manner that will reflect credit on themselves and the other fiduciaries.

(3) Fiduciaries should act with competence and should strive to maintain and improve their competence and that of other fiduciaries.

(4) Fiduciaries should use proper care and exercise independent professional judgment.

Statutory Reference: 36-8-17.

(13) Standard of Conduct for Fiduciaries

Every fiduciary shall:

- (a) Discharge his or her duties for the exclusive purpose of providing benefits to retirement system members and their beneficiaries;
- (b) Act with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with like aims;
- (c) Operate in accordance with the Rhode Island General Laws on retirement as well as promulgated regulations by the Retirement Board.

No fiduciary shall:

- (a) Deal with retirement system assets for his or her own account or in his or her own interest.
- (b) Act in any manner affecting a retirement system on behalf of any person or organization whose interests are adverse to the interests of the system, its members or beneficiaries;
- (c) receive any thing of value for his or her own personal account from any person or organization in connection with a transaction involving retirement system assets. A fiduciary who is a member of the retirement system shall not be deemed to have dealt with retirement system assets for his or her own account, or in his or her own interest or to have received anything of value for his or own personal account, to the extent that the fiduciary derives a benefit as a result of his/her membership which is not unique and is no greater than the benefit derived by other similarly situated members of the retirement system.

Statutory Reference: 36-8-17.

B. Meetings

(1) Meeting Conduct

The Chairperson will preside at all meetings, unless he/she chooses to relinquish the chair to the Vice-Chairperson. In the absence of the Chairperson, the Vice-Chair shall assume all of the duties and responsibilities of the Chair. The Chairperson may speak in discussion without relinquishing the chair and may make motions and vote on all questions put to the members.

All meetings of the Board shall be open to the public and media except that a meeting may be closed by open call when dealing with the medical history or personality of a particular member upon the affirmative vote of a majority of the board. Where a discussion may reflect in a harmful manner to a member of the retirement system, he/she may choose to have the meeting open or closed.

Statutory Reference: 36-8-3.1, 36-8-4, 36-8-6.

(2) Annual Meeting

The meeting on the second Wednesday of the month of March shall be known as the annual meeting of the Board.

Statutory Reference: 36-8-4.

(3) Regular Meetings

Regular meetings of the Board shall be held on the second Wednesday of each month unless re-scheduled by the Chairperson. Notice of the meeting shall include time and place of the meeting.

Statutory Reference: 36-8-4.

(4) Special Meetings

Special meetings of the Board may be called by a majority of the Board or by the Chairperson by written notice to the Board. The date, time, place, and purpose of any special meeting shall be given to every board member at least three (3) days prior to the meeting whenever practicable.

(5) Meeting Notice, Minutes and Agenda

The executive director shall cause a notice of each regular or annual notice along with the previous month's minutes and agenda to be mailed to each member at least (7) days prior to such meeting.

Statutory Reference: 36-8-4, 36-8-9.

(6) Quorum and Decision

A quorum of the board shall consist of a majority of the membership. A majority vote of the Board shall be necessary for a decision of the Board. The executive director shall maintain a record of all Board proceedings which will be available for public inspection during normal business hours.

Statutory Reference: 36-8-6.

**Employees' Retirement System of Rhode Island
and
Municipal Employees' Retirement System**

Regulation No. 2

Effective: February 14, 1994

Amended: October 13, 1999

**Rules Concerning The Procurement Of
Supplies And Services**

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EMPLOYEES' RETIREMENT SYSTEM OF THE STATE OF RHODE ISLAND

AND

MUNICIPAL EMPLOYEES' RETIREMENT SYSTEM

OF THE STATE OF RHODE ISLAND

Rules For the Procurement Of Supplies and Services

ARTICLE I - GENERAL PROVISIONS

Section 1.1 Introduction. The Employees' Retirement System of the State of Rhode Island and the Municipal Employees' Retirement System of the State of Rhode Island (the "System") is authorized to enter into contracts for the procurement of supplies and services. The purpose of these Rules is to create an equitable and efficient procurement system.

Section 1.2 Definitions. The words defined in this subsection shall have the following meanings wherever they appear in these Rules, unless the context in which they are used clearly requires a different meaning.

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

(2) "Change order" shall mean a written order of the System or a vendor directing or allowing the vendor to make changes authorized by the contract without the consent of the vendor or the System.

(3) "Contract" shall mean all types of agreements, including 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 but shall not mean a cost plus a percentage of cost, contracts providing for the issuance of job or task orders, leases; letter contracts and purchase orders. "Contract" shall include supplemental agreements with respect to any of the foregoing. "Contract" does not include any labor contract with employees of the System or employees of any state agency.

(4) "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, such as supplemental agreements, and unilateral actions, administrative changes, notices of termination, and notices of the exercise of a contract option.

(5) "Established catalog price" shall mean the price included in the most current catalog, price list, schedule, or other form that is regularly maintained by the manufacturer or vendor of an item, is either published or otherwise available for inspection by customers, states prices at which sales are currently or were last made to a significant number of buyers constituting the general buying public for that item and states prices which are obtained from the most recent industry wide publications and informational journals if any.

(6) "Executive Director" shall mean the person appointed by the Retirement Board as executive director pursuant to Section 36-8-9 of the Rhode Island General Laws.

(7) "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.

(8) "Invitation for bids" shall mean all documents, whether attached or incorporated by reference, utilized for soliciting bids in accordance with the procedures set forth in Section 2.1.2 of these Rules.

(9) "Negotiation" shall mean contracting by either the method set forth in Sections 2.1.3, 2.1.4, or 2.1.5.

(10) "Person" shall mean any business, individual, organization or group of individuals.

(11) "Procurement" shall mean the purchasing, buying, renting, leasing or otherwise obtaining of any supplies or services, and all functions that pertain to the obtaining of any supply or service item, including all phases of contract administration.

(12) "Procurement Committee" means a committee composed of five (5) members of the Retirement Board who shall be appointed by the Chair of the Retirement Board for terms of one (1) year in January of each year, provided, however, that the members of such committee first appointed after the adoption of these regulations shall serve until December 31st of the year next following the year of their appointment. Any vacancies in the committee shall be filled by the Chair. The committee shall act by majority vote and a majority shall constitute a quorum.

(13) "Request for proposals" shall mean all documents, whether attached or incorporated by reference, utilized for soliciting proposals in accordance with the procedures set forth in Sections 2.1.3, 2.1.4, and 2.1.5 of these Rules.

(14) "Responsible bidder or offeror" 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.

(15) "Responsive bidder" shall mean a person who has submitted a bid or proposal which conforms in all material respects to the invitation for bids, so that all bidders may stand on equal footing with respect to the method and timeliness of submission and as the substance of any resulting contract. A bidder who submits a bid based on alternative specifications to those contained in the invitation to bid will be responsive only if, in the judgment of the System, the alternative specifications meet the performance objectives of the System with respect to the item or service to be purchased and the invitation to bid states that alternative specifications will be considered.

(16) "Retirement Board" or "Board" means the board established pursuant to Section 36-8-3 of the Rhode Island General Laws to administer the System.

(17) "Services" shall mean the rendering, by a vendor, 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.

(18) "Small business" shall mean a person, partnership, corporation or other form of business entity independently owned and operated, not dominant in its field and which employs 500 or fewer employees and has its principal place of business in the State.

(19) "State" shall mean the State of Rhode Island and any of its departments or agencies and public agencies.

(20) "Supplemental agreement" shall mean any contract modification which is accomplished by the mutual action of the parties.

(21) "Supplies" shall mean all property, excluding real property or leases thereof.

(22) "Vendor" shall mean any person who provides supplies, services, or construction under a contract.

Section 1.3 Application of Rules. These Rules shall apply to all expenditures of funds by the System under a contract, except labor contracts between the System and employees of the System or employees of the State, or other contracts between the System and the State or other governments. The provisions of these Rules shall be considered to be incorporated in all contracts of the System to which they apply.

Notwithstanding anything contained in this Section 1.3, the "Rules of the Employees' Retirement System of the State of Rhode Island and the Municipal Employees' Retirement System of the State of Rhode Island for the Selection of Consultants" shall govern the selection of consultants by the System.

Section 1.4 Procurement Responsibilities of the System. For purchases equal to or in excess of 50 thousand dollars (\$50,000), the Retirement Board shall have all of the authority of the “chief purchasing officer” of the System under Chapter 2 of

Title 37 of the General Laws of Rhode Island and shall retain ultimate decision-making authority over procurements. For purchases equal to or in excess of twenty thousand dollars (\$20,000), but not more than fifty thousand dollars (\$50,000), a majority of the Procurement Committee shall have all of the authority of the “chief purchasing officer” of the System under Chapter 2 of Title 37 of the General Laws of Rhode Island and shall retain ultimate decision-making authority over procurements. For purchases of twenty thousand dollars (\$20,000) or less, the Executive Director shall have all of the authority of the Chief Purchasing Officer. Accordingly, the term “System” shall be used in these Rules to designate: (a) the Executive Director for purchases of twenty thousand dollars (\$20,000) or less, or (b) the Procurement Committee or the Retirement Board acting in the capacity of chief purchasing officer of the System.

Section 1.5 Public Access to Procurement Records. Except as otherwise provided for herein, all procurement information of the System shall be a public record to the extent provided in Chapter 2 of Title 38 (Access to Public Records) of the General Laws of Rhode Island and shall be available to the public as provided in such Act.

Section 1.6 Procurement Decisions of the System. Every determination required by these Rules shall be in writing and based upon written findings of fact by the System. These determinations and written findings shall be retained in an official contract file in the offices of the System.

ARTICLE II - SOURCE SELECTION AND CONTRACT FORMATION

Section 2.1 Source Selection.

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

- (a) competitive-sealed bidding (Section 2.1.2);
- (b) competitive negotiation (Sections 2.1.3 and 2.1.4);
- (c) noncompetitive negotiation (Section 2.1.5);
- (d) small purchase procedures (Section 2.1.6); or
- (e) master price agreements (Section 2.1.7);

2.1.2 Competitive-Sealed Bidding.

(a) Contracts exceeding the amount provided by Section 2.1.6 of these Rules shall be awarded by competitive-sealed bidding unless the System determines in writing that this method is not practicable. Factors to be considered in determining whether competitive-sealed bidding is practicable shall include whether:

(i) specifications can be prepared that permit an award on the basis of either the lowest bid price or the lowest responsible evaluated bid price; and

(ii) the available sources, the time and place of performance, and other relevant circumstances as are appropriate for the use of competitive-sealed bidding.

(b) The invitation for bids shall state whether an award shall be made on the basis of the lowest responsible bid price or the lowest responsible 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.

(c) Public notice of the invitation for bids shall be given by publication in a newspaper of general circulation in the State or a consortium of newspapers, which publish their newspapers at least once each week and have a circulation in one or more communities, not less than seven (7) days nor more than twenty-one (21) days before the date set for the opening of the bids. The System may make a written determination that the twenty-one (21) day limitation needs to be waived. The written determination shall state the reason why the twenty-one (21) day limitation is being waived and shall state the number of days, giving a minimum and maximum, before the date set for the opening of bids when public notice is to be given.

(d) 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.

(e) The contract shall be awarded with reasonable promptness by written notice to the responsive and responsible bidder whose bid is either the lowest bid price or lowest evaluated bid price.

(f) Correction or withdrawal of bids will be allowed only in the following circumstances:

(i) a bidder will not be permitted to correct a bid mistake after bid opening that would cause such bidder to have the low bid unless the mistake is clearly evident from examining the bid document, for example, errors in addition.

(ii) an otherwise low bidder may be permitted to correct a material mistake of fact in its bid, including price, when the intended bid is obvious from the bid document or is otherwise supported by proof that has evidentiary value. A low bidder will not be permitted to correct a bid for mistakes or errors in judgment.

(iii) in lieu of bid correction, a low bidder alleging a material mistake of fact will be permitted to withdraw its bid when there is reasonable proof that a mistake was made and the intended bid cannot be ascertained with reasonable certainty.

(iv) after bid opening, an otherwise low bidder shall not be permitted to make exceptions to the bid conditions or specifications which affect price or substantive obligations; however, such bidder shall be permitted the opportunity to furnish other information called for by the invitation for bids and not supplied due to oversight, so long as it does not affect responsiveness.

2.1.3 Competitive Negotiation.

(a) When the System determines in writing that the use of competitive-sealed bidding is not practicable, and except as provided in Sections 2.1.5, 2.1.6 and 2.1.7 of these Rules, a contract may be awarded by competitive negotiation.

(b) Adequate public notice of the request for proposals shall be given in the same manner as provided in Section 2.1.2(c) of these Rules.

(c) The request for proposals shall indicate the relative importance of price and other evaluation factors.

(d) Award shall be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to the System taking into consideration price and the evaluation factors set forth in the request for proposals.

(e) Written or oral discussions shall be conducted with all responsible offerors who submit proposals determined in writing by the System 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:

- (i) 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
- (ii) where time of delivery or performance will not permit discussions; or
- (iii) 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.

2.1.4 Negotiations After Unsuccessful Competitive-Sealed Bidding.

(a) Contracts may be competitively negotiated when it is determined in writing by the System that the bid prices received by competitive-sealed bidding under Section 2.1.2 of these Rules either are unreasonable as to all or part of the requirements, or were not independently reached in open competition, and for which:

- (i) each competitive bidder has been notified of the intention to negotiate and is given reasonable opportunity to negotiate; and
- (ii) the negotiated price is lower than the lowest rejected bid by any competitive bidder; and
- (iii) the negotiated price is the lowest negotiated price offered by a competitive offeror.

(b) In the event that all bids submitted pursuant to competitive-sealed bidding under Section 2.1.2 of these Rules result in bid prices in excess of the funds available for the purchase, and the System determines in writing:

(i) that there are no additional funds available from any source so as to permit an award to the lowest responsive and responsible bidder, and

(ii) the best interest of the System will not permit the delay attendant to a resolicitation under revised specifications, or for revised quantities, under competitive-sealed bidding as provided in Section 2.1.2 of these Rules, then a negotiated award may be made as set forth in subsection (c) or (d) of this Section 2.1.4.

(c) Where there is more than one bidder, competitive negotiations pursuant to Section 2.1.3 of these Rules 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:

(i) if discussions pertaining to the revision of the specifications or quantities are held with any potential offeror, all other potential offerors shall be afforded an opportunity to take part in such discussions; and

(ii) a request for proposals, based upon revised specifications or guaranties, shall be issued as promptly as possible, shall provide for an expeditious response to the revised requirements, and shall be awarded upon the basis of the lowest bid price or lowest evaluated bid price submitted by any responsive and responsible offeror.

(d) When after competitive-sealed bidding it is determined in writing that there is only one responsive and responsible bidder, a noncompetitive negotiated award may be made with such bidder in accordance with Section 2.1.5 of these Rules.

2.1.5 Sole Source Procurement and Emergency Procurements.

(a) A contract may be awarded for a supply or service item without competition when the System determines, in writing, that there is only one source for the required supply or service item.

(b) Notwithstanding any other provision of these Rules, the System may make emergency procurements when there exists a threat to public health, welfare or safety under emergency conditions, provided that such emergency procurements shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular vendor shall be included in the contract file.

2.1.6 Small Purchases. Procurements, not to exceed an aggregate amount of seventy-five hundred dollars (\$7,500) for all purchases other than construction may be made at the established catalogue or market price of commercial items sold in substantial quantities to the general public. In the case of all other small purchases as defined in this section, the System shall procure items in any manner it believes reasonable. Where practicable, the System shall make inquiries from at least three sources to determine what is a reasonable price. The inquiries may be made by telephone. No such inquiries are required when the price of the item or service is not expected to exceed one hundred dollars (\$100). Procurement requirements shall not be artificially divided by the System so as to constitute a small purchase under this section.

2.1.7 Master Price Agreements. Anything in these Rules to the contrary notwithstanding where any supplies to be purchased by the System are covered by a Master Price Agreement between a vendor and the Division of Purchasing of the Department of Administration of the State, such supplies may be purchased by the System without notice or otherwise following the procedures set forth in Sections 2.1.2 to 2.1.6, inclusive, hereof.

2.1.8 Waiver of Information in Bids and Offers. The System may waive informalities in any bid or offer.

Section 2.2 Cancellation of Invitation for Bids and Requests for Proposals. The System may cancel an invitation for bids, a request for proposal, or negotiations in connection with the procurement of any item or service, or may reject all bids or proposals if the System determines that such action is in the best interests of the System. No such cancellation or rejection shall prevent the System from resoliciting supplies and services for the same project on the same or different terms.

Section 2.3 Responsibility of Bidders and Offerors.

2.3.1 Determination of Responsibility. A written determination of responsibility of a bidder or offeror shall be made by the Executive Director in connection with the award of any contract. The Executive Director may make reasonable inquiries to determine responsibility. The failure of any bidder or offeror to promptly supply information in connection with such inquiries may be grounds for determining that such person is not responsible. Except as otherwise provided by law, information furnished by any bidder or offeror pursuant to this Section 2.3.1 may not be disclosed by the System to any other person without the prior written consent of such person.

2.3.2 Annual Statement of Qualifications. Persons interested in contracting with the System shall be encouraged by the Executive Director to submit to the System annually a statement of qualifications. Solicitation mailing lists of potential vendors shall include but need not be limited to vendors who have submitted annual statements of qualifications.

2.3.3 Cost or Pricing Data.

(a) A vendor shall submit to the System cost or pricing data and shall certify that, to the best of its knowledge and belief, any cost or pricing data required to be submitted was accurate, complete, and current as of a mutually determined specified date prior to the date of the pricing of any negotiated contract where the total contract price is expected to exceed fifty thousand dollars (\$50,000), or the pricing of any change order or contract modification which is expected to exceed twenty-five thousand dollars (\$25,000).

(b) The System may require vendor certified cost or pricing data in connection with any bid, proposal or contract without regard to the price ceilings set forth above if the System determines that such cost or price data is necessary to ensure a fair and reasonable contract price to the System.

(c) Where certified cost or pricing data must be submitted in connection with any contract, change, or modification thereto, the price to the System, including profit or fee, shall be adjusted to exclude any significant sums by which the System finds that such price was increased because the vendor furnished cost or pricing data, as of the date agreed upon between the parties, that was inaccurate, incomplete, or not current.

(d) The System may elect not to require certified cost or pricing data where the price negotiated is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, prices set by law or regulation, or in exceptional cases where the System determines that the requirements of this section may be waived by the System, and the reasons for such waiver are stated in writing.

Section 2.4 Contracts.

2.4.1 Types of Contracts. The System may enter into any type of contract which will promote the best interests of the System subject to the following rules:

(1) Cost plus percentage of cost-type contracts shall not be awarded to any person.

(2) No contract providing for the reimbursement of the vendor's cost plus a fixed fee (herein referred to as a cost-reimbursement-type contract) shall be awarded to any person unless the System determines that this type of contract is likely to be less costly to the System than any other type of contract or that it is impracticable to obtain supplies or services of the kind or

quality required except under such a contract. Each vendor under a cost-reimbursement-type contract shall obtain the consent of the System, as provided for in the contract, before entering into:

(i) a cost-reimbursement type subcontract; or

(ii) any other type of subcontract involving more than ten thousand dollars (\$10,000) or ten percent (10%) of the estimated cost of the prime contract. All cost-reimbursement-type contracts shall permit reimbursement only of allowable costs as determined in accordance with cost principles set forth in Article V of these Rules.

2.4.2 Approval of Accounting System. Except with respect to firm-fixed-price-type contracts, no contract type shall be used by the System unless the System has determined that the proposed vendor'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 vendor's accounting system is adequate to allocate costs in accordance with generally accepted accounting principles.

2.4.3 Partial, Progressive and Multiple Awards.

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

(b) A contract may provide for payments upon submission of proper invoices or vouchers for supplies delivered and accepted or services rendered and accepted where such supplies and services are only part of total contract requirements.

(c) The System may reserve the right to split a contract between two or more responsive and responsible bidders and to make an award for all or only part of the items, services or construction specified in the solicitation, if so stated in the invitation to bid or the request for proposal.

2.4.4 Annual Appropriations. All contracts awarded by the System shall be subject to the availability of annual appropriations by the General Assembly unless prior to the award an amount equal to the contract price has been administratively set aside by the System from then available appropriated funds.

Section 2.5 Inspection of Facilities and Audits of Records.

(a) The System may inspect the plant or place of business of the vendor or any subcontractor under any contract awarded or to be awarded by the System.

(b) The System shall be entitled to audit the books and records of a vendor or any subvendor under any negotiated contract other than a firm-fixed-price-type contract, at any time until the period of retention provided for herein expires. Such books and records shall be maintained by the vendor 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 final payment under the subcontract.

Section 2.6 Reporting of Anti-Competitive Practices.

(a) If for any reason the System suspects collusion among bidders or offerors, the System shall transmit a written notice of the facts giving rise to such suspicion to the Attorney General of the State (the "Attorney General").

(b) All documents involved in any procurement in which collusion is suspected shall be retained by the System until the Attorney General notifies the System that they may be released. All such documents shall be made available to the Attorney General or his or her designee upon request, notwithstanding any other provision of this Rule.

ARTICLE III - SPECIFICATIONS

Section 3.1 Issuance of Specifications.

(a) The Executive Director shall establish and maintain to the extent practicable standards and specifications approved by the Department of Administration of the State, the U.S. Government, and industry and professional associations, relating to the development and use of purchasing specifications and for the inspection, testing and acceptance of supplies and services not inconsistent with the Rules of the System.

(b) The System shall develop to the extent practicable "General Conditions" to be used in various types of contracts entered into by the System.

(c) The System shall from time to time, review those standards and specifications and "General Conditions" which it utilizes, with a view to conforming such standards, specifications and "General Conditions" to all technical and scientific advances and to reflect changes in the System's requirements and to the extent practicable to maximize competition in the fulfillment of the System's requirements.

ARTICLE IV - MODIFICATION AND TERMINATION OF CONTRACTS

Section 4.1 Modification of Contracts. The System may require clauses in its contracts to which it is a party permitting changes or modifications by the System.

Section 4.2 Termination of Contract - Default of Vendor. The System may provide that a contract may be terminated for default of the vendor and may provide for liquidated damages.

Section 4.3 Termination of Contract - Convenience. The System may provide that contracts may be terminated for the convenience of the System or the vendor and in such cases shall provide for appropriate adjustments in price including, where applicable, reimbursement for the reasonable value of any nonrecurring costs incurred but not amortized in the price of any item or service delivered under the contract.

ARTICLE V - COST PRINCIPLES

Section 5.1 Cost and Pricing Principle. Except as otherwise provided by contract, the System shall use generally accepted accounting principles:

- (1) as guidelines in the negotiation of estimated costs for contracts when the absence of open-market competition precludes the use of competitive-sealed bidding, as adjustments for changes or modifications in contract performance requested by the System, and as settlements of contracts which have been terminated;
- (2) to determine the allowability of incurred costs for the purposes of reimbursing costs under contract provisions which provide for the reimbursement of costs; and
- (3) as appropriate in any other situation where determinations of estimated or incurred costs of performing a contract may be required.

ARTICLE VI - DISPUTE RESOLUTION AND DEBARMENT

Section 6.1 Resolution of Protested Solicitation and Award.

(a) Any actual or prospective bidder, offeror, or vendor who is aggrieved in connection with the solicitation or award of any contract may file a protest with the System. A protest must be filed in writing not later than two (2) calendar weeks after such aggrieved person knows or should have known of the facts giving rise thereto.

(b) The System shall promptly issue a decision in writing regarding such protest. A copy of that decision shall be furnished to the aggrieved party and shall state the reasons for the action taken.

(c) In the event a protest is filed in a timely manner under this Section, the System shall not proceed further with the solicitation or award which is the subject of the protest until it has issued a decision on the protest, or determined that continuation of the procurement is necessary to protect a substantial interest of the System.

Section 6.2 Debarment and Suspension.

(a) After reasonable notice to the person involved and reasonable opportunity for that person to be heard, the System may debar a person for cause from consideration for award of contracts contemplated by these Rules. The debarment shall not be for a period of more than three years. The System may suspend a person from consideration for award of contracts if there is probable cause for debarment. The suspension shall be for a period of not less than three months.

(b) Causes for debarment or suspension include the following:

(1) conviction of a criminal offense in connection with obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;

(2) conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a vendor with the System;

(3) conviction under state or federal antitrust statutes arising from the submission of bids or proposals;

(4) violation of contract provisions, as set forth below, of a character which is regarded by the System to be so serious as to justify debarment action:

(i) deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in a contract with the System; or

(ii) recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts with the System or the State; provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the vendor shall not be considered to be a basis for debarment;

(5) any other cause the System determines to be so serious and compelling as to affect responsibility as a vendor, including debarment by a governmental entity.

(c) The System shall issue a written decision to debar or suspend. The decision shall state the reasons for the action taken and inform the debarred or suspended person of its rights to judicial review.

(d) A copy of the decision under Subsection (c) of this Section shall be furnished promptly to the debarred or suspended person.

Section 6.3 Resolution of Contract Disputes. If any claim or controversy arising under contracts to which these Rules apply is not resolved by mutual agreement, the System shall promptly issue a decision in writing regarding the subject matter of such claim or controversy. A copy of that decision shall be furnished to the vendor. If the System 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 vendor may proceed as if an adverse decision had been received from the System.

ARTICLE VII - ADDITIONAL MATTERS

Section 7.1 Equal Employment Opportunity. For all contracts for supplies and services exceeding ten thousand dollars (\$10,000), vendors must comply with the requirements of federal executive order 11246, as amended, and Section 28-5.1-10 of the General Laws of the State. Failure to comply will be considered a substantial breach of the contract subject to penalties prescribed on regulations administered by the Department of Administration of the State.

Section 7.2 Conflict of Interest. No member or employee of the System shall have any interest, financial or otherwise, direct or indirect, or engage in any activity which is in substantial conflict with the proper discharge of his or her duties as a member or employee of the System.

Section 7.3 Legal Counsel. Pursuant to the provisions of Section 36-8-9 and Section 45-21-35 of the General Laws of Rhode Island, legal counsel to the System is chosen by the General Treasurer of the State. Accordingly, nothing herein contained shall be deemed applicable to the selection of legal counsel for the System.

ARTICLE VIII - EFFECTIVE DATE

Section 8.1 Effective Date. These Rules shall become effective upon their adoption by the Board. Thereafter, the Board shall file a copy of these Rules with the Secretary of State.

Section 8.2 Contracts in Effect on Effective Date. These Rules shall not change in any way a contract commitment by the System or of a vendor to the System which was in existence on the effective date of these Rules.

**Employees' Retirement System Of The
State Of Rhode Island
and
Municipal Employees' Retirement System
Of The State Of Rhode Island**

Regulation No. 3

Promulgated: February 14, 1994

Effective: February 14, 1994

Rules Concerning The Selection Of Consultants

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RULES OF
THE EMPLOYEES' RETIREMENT SYSTEM
OF THE STATE OF RHODE ISLAND
AND
THE MUNICIPAL EMPLOYEES' RETIREMENT SYSTEM
OF THE STATE OF RHODE ISLAND
FOR THE SELECTION OF
CONSULTANTS

ARTICLE I - GENERAL PROVISIONS

Section 1.1 Introduction. The Employees' Retirement System of the State of Rhode Island and the Municipal Employees' Retirement System of the State of Rhode Island (the "System") is authorized to employ consulting and other professional services. The purpose of these rules is to adopt internal procedures consistent with the requirements of Chapter 2 of Title 37 of the Rhode Island General Laws (State Purchases Act) in connection with the procurement of consulting services by the System.

Section 1.2 Definitions. All capitalized terms used herein shall have the same meaning as set forth in the "Rules of the Employees' Retirement System of the State of Rhode Island and the Municipal Employees' Retirement System of the State of Rhode Island for the Procurement of Supplies and Services". The words defined in this subsection shall have the following meanings wherever they appear in these Rules, unless the context in which they are used clearly requires a different meaning.

(1) "Consultant" shall mean any person engaged to provide information regarding a particular area of knowledge in which the person has expertise, including, but not limited to, accountants, actuaries, financial consultants, data processing consultants and physicians, excluding, however, legal services.

Section 1.3 Application of Rules. These Rules apply to all expenditures of funds by the System under a contract for consulting services, except contracts between the System and the State of its political subdivisions, or between the System and other governments. The provisions of these Rules shall be considered to be incorporated in all contracts of the System to which they apply.

Notwithstanding anything contained in this Section 1.3, the "Rules of the Employees' Retirement System of the State of Rhode Island and the Municipal Employees' Retirement System of the State of Rhode Island for the Procurement of Supplies and Services" shall govern the procurement of supplies and services.

Section 1.4 Procurement Responsibilities of the System. The Procurement Committee shall select persons or firms to render consultant services pursuant to these Rules. Accordingly, the term "System" shall be used in these Rules to designate the Procurement Committee.

Section 1.5 Public Access to Procurement Records. Except as otherwise provided for herein all procurement records of the System shall be public record to the extent provided in Chapter 2 of Title 38 (Access to Public Records) of the General laws of Rhode Island and shall be available to the public as provided in such Act.

Section 1.6 Procurement Decisions of the System. Every determination required by these Rules shall be in writing and based upon written findings of fact by the System. These determinations and written findings shall be retained in an official contract file in the offices of the System.

ARTICLE II - SELECTION OF CONSULTANTS

Section 2.1 General Policy. It shall be the policy of the System to publicly announce its requirements for consulting services, which are reasonably estimated to exceed ten thousand dollars (\$10,000), and to negotiate contracts for such professional services on the basis of demonstrated competence and qualifications and at fair and reasonable prices.

Section 2.2 Annual Statement of Qualifications and Performance Data. Consultants shall be encouraged by the Executive Director to submit to the System annually a statement of qualifications and performance data which shall include, but not be limited to the following:

1. The name of the firm and the location of its principal place of business and all offices;
2. The age of the firm and its average number of employees over the past five years;
3. The education, training, and qualifications of members of the firm and key employees;
4. The experience of the firm, reflecting technical capabilities and project experience; and

5. Such other pertinent information as requested by the Executive
Director.

Section 2.3 Public Announcement of Needed Consultant Services. The System shall give public notice in a newspaper of general circulation in the State of the need for consultant services which are reasonably estimated to exceed ten thousand dollars (\$10,000). The System may publish such additional notice as it deems necessary to assure response from qualified individuals or firms. Such public 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. The notice shall contain a brief statement of the services required, describe the project and specify how a solicitation containing specific information on the project may be obtained.

Section 2.4 Solicitation.

(a) A solicitation shall be prepared which describes the System's requirements and sets forth the evaluation criteria. It shall be distributed to interested persons.

(b) The solicitation shall describe the criteria to be used in evaluating the statement of qualification and performance data and in the selection of firms. Criteria shall include, but are not limited to:

- (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;
- (2) ability to perform the services as reflected by workload and the availability of adequate personnel, equipment, and facilities to perform the services expeditiously;
- (3) past performance as reflected by the evaluation of private persons and officials of other governmental entities that 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
- (4) the cost of such services.

(c) For services reasonably estimated to exceed twenty thousand dollars (\$20,000), a bidder's conference shall be held which describes the criteria to be used in evaluating the statement of qualification and performance data and in the selection of firms. The scope of work shall be discussed and further defined at such conference, including on-site visits, if appropriate.

Section 2.5 Evaluation of Statements of Qualifications and Performance Data. The consultant selection committee shall evaluate statements that may be submitted in response to the solicitation of consultant services and statements of qualifications and performance data, if required. All such statements shall be evaluated in light of the criteria set forth in the solicitation for consulting services. The consultant selection committee may waive informalities in any such statements.

Section 2.6 Final Selection of Contractors. The consultant selection committee shall select no more than three (3) firms (or two (2) if only two (2) apply) evaluated as being professionally and technically qualified. The firms selected, if still interested in providing the services, shall make a representative available to the consultant selection committee at such time and place as it shall determine, to provide such further information as it may require.

The consultant selection committee shall negotiate with the highest qualified firm for a contract for consulting services for the System at compensation which the consultant selection committee determines to be fair and reasonable. In making such determination, the consultant selection committee shall take into account the professional competence and technical merits of the offerors, and the price for which the services are to be rendered. The consultant selection committee shall be responsible for the final selection of the providers of consulting services.

Section 2.7 Contracts Not Exceeding \$10,000. The Executive Director of the System shall be responsible for the final decision on consulting contracts not expected to exceed ten thousand dollars (\$10,000). The Executive Director shall, however, notify the Department of Administration, the Division of Purchases and the Division of Budget of the State of its selection. The Executive Director shall use the criteria set forth in Section 2.4(b) in making such determinations. Each determination shall be justified in writing.

ARTICLE III - REMEDIES

Section 3.1 Protest of Solicitation and Award.

(a) Any actual or prospective contractor who is aggrieved in connection with the solicitation or award of any contract under these Rules may file a protest with the System. A protest must be filed in writing not later than two (2) calendar weeks after such aggrieved person knows or should have known of the facts giving rise thereto.

(b) The System shall promptly issue a decision in writing regarding such protest. A copy of that decision shall be furnished to the aggrieved party and shall state the reasons for the action taken.

(c) In the event a protest is filed in a timely manner under this Section, the System shall not proceed further with the solicitation or award which is the subject of the protest until it has issued a decision on the protest, or determined that continuation of the procurement is necessary to protect a substantial interest of the System.

Section 3.2 Debarment and Suspension.

(a) After reasonable notice to the person involved and reasonable opportunity for that person to be heard, the System may debar a person for cause from consideration for award of contracts contemplated by these Rules. The debarment shall not be for a period of more than three years. The System may suspend a person from consideration for award of contracts if there is probable cause for debarment. The suspension shall be for a period of not less than three months.

(b) The causes for debarment or suspension include the following:

- (1) conviction of a criminal offense in connection with obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;
- (2) conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a contractor with the System;
- (3) conviction under state or federal antitrust statutes arising out of the submission of bids or proposals;

(4) violation of contract provisions, as set forth below, of a character which is regarded by the System to be so serious as to justify debarment action, including,

(i) deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or

(ii) a recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts; provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment;

(5) any other cause the System determines to be so serious and compelling as to affect responsibility as a contractor, including debarment by a governmental entity.

(c) The System shall issue a written decision to debar or suspend. The decision shall state the reasons for the action taken; and inform the debarred or suspended person of its rights to judicial review.

(d) A copy of the decision under Subsection (c) of this Section shall be furnished promptly to the debarred or suspended person.

Section 3.3 Resolution of Contract Disputes. If any claim or controversy arising under contracts to which these Rules apply is not resolved by mutual agreement, the System shall promptly issue a decision in writing regarding the subject matter of such claim or controversy. A copy of that decision shall be furnished to the contractor. If the System does not issue a written decision within thirty (30) days after written request for a final decision, or within such longer period as might be established by the parties to the contract in writing, then the contractor may proceed as if an adverse decision had been received from the System.

ARTICLE IV - ADDITIONAL MATTERS

Section 4.1 Equal Employment Opportunity. For all contracts for consultant services exceeding ten thousand dollars (\$10,000), contractors must comply with the requirements of federal executive order 11246, as amended, and Section 28-5.1-10 of the General Laws. Failure to comply will be considered a substantial breach of the contract subject to penalties prescribed in regulations administered by the Department of Administration of the State.

Section 4.2 Conflict of Interest. No member or employee of the System shall have any interest, financial or otherwise, direct or indirect, or engage in any activity which is in substantial conflict with the proper discharge of his or her duties as a member or employee of the System.

ARTICLE V - EFFECTIVE DATE

Section 5.1 Effective Date. These Rules shall become effective upon adoption by the Board. Thereafter, the Board shall file a copy of these Rules with the Secretary of State.

Section 5.2 Contracts in Effect on Effective Date. These Rules shall not change in any way a contract commitment by the System or of a contractor to the System which was in existence on the effective date of these Rules.

**Employees' Retirement System And The State of Rhode Island
and
Municipal Employees' Retirement System
Of The State of Rhode Island**

Regulation No. 4

Promulgated: May 11, 1994

Effective: May 11, 1994

Rules of Practice and Procedure for Hearings

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**Employees Retirement System Of The State of Rhode Island
And
Municipal Employees' Retirement System
Of The State of Rhode Island**

Rules of Practice and Procedure for Hearings

Section 1.00 Introduction

These Rules of Practice and Procedure are promulgated pursuant to R.I. General Laws Section 36-8-3. The Rules shall be in effect during any hearing on a contested case before the Retirement Board or its duly authorized representative.

Section 2.00 Definitions

(1) The definitions set forth in R.I. General Laws Section 36-8-1 are specifically incorporated by reference herein.

(2) "Contested case" means any administrative or subcommittee action whereby a member is aggrieved and subsequently requests a hearing before the Retirement Board.

(3) "Party" may mean any member, beneficiary, retirement system or such other person or organization who the hearing officer deems to have standing.

(4) "Hearing officer" shall mean an individual appointed by the Retirement Board to hear and decide a contested case.

Section 3.00 Request for Hearing and Appearance

(a) Any member aggrieved by any administrative action may request a hearing before the Retirement Board. Upon such request, the matter will be deemed a contested case.

(b) Such request shall be in writing and shall be sent to the Retirement Board within thirty (30) days after receipt of the administrative or sub-committee decision.

(c) A request for hearing shall be signed by the member and shall contain the following information:

- (1) Name of member;
- (2) Date and nature of decision being contested;
- (3) A clear statement of the objection to the decision; and
- (4) A concise statement of relief sought.

(d) Requests for hearing should be sent to the Retirement Board at 40 Fountain Street, Providence, RI 02903.

(e) Failure to strictly comply with the procedures outlined in this Section shall be grounds to deny any request for a hearing.

Section 4.00 Contested Cases - Notice

(a) Upon receipt of a request for hearing, the Retirement Board or its designee shall appoint a hearing officer. The appointed hearing officer shall hear the matter, find facts and offer conclusions of law to the Retirement Board.

(b) A date for hearing shall be assigned within forty-five (45) days of receipt of the request for hearing.

(c) In any contested case, all parties shall be afforded an opportunity for hearing after reasonable notice.

(d) The notice shall include:

- (1) A statement of the time, place, and nature of the hearing;
- (2) A statement of the legal authority and jurisdiction under which the hearing is to be held;
- (3) A reference to the particular sections of the statutes and rules involved;
- (4) The name, official title and mailing address of the hearing officer, if any;
- (5) A statement of the issues involved and, to the extent known by the hearing officer, of the matters asserted by the parties; and
- (6) A statement that a party who fails to attend or participate in the hearing may be held to be in default and have his or her appeal dismissed.

(e) The notice may include any other matters the hearing officer considers desirable to expedite the proceedings.

(f) Any party may request that the hearing location be changed due to the disability or infirmity of a member or witness.

Section 5.00 Contested Cases - Hearings

(a) All members shall be afforded an opportunity to respond and present evidence and argument on all issues involved.

(b) Members must appear at the hearing. They may represent themselves or be represented by legal counsel at their own expense.

(c) Continuances and postponements may be granted by the hearing officer.

(d) Disposition may be made of any contested case by stipulation, agreed settlement, consent order or default.

(e) Should the hearing officer determine that written memoranda is required, the member will be notified by the hearing officer of the need to file a written document which discusses the issues of the case. Memoranda of law may always be offered in support of arguments offered by the member or the representative of the retirement system.

(f) The Executive Director may, when he or she deems appropriate, retain independent legal counsel to prosecute any contested case.

(g) A recording of each hearing shall be made. Any party may request a transcript or copy of the tape at their own expense.

Section 6.00

Contested Cases - Conduct of Hearings

(a) Hearings shall be conducted by the hearing officer who shall have authority to examine witnesses, to rule on motions, and to rule upon the admissibility of evidence.

(b) The hearing shall be convened by the hearing officer. Appearances shall be noted and any motions or preliminary matters shall be taken up. Each party shall have the opportunity to present its case generally on an issue by issue basis, by calling and examining witnesses and introducing written evidence.

(c) The Member shall first present his or her case followed by presentation of the Retirement System's case.

(d) The hearing officer shall have the authority to continue or recess any hearing and to keep the record open for the submission of additional evidence.

(e) If for any reason a hearing officer cannot continue on a case, another hearing officer will be appointed who will become familiar with the record and perform any function remaining to be performed without the necessity of repeating any previous proceedings in the case.

(f) Each party shall also have the opportunity to cross-examine opposing witnesses on any matter relevant to the issues.

(g) Any objections to testimony or evidence and the basis for the objection shall be made at the time the testimony or evidence is offered.

(h) The hearing officer may question any party or any witness for the purpose of clarifying their understanding or to clarify the record.

(i) Hearings shall be open to the public and media except when personalities are being discussed. Where a discussion may reflect in a harmful manner on the person(s) discussed, such person(s) may choose to have that portion of the hearing open or closed at his/her discretion.

(j) The scope of hearing shall include only those matters specifically outlined in the request for hearing.

(k) Written evidence will be marked for identification. If the original is not readily available, written evidence may be received in the form of copies or excerpts. Upon request, parties shall be given an opportunity to compare the copy with the original.

(l) Findings of fact shall be based solely on the evidence and matters officially noticed.

(m) If a member fails to attend or participate in the hearing as requested, the hearing officer may default such member and dismiss his or her appeal with prejudice.

Section 7.00

Contested Cases - Record

The record in a contested case shall include:

- (1) All pleadings, motions, intermediate rulings;

- (2) Evidence received or considered;
- (3) A statement of matters officially noticed;
- (4) Questions and offers of proof and rulings thereon;
- (5) Proposed findings and exceptions;
- (6) Any decision, opinion, or report by the hearing officer at the hearing;
and
- (7) All staff memoranda or data submitted to the hearing officer in connection with their consideration of the case.

Section 8.00

Ex Parte Communications (Communications by one party)

There shall be no verbal communications with the Retirement Board or the hearing officer regarding any issue of fact or law in a case, without notice and opportunity for all parties to participate. There shall be no written communications that are not transmitted at the same time to all parties, except that an individual involved in rendering the decision in a case may communicate ex parte with employees of the agency who have not participated in any hearing in the case for the purpose of utilizing their special skills or knowledge in evaluating the evidence.

Section 9.00

Rules of Evidence

In contested cases:

(a) Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. The rules of evidence as applied in civil cases in the superior courts of this state shall be followed. Evidence not usually admitted under the rules of evidence for civil cases may be submitted where it is shown that such evidence is necessary to ascertain facts not acceptable of being proved otherwise. The hearing officer shall give effect to the rules of privilege (such as attorney/client privilege) recognized by law. Objections to evidence may be made and shall be noted in the record. Any part of the evidence may be received in written form when a hearing needs to be expedited and the interests of the parties will not be hurt substantially.

Section 10.00

Final Decision and Member Right of Appeal

(a) Within twenty-five (25) days after receipt of the Hearing Officer's report, a copy thereof shall be served upon all parties to the proceeding and each party shall be notified of the time and place when the matter shall be considered by the Retirement Board. Each party to the proceeding shall be given the right to make exceptions, to file briefs and to make oral arguments before the Retirement Board. A party wishing to file a brief or make exceptions shall be required to submit the same to the Executive Director not later than ten (10) days prior to the date when the Retirement Board is scheduled to hear and act upon the decision of the Hearing Officer. Any party shall have the right to appear before the Retirement Board and make oral argument at the time of such hearing. After consideration of the decision of the Hearing Officer and such other matters as shall be presented by counsel for any party to the proceeding, the Retirement Board shall make a decision, which decision shall contain a clear and concise statement of the facts and the legal conclusions.

(b) Any person aggrieved by the decision of the Retirement Board shall have all rights of an aggrieved party under the applicable provisions of the Administrative Procedures Act, Title 42-35 of the General Laws of Rhode Island.

Section 11.00

Requests for Rehearing

(a) A request for rehearing which is submitted prior to the issuance of the hearing officer's recommendation should be made in writing. The request must detail the substance of the additional evidence to be offered, and the reason for the failure of the party to offer it at the prior proceedings.

(b) A rehearing will be denied if the evidence does not bear on any issue in contest in the original proceedings, will not likely affect the final decision and order or if the request appears to be merely for delay. A second request for rehearing after the granting or denial of a prior request for rehearing will not be permitted.

Section 12.00

Repeal of Prior Provision

Upon the adoption and effectiveness of these Rules and Regulations, the following provisions of the Rhode Island Retirement Board Rules and Regulations are repealed:

Rule IV Section 7;
Rule IV Section 8; and
Rule V Section 3.

**Employees Retirement System of Rhode Island
and
Municipal Employees Retirement System**

Regulation No. 5

August, 1995

Rules of Elections to Employees Retirement Board

Section (1) Election Administration

(A) Regular Elections

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(B) Special Elections

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Statutory Reference: R.I.G.L. 36-8-4

Section (1) Election Administration

(A) Regular Elections

Section One. Date of Election.

Regular elections will be held in the January preceding the expiration of the elected members' term of office.

Section Two. Notice of Election.

A notice of intent to hold elections to seat members of the state employees, teacher, municipal employee and retiree groups shall be sent by regular mail to each member of the system by September 15th of the year preceding the election. Additional notices will be made available for posting in various state and municipal agencies, schools, and related public offices. Each such mailing shall be made to the last known address of the member, as provided by the member's employer or the member's data file at the retirement system.

Section Three. Eligibility to Vote and Candidacy.

Each member, who is an active contributing member of the retirement system on the date of the notice of election, or who has attained maximum service credit and no longer contributes, or who is on a leave of absence status without pay for up to one year, shall be eligible to vote for a candidate of his respective group or be a candidate. An official of a state employee union, municipal employee union, or teacher employee union may also be a candidate for election.

Each retired member who is receiving a retirement benefit as of the date of notice of the election shall be eligible to vote for or be a candidate for the retirees' representative to the board.

Section Four. Nomination Papers.

Each member who wishes to be a candidate for the board from his/her respective group, must file his/her intent for such office and obtain nomination papers in person from the retirement system.

Each candidate must secure at least 100 valid signatures on such nomination papers and return them to the retirement office as of the date identified within the notice of election. Such date must be between October 15th and October 30th of the year preceding the election.

The Sub-Committee on Elections shall validate such signatures and certify to the Retirement Board that the candidate has qualified for a place on the ballot.

Signatures of members appearing more than once on a set of nomination papers are invalid as are signatures of non-members such as a candidate's spouse, family member or beneficiary.

In the event that only one retired or municipal candidate qualifies under this section, he/she shall be deemed elected and no election shall be necessary for that group. If only two active state employees or teachers qualify under this section, they shall be deemed elected and no election shall be necessary.

Any candidate who does not qualify because of invalidated signatures will be accorded a hearing by the Elections Sub-Committee prior to the printing of ballots.

Section Five. Ballots.

Upon certification of the qualifying candidates in each respective group, the Sub-Committee on Elections or its agent shall have ballots and return envelopes printed in the following color scheme:

State Employees	Yellow
Teachers	Blue
Municipal Employees	Pink
Retired Members	White

Each ballot shall contain a printer's trademark to prevent the reproduction of non-official ballots, and shall contain a list of the candidates, identification of their department, division, city, town, or school and a box to be checked or punched out with instructions to mark in ink, or to punch out one or two boxes as the case may be.

The order of candidates' names on the printed ballots within each respective group shall be determined by a lottery held at the November board meeting prior to the January election.

Section Six. Distribution and Contents of Ballots.

Ballots will be mailed to each eligible member to the address on record as of the date of the election notice. Each mailing envelope will contain a ballot, instructions, and a return envelope.

Duplicate ballots will be distributed only upon receipt of a written notarized affidavit certifying that the member did not receive a ballot or wishes to exchange a mutilated or erroneously marked ballot.

Section Seven. Tabulation of Ballots.

On the day following the end of the election, the Sub-Committee on Elections or their designated agent shall tabulate the results. Any interested person may attend the tabulation of the ballots. The Sub-Committee on Elections shall cause the ballots to be safeguarded in an appropriate place should the tabulation be suspended for any reason.

Section Eight. Voided Ballots.

The following ballots shall be deemed void:

- (a) Ballots received after deadline date;
- (b) Ballots delivered in person to the retirement system;
- (c) Ballots not in an official return envelope;
- (d) Multiple ballots in single envelope;
- (e) Ballots torn or mutilated in the ballot area;
- (f) Ballots containing more than one selection when only one is appropriate; or more than two selections when only two selections

are appropriate.

- (g) Ballots crossed out or erased;
- (h) Copies or facsimiles of ballots;
- (i) Ballots marked in pencil;
- (j) Ballots with write-in candidates.

The Sub-Committee on Elections or their agent shall hold voided ballots to be evaluated by the board in the event that they may change the outcome of the election.

Section Nine. Explanations, Challenges, and Recounts.

Any candidate may request an explanation of voided ballots, challenge ballots, or seek a recount of ballots by making such request to the Chairperson of the Retirement Board in writing by certified mail within seventy-two (72) hours of legal notification of the results of tabulation of ballots, excluding Saturday, Sundays, and holidays.

Section Ten. Results of Election and Certification.

Upon completion of the tabulation of ballots cast, the Sub-Committee on Elections or its agent shall certify to the board the results and the names of the candidates elected. The Board shall then certify and publish the results.

Section Eleven. Tie Votes.

In the event of a tie vote in any election, the Sub-Committee on Elections or its agent shall order an immediate recount of ballots and a review of all voided ballots in that election. If a tie vote still results, the Sub-Committee on Elections or its agent shall hold a run-off election between the tied candidates.

Section Twelve. Destruction of Ballots.

The Retirement Board shall keep the ballots cast in each election in sealed cartons for three months following the certification of election, and then destroy them.

(B) Special Elections

Section One. Date of Election.

A special election will be held within seventy (70) days of a Board vacancy.

Section Two. Notice of Election.

A notice of intent to hold an election to seat a vacancy on the Board shall be sent by regular mail to each eligible member. Additional notices will be made available for posting in various state and municipal agencies, schools, and related public offices within ten (10) days of such vacancy. Each such mailing shall be made to the last known address of the member, as provided by the member's employer or the member's file at the retirement system.

Section Three. Eligibility to Vote and Candidacy.

Each member, who is an active contributing member of the retirement system on the date of the notice of election, or who has attained maximum service credit and no longer contributes, or who is on a leave of absence status without pay for up to one year, shall be eligible to vote for a candidate of his/her respective group or be a candidate for election. An official of a state employee union, municipal employee union, or teacher employee union may also be a candidate for election.

Each retired member who is receiving a retirement benefit as of the date of notice of the election shall be eligible to vote for or be a candidate for the retirees' representative to the Board.

Section Four. Nomination Papers.

Each member who wishes to be a candidate for the Board from his/her respective group, must file his/her intent for such office and obtain nomination papers in person from the retirement system.

Each candidate must secure at least 100 valid signatures on such nomination papers and return them to the retirement office as of the date identified within the notice of election.

The Sub-Committee on Elections shall validate such signatures and certify to the Retirement Board that the candidate has qualified for a place on the ballot.

Signatures of members appearing more than once on a set of nomination papers are invalid as are signatures of non-members such as a candidate's spouse, family member or beneficiary.

In the event that only one retired or municipal candidate qualifies under this section, he/she shall be deemed elected and no election shall be necessary.

Any candidate who does not qualify because of invalidated signatures will be accorded a hearing by the Elections Sub-Committee prior to the printing of ballots.

Section Five. Ballots.

Upon certification of the qualifying candidates in each respective group, the Sub-Committee on Elections or its agent shall have ballots and return envelopes printed in the following color scheme:

State Employees	Yellow
Teachers	Blue
Municipal Employees	Pink
Retired Members	White

Each ballot shall contain a printer's trademark to forestall reproduction of unofficial ballots, and shall contain a list of the candidates, identification of their department, division, city, town, or school and a box to be checked or punched out with instructions to mark in ink, or to punch out one or two boxes as the case may be.

The order of candidates' names on the printed ballots within each respective group shall be determined by a lottery held at the next available Board meeting.

Section Six. Distribution and Contents of Ballots.

Ballots will be mailed to each eligible member to the address on record as of the date of the election notice. Each mailing envelope will contain a ballot, instructions, and a return envelope.

Duplicate ballots will be distributed only upon receipt of a written notarized affidavit certifying that the member did not receive a ballot or wishes to exchange a mutilated or erroneously marked ballot.

Section Seven. Tabulation of Ballots.

On the day following the end of the election, the Sub-Committee on Elections or their designated agent shall tabulate the results. Any interested person may attend the tabulation of the ballots. The Sub-Committee on Elections shall cause the ballots to be safeguarded should the tabulation be suspended for any reason.

Section Eight. Voided Ballots.

The following ballots shall be deemed void:

- (a) Ballots received after deadline date;
- (b) Ballots delivered in person to the retirement system;
- (c) Ballots not in an official return envelope;
- (d) Multiple ballots in a single envelope;
- (e) Ballots torn or mutilated in the ballot area;
- (f) Ballots containing more than one selection when only one is appropriate; or more than two selections when only two selections are appropriate.
- (g) Ballots crossed out or erased;
- (h) Copies or facsimiles of ballots;
- (i) Ballots marked in pencil;
- (j) Ballots with write-in candidates.

The Sub-Committee on Elections or their agent shall hold voided ballots to be evaluated by the board in the event that they may change the outcome of the election.

Section Nine. Explanations, Challenges, and Recounts.

Any candidate may request an explanation of voided ballots, challenge ballots, or seek a recount of ballots by making such request to the Chairperson of the Retirement Board in writing by certified mail within seventy-two (72) hours of legal notification of the results of tabulation of ballots, excluding Saturday, Sundays, and holidays.

Section Ten. Results of Election and Certification.

Upon completion of the tabulation of ballots cast, the Sub-Committee on Elections or its agent shall certify to the board the results and the name of the candidates elected. The Board shall then certify and publish the results.

Section Eleven. Tie Votes.

In the event of a tie vote in any election, the Sub-Committee on Elections or its agent shall order an immediate recount of ballots and a review of all voided ballots in that election. If a tie vote still results, the Sub-Committee on Elections or its agent shall hold a run-off election between the tied candidates.

Section Twelve. Destruction of Ballots.

The Retirement Board shall keep the ballots cast in each election in sealed cartons for three months following the certification of election, and then destroy them.

Employees' Retirement System of Rhode Island and Municipal Employees' Retirement System

Regulation No. 6 A (1)

Promulgated: September 10, 1997

Effective: September 10, 1997

Rules Regarding the Purchase of Military Service Credit
pursuant to
R.I.G.L. 36-9-31, 16-16-7.1 and 45-21-53.

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Section (A) Purchase Rules

(1) Military Credit Purchase

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Section One: Statutory Requirements

In order to purchase military credit in the Employees' Retirement System of Rhode Island or the Municipal Employees' Retirement System, the following conditions must be met:

- (a) the member must be an active member at the time of the purchase;
- (b) a member cannot purchase military service credit for any year or portion thereof which counts as service credit in any other retirement system in which the member is vested or from which the member is receiving a pension and/or any other payment for life;
- (c) the member must have been on active duty and must have received an honorable discharge;
- (d) any purchase made after January 1, 1995 cannot bring the member's total purchased time above five years (Military purchases completed prior to January 1, 1995 may bring the member's total purchased time over five years);
- (e) the total amount of military credit purchased cannot exceed four years of creditable service; and
- (f) a member may not purchase credit for any fraction of a year for which he or she already receives service credit in the retirement system.

Section Two: Definition of Armed Service

Members with active duty in the following branches of the armed services shall be allowed to purchase military service credit pursuant to R.I.G.L. 36-9-31, 16-16-7.1 and 45-21-53:

- (a) United States Army, United States Army Reserve and the National Guard of the United States;
- (b) United States Navy and United States Navy Reserve;
- (c) United States Marine Corps and United States Marine Corps Reserve;
- (d) United States Coast Guard and United States Coast Guard Reserve;
- (e) United States Air Force, United States Air Force Reserve and Air National Guard of the United States
- (f) United States Public Health Service;
- (g) Those merchant marine seamen manning army transports of merchant ships operated for the United States War Shipping Administration in war zone areas.

(continued on next page)

For purposes of determining allowable National Guard time, only time spent on active duty in the National Guard of the United States shall be considered. Accordingly, service in the full time National Guard or the National Guard of a State, Territory, Commonwealth of Puerto Rico or District of Columbia shall not be considered as service in the National Guard of the United States.

Section Three: Purchase Cost

An active member wishing to purchase military service credit shall be charged ten percent (10 %) of his/her first year's earnings for each year of military credit desired to be purchased.

Interest shall be added to the purchase cost unless:

- a) the member was an active member of either the Employees Retirement System of Rhode Island or the Municipal Employees Retirement System prior to July 1, 1980; or
- b) the purchase of military credit is made during the first five years of the individual's membership in the retirement system.

Section Four: Military Credit Fractions

In construing the purchase of military service credit, the following rules shall determine the amount of military service credit which may be purchased:

- (a) Any active member who served on active duty any fraction of a year less than six (6) months shall be allowed to purchase six (6) months of service for each such fraction. Any active member who served on active duty any fraction of a year in excess of (6) months shall be permitted to purchase one year of military credit.
- (b) When calculating allowable purchase time, no member shall be allowed to purchase credit which, when totaled, provides the member with more than one year of service credit in any one calendar year.
- (c) As of July 3, 1997, any active member shall only be allowed to purchase military service credit for the actual time he or she was on active duty.

(For example, if a member was on active duty for 3 months and 4 months, he shall only be permitted to purchase 3 months and 4 months. Similarly, if a member served 2 weeks summer duty in the National Guard, he/she shall only be permitted to purchase 2 weeks of military service credit.)

Section Five: Application and Process for Military Credit

In order to purchase military credit, the following documentation must be submitted:

- (1) a signed application for military service credit;
- (2) proof of active duty;
- (3) proof of honorable discharge;
- (4) proof of active duty and honorable discharge as provided on the following standard military forms:
 - (a) Form DD 214;
 - (b) Form 23 of the National Guard;
 - (c) or any such other form of proof of active duty and honorable discharge as may be required by the retirement system in cases where standard military forms do not exist. The system will not accept mere statements or affirmations by the individual member as proof of active duty.

As soon as all necessary documentation has been received and reviewed by the retirement system, the member will be sent a bill indicating the allowable time that may be purchased and the cost to purchase such credits.

In cases where the purchase is not allowed, the member will receive notice indicating why the purchase has been disallowed.

Employees' Retirement System of Rhode Island and Municipal Employees' Retirement System

Regulation No. 7

Promulgated: January 13, 1999

Effective: January 13, 1999

Rules Regarding the Use of R.I.G.L. 36-10-18 Multiple Beneficiaries

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Section (A) Multiple Beneficiaries

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Section One: Regulation Summary

In 1994, the Rhode Island General Assembly amended R.I.G.L. 36-10-18 to allow members of the Employees Retirement System of Rhode Island (public school teachers and state employees only) to elect more than one beneficiary to be the recipient of a survivor option under Rhode Island retirement law. The option to elect multiple beneficiaries is not available to state police, judicial, general municipal, or police & fire members of retirement plans administered by ERSRI.

This regulation explains the procedure to be utilized by ERSRI in determining the amount due each qualified beneficiary.

Section Two: ERSRI Methodology on Multiple Beneficiaries Optional Annuity

ERSRI Regulation No. 7 and all applicable R.I.G.L. statutory rules shall be used in determining a member's optional annuity.

Optional Annuity Multiple Beneficiary benefits will be determined as follows:

- (a) The amount of the ex-member's contributions shall be divided by the number of multiple beneficiaries identified on the Optional Annuity Form in order to calculate an equal amount of 'return of contributions' to be due each multiple beneficiary.
- (b) The ex-member's retirement benefit shall be calculated according to the standard method for service retirement annuity (SRA or maximum plan). If the member on the date of his/her death was not eligible for retirement, the optional annuity shall be calculated using an actuarial adjustment determined by the number of years the member was below age or service requirements.
- (c) The resulting SRA retirement benefit due the deceased member shall be divided in equal shares between the multiple beneficiaries.
- (d) The multiple beneficiaries shall have the choice of selecting either: (1) return of contributions; or (2) an Optional Annuity benefit that has been split evenly amongst the named multiple beneficiaries.
- (e) It is not necessary that all multiple beneficiaries make the same selection. (i.e. One beneficiary may choose a return of contributions while the others may choose the optional annuity.)

Section Three: ERSRI Methodology on Multiple Beneficiaries / Joint and Survivor Option One

ERSRI Regulation No. 7 and all applicable R.I.G.L. statutory rules shall be used in determining a member's survivor retirement benefit.

Option One Multiple Beneficiary benefits will be determined as follows:

- (a) The retiring member's retirement benefit shall be calculated according to standard method for service retirement annuity (SRA or maximum plan);
- (b) The SRA retirement benefit is then divided into equal shares according to the number of named multiple beneficiaries;
- (c) For a non-spouse beneficiary who is ten years (or more) younger than the retiring member, Internal Revenue Service rules require an actuarial reduction for retiring members utilizing Option One; See IRS proposed regulation 1.401(a)(9)—2.
- (d) Option One factors based on the multiple beneficiaries ages are then applied to the equal shares;
- (e) The sum of the actuarially reduced benefits shall be the retiring member's benefit during his/her lifetime.

Section Four: ERSRI Methodology on Multiple Beneficiaries / Joint and Survivor Option Two

ERSRI Regulation No. 7 and all applicable R.I.G.L. statutory rules shall be used in determining a member's survivor retirement benefit.

Option Two Multiple Beneficiary benefits will be determined as follows:

- (a) The retiring member's retirement benefit shall be calculated according to standard method for service retirement annuity (SRA or maximum plan);
- (b) The SRA retirement benefit is then divided into equal shares according to the number of named multiple beneficiaries;
- (c) Option Two factors will be applied to multiple amounts;
- (d) The sum of the actuarially reduced benefits shall be the retiring member's benefit during his/her lifetime.

**Section Five : Restrictions on the use of Multiple Beneficiaries as
provided under R.I.G.L 36-10-18**

- (a) Beneficiaries must be natural or adopted children or stepchildren and/or a spouse of the ERSRI member. There is no restriction as to the number of multiple beneficiaries.
- (b) In the case of the death of a multiple beneficiary, the benefit of remaining beneficiaries shall not be increased nor decreased.
- (c) A multiple beneficiary's benefit shall cease upon his/her death. There is no additional benefit due the survivor or beneficiary of a multiple beneficiary.
- (d) The multiple beneficiary option is not available to state police, judicial, general municipal, or police & fire members of the retirement system.

Employees' Retirement System of Rhode Island and Municipal Employees' Retirement System

Regulation No. 8

Promulgated: October 13, 1999

Effective: October 13, 1999

Rules Regarding the Operation and Administration of Rhode Island
General Laws 36-10-18, 36-10-19, 45-21-30 and 45-21-51 concerning
the right to revoke or modify a retirement option after retirement

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These Administrative Rules pertaining to the right of a retired member to revoke or modify their retirement option after retirement are promulgated pursuant to R.I. General Laws Section 36-8-3. The Rules shall be applicable to all changes requested pursuant to RIGL §36-10-19 and 45-21-30.

Section 2 DEFINITIONS

Section 3 REVOCATION/MODIFICATION OF RETIREMENT OPTION SELECTION

- A. Only retired members who have selected to receive retirement benefits pursuant to Option One or Option Two shall be entitled to revoke or modify their retirement option.
- B. A retired member may exercise his/her right to revoke or modify his/her retirement option selection only one time. Additional requests to revoke or modify an individual's retirement selection are not permitted.
- C. Retired members who are receiving retirement benefits per the Maximum Plan or the Social Security Option are not entitled to change their retirement option selection.
- D. A retired member may revoke his/her selection of Option One or Option Two and select the Maximum Plan.
- E. A retired member may modify his selection from Option One to Option Two or from Option Two to Option One.

F. Notice of modification or revocation must be filed with and approved by the Retirement System prior to the commencement of divorce proceedings against or by the named beneficiary being filed in the Rhode Island Family Court or in a foreign court of equal jurisdiction.

Section 4 PROCESS OF REVOCATION/MODIFICATION

A. A retired member seeking revocation or modification of his/her retirement benefits must complete and return the form prescribed by the Retirement System. No action will be taken on an oral request to revoke or modify a retired member's benefits.

B. Revocation or modification will become effective in the month following receipt of the signed form by the Retirement System.

C. Any request for modification or revocation of benefits described in Section 3:00 above must be received prior to the death of the retired member or if sent by mail, post marked prior to the death of the retired member.

Employees' Retirement System of Rhode Island and Municipal Employees' Retirement System

Regulation No. 9

Promulgated: October 13, 1999

Effective: October 13, 1999

Rules pertaining to the application to receive an
Ordinary Disability Pension pursuant to
R.I. General Laws Section 36-8-3.

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This Regulation does not apply to members of the Judicial Retirement Plan or the State Police Retirement Plan.

Section 2 DEFINITIONS

Section 3 REQUIREMENTS FOR APPLICATION AND DISABILITY DETERMINATION

- A. Only active members or members on leave of absence for illness from the Employees Retirement System of Rhode Island or the Municipal Employees Retirement System with a minimum of five (5) years of contributing service, three (3) of which must be consecutive are eligible to receive an Ordinary Disability Pension.
- B. Any member eligible to receive a regular service retirement allowance is prohibited from receiving an Ordinary Disability Pension.
- C. An applicant must complete, sign and submit the following forms:
 - (1) Disability Retirement Application;
 - (2) Applicant's Physician Statement for Disability Retirement;
 - (3) Employer's Disability Statement;
 - (4) Current Job Description;
 - (5) Birth Certificate

prior to the application being reviewed by the Disability Sub-Committee of the Retirement Board of the Employees Retirement System of Rhode Island.

D. An applicant for an Ordinary Disability Pension must be examined by three independent physicians selected by the Retirement System. Payment for the above stated examinations and any test required as a result of the examinations shall be borne by the Retirement System.

Section 4 STATUTORY STANDARD FOR ORDINARY DISABILITY

A. Upon review of the reports of the medical examinations of the physicians engaged by the Retirement System, the Retirement Board may grant the member an Ordinary Disability Pension.

B. The Retirement Board must deem that a member is physically or mentally incapacitated from the performance of his/her duties as a public employee for the member to be eligible to receive an Ordinary Disability Pension.

Section 5 CONSIDERATION BY THE DISABILITY SUB-COMMITTEE

A. Upon determination by the Retirement System that the applicant has complied with Section 3(c) above the application will be forwarded to the Disability Sub-Committee which shall review the submitted material and recommend a final determination to the Retirement Board.

B. The Disability Sub-Committee may require the applicant to appear before the Sub-Committee to answer questions regarding his or her application for disability benefits.

Section 6 REQUEST FOR RECONSIDERATION

A. Any member aggrieved by a decision of the Retirement Board to accept the recommendation of the Disability Sub-Committee to deny their application for Ordinary Disability Benefits may request that the application be reconsidered by the Disability Sub-Committee.

B. Such request shall be in writing and shall be sent to the Retirement System within thirty (30) days after receipt of the decision of the Retirement Board.

C. A request for reconsideration shall be signed by the member or the member's attorney and shall contain the following:

- (1) Name of member;
- (2) Date and nature of decision being contested; and
- (3) A clear statement of the objection to the decision.

D. Request for reconsideration should be sent to the Executive Director, Employees Retirement System of Rhode Island, 40 Fountain Street, Providence, Rhode Island 02903.

E. Failure to strictly comply with the procedures outlined in this Section may be grounds to deny any request for reconsideration.

Section 7 RECONSIDERATION NOTICE

A. Upon receipt of a request for reconsideration the Retirement Board or its designee shall assign a reconsideration date within sixty (60) days of the receipt of the request for reconsideration.

B. The notice shall contain:

- (1) A statement of the time and place of the reconsideration;
- (2) A statement that a party who fails to attend or participate in the reconsideration hearing may be held to be in default and have his or her reconsideration dismissed.

Section 8 ADDITIONAL DOCUMENTATION

A. Any applicant wishing to present additional documentation for consideration during the reconsideration hearing must forward 10 copies of the additional documentation to the Retirement System ten (10) days prior to the date of the reconsideration hearing.

Section 9 RECONSIDERATION BY THE DISABILITY SUB-COMMITTEE

A. Upon completion of the reconsideration hearing the Disability Sub-Committee will forward a recommendation to the Retirement Board requesting either approval of the member's application for an Ordinary Disability Pension or requesting that the Retirement Board reaffirm their original denial of the member's application for Ordinary Disability Benefits.

B. The Retirement Board shall notify the applicant of its decision to accept or reject the recommendation of the Disability Sub-Committee within seven (7) days of its decision.

Section 10 APPEAL PROCESS

A. Any member aggrieved by a decision of the Retirement Board to accept the recommendation of the Disability Sub-Committee to deny their application for Ordinary Disability Benefits may appeal that decision to the Retirement Board of the Employees Retirement System of Rhode Island.

B. The appeal shall be in writing and shall be sent to the Retirement Board within thirty (30) days after receipt of the decision of the Retirement Board.

C. The appeal shall be signed by the member or the member's attorney and shall contain the following:

- (1) Name of member;
- (2) Date and nature of decision be contested; and
- (3) A clear statement of the objection to the decision.

D. Notice of Appeal shall be sent to Retirement Board, Employees Retirement System of Rhode Island, 40 Fountain Street, Providence, Rhode Island 02903.

Section 11 NOTICE OF APPEAL

A. Upon receipt of a Request for Reconsideration the Retirement Board or its designee shall assign a hearing date within ninety (90) days of the receipt of the Notice of Appeal.

B. The Notice shall contain:

- (1) A statement of the time and place of the hearing;
- (2) A statement that a party who fails to attend or participate in the hearing may be held to be in default and have his or her appeal dismissed.

Section 12 AGENCY APPEAL

A. Any member aggrieved by the final decision of the Retirement Board shall have all rights of an aggrieved party under the applicable provisions of the Administrative Procedures Act, Title 42-35 of the General Laws of Rhode Island.

Section 13 APPLICATIONS BY TERMINAL MEMBERS

- A. An application for ordinary disability benefits on behalf of a member whose disability is deemed terminal by the Board's medical advisor may be considered with one additional medical report by an independent physician. The ERSRI medical advisor must complete a written form supplied by ERSRI indicating the terminal status of the member.
- B. When a member, whose ordinary disability application has been accepted by the retirement system, dies prior to the applicant's approval at a monthly board meeting, the retirement board may award the ordinary disability to the member's beneficiary provided an option selection form indicating Option One or Option Two had been received by the retirement system prior to the member's death.

Employees' Retirement System of Rhode Island and Municipal Employees' Retirement System

Regulation No. 10

Promulgated: June 14, 2000

Effective: July 1, 2000

Rules Regarding the Operation and Administration of Rhode Island
General Laws 16-16-1 (11) and 16-16-5 regarding creditable service as
a teacher member of the Employees Retirement System
of Rhode Island

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Section One: Regulation Summary

This regulation governs the determination of creditable service for teacher members of the Employees Retirement System of Rhode Island (ERSRI). This regulation does not apply to state employee members, members of the Municipal Employees Retirement System (MERS), or members of the Judicial Retirement Plan or State Police Retirement Plan.

Section Two: Definitions

School Year: "School year" shall be defined as the number of days required by R.I.G.L. 16-2-2 that school be in session.

Section Three: Statutory Standard

- (A) Every teacher as defined in R.I.G.L. 16-16-1 (11) who is an active member of the Employees Retirement System of Rhode Island shall be eligible for one year of service credit for each school year served as a teacher.
- (B) All teachers who complete at least $\frac{3}{4}$ of the school year shall be given a year of service for that year.

Section Four: Service Credit for Classroom Teachers

In those years in which a teacher works less than the $\frac{3}{4}$ of the school year necessary to constitute a full year of service credit, the Employees Retirement System will award service credit according to the following chart:

Days in School Year	1 year	9 mos.	6 mos.	3 mos.
180	135	91	67	45

For example, a teacher who works 125 days in a school year will be awarded 9 months of service credit by the retirement system. These rules shall apply to the crediting of substitute teaching service by the teacher and shall also apply to all teacher members of the retirement system regardless of the day he/she commences employment in any given school year.

Section Five: Effective Date

This regulation shall take effect July 1, 2000.

**Employees' Retirement System of Rhode Island
And
Municipal Employees' Retirement System**

Regulation No. 11

Promulgated: December 19, 2001

Effective: January 1, 2002

Rules Regarding the Operation and Administration of Rhode Island
General Laws 16-16-8.1, 36-9-41 and 45-21-64 regarding Purchase
of service credits payable by installment

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Section One: Regulation Summary

This regulation governs procedure for installment payments on optional service credits purchases (OSC) to members of the State and Teacher Retirement System (ERS) and Municipal Employees Retirement System (MERS).

Section Two: Definitions

Regular Interest – Shall mean interest paid on a lump sum purchase as defined in 36-8-1(13)

Active Member – Shall be defined as is in RIGL 36-8-1(19), 16-16-1(16) and 45-21-2(20)

Installment Interest – Shall be defined as the actuarial assumed rate of return adopted by the board pursuant to RIGL 36-8-13

Prorated Agreement – Shall be calculated using a fraction. The numerator shall be the number of payments made on the installment agreement and the denominator shall be the total number of payments required to complete the agreement. This fraction shall be multiplied by the total years of service being purchased through the installment. For example:

Total installment payments – 12

Total time being purchased – 7years, 0 months, 0 days

Installment payments made before termination – 6

(a) $6/12 = 0.5$

(b) $0.5 \times 7\text{years} = 3.5$

Service awarded at time of termination is 3 years, 6 months, 0 days

Section Three: Procedure

1) ERSRI will first create a cost calculation for the service being purchased based on parameters (member-specific data, rules relative to the plan, type of service being purchased, etc) pursuant to Rhode Island General Laws. The member shall select to purchase the service credits through either a lump-sum payment or an approved installment plan.

a) A member may not enter into an installment agreement and make a lump sum payment, nor may a member enter into a lump sum agreement and make installments. The payment selection made is irrevocable consistent with federal law.

2) Installment agreements are calculated on an amortized payment schedule using interest at the actuarial assumed rate of return adopted by the board.

- a) Neither installment interest or regular interest is posted to a member account. Neither is refundable. Only the principal portion (or the portion that is effectively the missing contributions on wages being replaced) is posted to the member account.
 - b) Agreements, which will be paid using "rollover" funds, must be set up to accept rollover money at their creation. An agreement that has not been set-up to accept rollover funds must be cancelled, and a new agreement created if the member wishes to pay with rollover monies. This will require the cancelled agreement to be prorated.
 - c) The service is not awarded nor are contributions posted to the member account until the agreement has been *completed* or *prorated* due to cancellation of the agreement. Therefore, member account balances are not affected over the life of an installment agreement. In the member annual statement, summary information regarding "in process" and "completed" purchase agreements will be included.
 - d) Payment frequencies from active Member Agencies on installment agreements are set at one (1) per month. Early payments can not be applied to principal, thereby changing the structure of the agreement. Therefore, the total interest on an installment payment plan will remain the same throughout the life of the agreement.
 - e) Payments on installment agreements may be accepted from active Member Agencies (via payroll deduction.) The payment frequency is fixed at one (1) per month; the employer shall conform to all the reporting and transmittal of OSC funds on a monthly basis, regardless of their wage and contribution reporting frequency.
 - (1) In the event, an employer becomes delinquent remitting payments to ERSRI on installment agreements, the member shall not be held in default and the agreement shall not be cancelled. ERSRI may seek penalty interest from the employer.
- 3) Pursuant to RIGL 45-26-56, 45-21-12.1, 36-9-20, and 16-16-8, requiring the present value of accrued benefits (PVAB) be transferred from one employer reserve to another at the time a member changes employment, installment agreements must be prorated and posted to the member account at the time of the termination of employment. Proration of an agreement results in service and contributions being reported to the plan and employer reserve that the member belongs to at the time the agreement is entered into.
- a) Therefore, since the agreement is irrevocable the member will be required to continue the purchase of the remaining allowable service with a new agreement after being enrolled with the new employer.

Section Four: General Policies

- 1) Should someone cease being an active member prior to completion of the installment agreement for any reason, including death and termination (both voluntary and involuntary), the agreement will become null and void at the effective date of termination and will be prorated at the time of termination. If applicable, the member may have the option of paying in lump sum, the amount necessary to complete the service credit originally provided in the installment agreement. These payments must be received by ERSRI within 30 business days from the effective date of termination.
 - a) In case of the death of an active member with an active installment agreement, the beneficiary shall be provided the option of completing the agreement by making a lump-sum payment for the outstanding balance of the agreement at the time of the participants death. The procedure shall be that the installment agreement becomes null and void at the effective date of termination and will be prorated at the time of termination.
 - i) If applicable, funds from the death benefit payment may be used toward the lump-sum payment of the cancelled agreement. The beneficiary will be required to execute ERSRI transfer documents to effectuate the transfer of the death benefit.
- 2) If an agreement needs to be prorated for any reason and a lump sum is computed, interest on the lump sum shall be computed to the date of termination of employment, death or cancellation of the agreement.

Section Five: Effective Date

This regulation shall take effect January 1,2002