

TABLE OF CONTENTS

SECTION 1 - GENERAL PROVISIONS	PAGE 1
SECTION 2 - PROCUREMENT STRUCTURE AND ACCOUNTABILITY	PAGE 8
SECTION 3 - CODE OF ETHICS AND PROFESSIONAL BEHAVIOR	PAGE 12
SECTION 4 - VENDOR QUALIFICATION PREQUALIFICATION AND SOLICITATION	PAGE 15
SECTION 5 - COMPETITIVE REVIEW AND SOURCE SELECTION	PAGE 20
SECTION 6 - NEGOTIATION	PAGE 29
SECTION 7 - SUPPLEMENTAL SERVICES	PAGE 34
SECTION 8 - CONTRACTS	PAGE 40
SECTION 9 - EXCEPTIONS TO COMPETITIVE BIDDING REQUIREMENTS	PAGE 52
SECTION 10 - INVENTORY WAREHOUSING MANAGEMENT	PAGE 56

SECTION 1 - GENERAL PROVISIONS

PURPOSES AND POLICIES

1.1.1. The underlying purposes and policies of these regulations are:

1.1.1.1. To simplify, clarify, and modernize purchase modernize purchasing activities undertaken by the Rhode Island Higher Education Assistance Authority;

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

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

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

1.1.1.5. To provide increased economy in RIHEAA procurement activities by fostering effective competition;

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

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

1.1.2 Administrative Practices and Policies

1.1.2.1. Competition: Rhode Island Higher Education Assistance Authority will operate an effective procurement system by obtaining goods and services within a competitive environment whenever possible. The primary method of assuring that procurements are to the advantage of RIHEAA will be the use of a competitive environment whenever possible. The primary method of assuring that procurements are to the advantage of RIHEAA will be the use of competitive bidding procedures.

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

1.1.2.3. Responsibility and Accountability:

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

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

1.2 APPLICATION

1.2.1. In accordance with Section [37-2-41, Chapter 37-2, RIGL, shall apply to every expenditure of funds, except as otherwise provided by law, by RIHEAA under any contract or like business agreement, excepting only those contracts or like business agreements between RIHEAA and the and other governments. It shall also apply to the disposal of RIHEAA supplies. Nothing in Chapter 37-2 or in the regulations promulgated hereunder shall prevent RIHEAA from complying with the terms and conditions of any grant, gift, bequest or cooperative agreement.

1.1.2. Regulations promulgated by the Chief Purchasing officer in accordance with the authority and requirements set forth in Chapter 37-2, RIGL, shall apply to all RIHEAA procurements with the following exception:

1.2.2.1. RIHEAA may use the state Central Purchasing Authority to procure specific items provided that such activity is conducted in accordance with the purchasing policies, procedures and regulations promulgated thereunder.

GENERAL DEFINITIONS

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

1.3.2 "Construction" shall mean the process of building, altering, repairing, improving or demolishing any public structures or building, or other public improvements of any kind to any public real property. It does not include the routine maintenance or repair of existing structures, buildings or real property performed by salaried employees of RIHEAA in the usual course of their job.

1.3.3 "Data" shall mean recorded information, regardless of form or characteristic.

1.3.4 "Designee" shall mean a duly authorized representative of a person holding a superior position.

1.3.5 "May" shall mean permissive.

1.3.6 "Person" shall mean any business, individual, organization or group of individuals.

1.3.7 "Procurement" shall mean the purchasing, buying, renting, leasing or otherwise obtaining of any supplies, services, or construction. It shall also include all functions that pertain to the obtaining of any supply, service, or construction item, including description of requirements, selection and solicitation of sources, preparation and award of contracts, and all phases of contract administration.

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

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

1.3.10. Public Agency. In accordance with Chapter 37-2-7(16) of the RIGL, a "Public agency" shall be defined as: Rhode Island Higher Education Assistance Authority.

1.3.11 "Purchasing agency" shall mean RIHEAA or the Central Purchasing Authority acting on behalf of RIHEAA.

1.3.12 "Services" shall mean the rendering, by a contractor, of its time and effort rather than the furnishing of a specific end product, other than reports which are merely incidental to the required performance of services. "Services" does not include labor contracts with employees of RIHEAA.

1.3.13 "Shall" shall mean imperative.

1.3.14 "State" shall mean the State of Rhode Island and RIHEAA.

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

1.3.16 "Using Agency" shall mean RIHEAA.

1.4 DOCUMENTATION AND REPORTS:

1.4.1 Purchase Reports

1.4.1.1. The Accounting Department shall maintain records of all purchases and sales made under RIHEAA's authority and shall make periodic summary reports of all transactions to the Chief Purchasing Officer.

1.4.1.2. Sole Source, Emergency and Small Purchases

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

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

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

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

1.4.2.2. The extent of documentation may vary with RIHEAA's needs and requirements and the value and complexity of the purchase.

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

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

1.4.2.3.2. Rationale for action taken;

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

1.4.2.3.4 furnishing facts in the event of litigation.

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

1.4.3.1. Annually the Executive Director shall submit to the Director of Administration a list of RIHEAA officials who shall have the authority to act on behalf of RIHEAA for all purchases made through the State Purchasing Authority. Annually each department head shall submit to the Executive Director the officials who shall have the authority to act on behalf of the Department. The approved list shall be placed on file at the Department of Administration Offices of Purchases, Accounts and Control and Budget.

1.4.3.1.1. All authorizations shall be specific as to:

1.4.3.1.1.1. maximum levels of expenditure, commitment, program account;

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

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

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

1.4.3.3 Requisitions shall require the original signature of an official designated by the user Department as an agent authorized to act on his/her behalf for procurement transactions.

1.4.3.4. Requisitions submitted to the Purchasing Department shall require the original signature of an official designated by the Supervising Accountant and Deputy Director as responsible for certifying as to the availability of funds for purchasing actions.

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

1.4.5 Audit of contractor records.

1.4.5.1. In accordance with [37-2-34(2)] RIHEAA may audit the books and records of any person who has submitted cost or pricing data for certain negotiated contracts or change orders at any time until the period of record retention as set forth in 37-2-34(3) shall have expired. The right to audit hereunder shall only extend to those books and records reasonably connected with cost or pricing data submitted in accordance with 37-2-28.

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

1.4.5.2. RIHEAA or the Auditor General may audit the books and records of a contractor or any subcontractor under any negotiated contract or subcontract other than a firm fixed-price type contract, provided, however, that this subsection shall not limit the right to audit as set forth in subsection (2) of this section 37-2-341.

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

1.4.6. All documents involved in any procurement in which collusion is suspected shall be retained until the Attorney General gives notice that they maybe released, and all such documents shall be made available to the Attorney General or his designee upon request.

1.4.7. In accordance with 37-2-61 every determination required by Chapter 37-2 and the policies contained herein shall be in writing and based upon written findings of fact by the public official making the determination. These determinations and written findings shall be retained in an official contract file in the Office of the Chief Purchasing Officer. For the purposes of this section, the Office of Purchases shall be considered synonymous with the "Office of the Chief Purchasing Officer."

1.4.8. Each bid, together with the name of the bidder, shall be recorded and an abstract made available for public inspection. Subsequent to the awarding of a bid, all documents pertinent to the awarding of the bid shall be made available and open to public inspection and retained in the bid file.

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

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

1.4.8.2.1. Information of a proprietary nature submitted by vendors; and

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

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

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

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

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

1.4.8.5.2. Reviews of document records shall be permitted by appointment only and shall be conducted under the supervision of a Purchasing Department official.

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

1.5. BREACH OF CONTRACT DISPUTES

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

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

1.5.1.2. The Purchasing Agent shall be authorized to resolve contract disputes between contractors and RIHEAA upon the submission of a request in writing, which shall provide:

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

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

1.5.1.2.3. a proposed course of action to resolve the dispute.

1.5.1.3. The Purchasing Agent shall determine whether:

1.5.1.3.1. the interpretation provided is appropriate,

1.5.1.3.2. the proposed solution is feasible, or

1.5.1.3.3. another solution may be negotiable.

1.5.2. Failure to render timely decisions. This section shall apply to a claim or controversy arising under contracts between RIHEAA and its contractors. If such a claim or controversy is not resolved by mutual agreement, the Chief Purchasing Officer or his designee, shall promptly issue a decision in writing. A copy of the decision shall be mailed or otherwise furnished to the contractor. If the Chief Purchasing Officer does not issue a written decision within thirty (30) days after written request for a final decision, or within such longer period as might be established by the parties to the contract in writing, then the contractor may proceed as if an adverse decision had been received.

1.5.3. Legal Remedy for Disputes

1.5.3.1. Any person, firm or corporation, having a lawfully authorized written contract with RIHEAA at the time of or after January 1, 1990 may bring an action against RIHEAA on the contract, including but not limited to actions either

for breach of contracts or for enforcement of contracts or for both. Any such claim shall be commenced in Superior Court within three (3) years from the date of completion specified in the contract and shall be tried by the court sitting without a jury. Such case shall receive a priority position on the calendar. All defenses in law or equity, except the defense of governmental immunity, shall be preserved to RIHEAA.

1.5.4 Settlement of dispute

1.5.4.1. The first, five hundred thousand dollars (\$500,000) of any arbitration award or Superior Court judgment against the state and/or RIHEAA awarding damages on a contract claim under the provision of state purchasing law shall be a necessary governmental expense and payment shall be approved by the Chief Purchasing Officer and paid by the State Treasurer out of the General Fund upon warrants drawn by the Chief Purchasing Officer. Appropriations for this judgments shall be continued appropriations.

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

1.6 RESOLUTION OF PROTESTS

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

1.6.2. Authority to resolve protests

1.6.2.1. The Chief Purchasing Officer or his designee shall have authority to determine protests and other controversies of actual or prospective bidders or offers in connection with the solicitation or selection for award of a contract.

1.6.2.2. Any actual or prospective bidder, offer, or contractor who is aggrieved in connection with the solicitation or selection for award of a contract may file a protest with the Chief Purchasing Officer. A protest or notice of other controversy must be filed promptly and in any event within two (2) calendar weeks after such aggrieved person knows or should have known of the facts giving rise thereto. All protests or notices of other controversies must be in writing.

1.6.2.3 The Chief Purchasing Officer shall promptly issue a decision in writing. A copy of that decision shall be mailed or otherwise furnished to the aggrieved party and shall state the reasons for the action taken.

1.6.2.4. The Chief Purchasing Officer shall promptly issue a decision in writing. A copy of that decision shall be mailed or otherwise furnished to the aggrieved party and shall state the reasons for the action taken.

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

1.7 IMPREST FUNDS

1.7.1. RIHEAA may establish, when provided for by appropriation, one (1) or more imprest cash funds for the purpose of paying disbursements requiring prompt cash outlay, and to carry out the provisions of this chapter. Such imprest cash funds shall be established subject to the requirements in Section 1.7 of the Procurement Regulations of the State.

1.8. GOODS PRODUCED IN THE REPUBLIC OF SOUTH AFRICA – In conformity with the policy of divestment established in Section 35-10-12, RIHEAA shall refrain from the purchase of any goods, which are known to be wholly

produced in the Republic of South Africa. Such goods are those which are in their final form for use or consumption without additional processing, assembly, or manufacturing. Further, RIHEAA will give preference in its purchasing to companies not doing business in, or with, the Republic of South Africa. The Chief Purchasing Officer shall promulgate such rules and regulations as are necessary and proper to carry out the purpose of this section.

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

SECTION 2 - PROCUREMENT STRUCTURE AND ACCOUNTABILITY

2.1 DEFINITIONS

2.1.1. In accordance with (37-2-7(3), the Chief Purchasing Officer shall be the Executive Director.

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

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

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

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

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

2.2. CENTRALIZED PROCUREMENT AUTHORITY FOR STATE AGENCIES set forth in chapter 37-2

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

2.2.1.1. (37-2-54 (3)) No purchase or contract shall be binding unless made under general regulations which the Chief Purchasing Officer may prescribe.

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

2.2.1.2. RIHEAA may use the Office of Purchases for purchasing and contracting in lieu of these procedures.

2.2.2. Within the Purchasing Department of RIHEAA shall be a purchasing agent who shall be appointed by the Chief Purchasing Officer. The Purchasing Agent shall be the administrator of the Purchasing Department and shall:

2.2.2.1. Serve as the central procurement and contracting agent of RIHEAA;

2.2.2.2. Recommend regulations, rules, and procedures to the Chief Purchasing Officer;

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

2.2.3. The Chief Purchasing Officer, except as otherwise provided by law, shall purchase, or shall delegate and control the purchase of, the combined requirements of all RIHEAA Departments, including, but not limited to, interests in real property, contractual services, rentals of all types, supplies, materials, equipment, and services, except where competitive bids may not be required.

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

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

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

2.2.3.1.3. Requested Delegated Purchase Authority shall be specifically justified by a department director and authorized by the Purchasing Agent in advance of any purchase action.

2.2.3.1.4. All delegated purchasing authority shall be specific as to:

2.2.3.1.4.1. The names and titles of individuals authorized by a department director to commit funds on behalf of his department.

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

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

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

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

2.2.5 [37-2-10] The Chief Purchasing Officer may provide for the distribution of RIHEAA's procurement activities and functions among the various departments within the Authority. However, in accordance with Chapter 37-2-13(3) the Chief Purchasing Officer shall not delegate his power to issue RIHEAA purchasing regulations to any other person and no RIHEAA purchasing regulations shall be issued except as approved by the Chief Purchasing Officer.

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

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

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

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

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

2.2.9. The Chief Purchasing Officer shall have power to salvage, to exchange, and to condemn supplies, equipment and real property.

2.2.9.1 [37-2-451 Supply Disposition Process - The Chief Purchasing officer shall sell or otherwise dispose of all property (including any interest in real property) of RIHEAA which is not needed or has become unsuitable for public use, or would be more suitable consistent with the public interest for some other use, as determined by the Chief Purchasing Officer pursuant to the provisions of Title 37, Chapter 7 [RIGLI]. The determination of the Chief Purchasing Officer shall be set forth in an order and shall be reached only after review of a written request by the department desiring to dispose of the property. Such request shall describe the property and state the, reasons why the department believes disposal should be effected. All instruments required by law to be recorded which convey any interest in any such real property so disposed of shall be executed and signed by the Chief Purchasing Officer pursuant to the provisions of Title 37, Chapter 7.

2.3 STRUCTURE AND RESPONSIBILITIES FOR CENTRALIZED STATE AGENCY PROCUREMENT

2.3.1. The Chief Purchasing Officer shall be responsible for:

2.3.1.1. Policy formulation and dissemination;

2.3.1.2. Establishing standards;

2.3.1.3. Defining and promulgating procedures;

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

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

2.3.2. The RIHEAA Purchasing Agent shall be responsible for:

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

2.3.2.2. Supervising procurement activity within the Purchasing Office;

2.3.2.3. Assuring that delegated purchasing authority is exercised properly;

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

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

2.3.2.5.1. Competitive purchases,

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

2.3.2.5.3. opportunities for local Rhode Island enterprises;

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

2.3.2.7. Assuring compliance with appropriate competitive bidding procedures throughout RIHEAA's procurement system.

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

2.3.2.9. Establishing and monitoring standards of quality;

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

2.3.2.11. Supervising RIHEAA's warehousing and inventory activities.

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

2.3.4. The State Controller shall be responsible for:

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

2.3.4.2. Forwarding all documents manifesting clear or suspected compliance violations to RIHEAA's Purchasing Agent for appropriate action;

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

2.3.4.4. Monitoring administration of imprest cash accounts.

2.3.5. All RIHEAA Department Directors shall be accountable to the Chief Purchasing Officer for the purpose of carrying out RIHEAA's procurement activities. The Department Directors shall be responsible for:

2.3.5.2. Assuring the availability of funds to sustain purchase commitments;

2.3.5.2. Enforcing adherence to applicable policies and procedures;

2.3.5.3. Thoughtful planning which will:

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

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

2.3.5.4. Careful development of specifications to:

2.3.5.4.1. Promote speed of bid implementation,

2.3.5.4.2. Reduce misunderstanding and conflicts, and

2.3.5.4.3. Enhance quality, competition, and control.

2.3.6. The Director of Economic Development shall be responsible for:

2.3.6.1. Certifying vendors as meeting state (Chapter 37-24.1-3) and/or federal legal and regulatory requirements to be considered Small Disadvantaged Businesses, e.g., minority or women-owned and controlled businesses; and

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

2.3.7. The Attorney General shall be responsible for:

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

2.3.7.2. Prosecution of cases involving criminal activity.

2.3.8. The Ethics Commission shall be responsible for:

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

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

2.4 VIOLATIONS OF PURCHASING LAWS AND REGULATIONS

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

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

2.4.2.1. The Chief Purchasing Officer shall have authority to impose sanctions, in accordance with personnel administration requirements, on any RIHEAA employee who has been found to have violated RIHEAA's purchasing code of ethics.

2.4.2.2. The Chief Purchasing Officer shall have the authority to suspend or debar suppliers in accordance with the requirements set forth herein.

2.4.3. Suspected violations of state conflict of interest laws and regulations regarding procurement or RIHEAA's procurement code of ethics set forth herein shall be reported in confidence to the Chief Purchasing Officer and in accordance with the rules and regulations established by the State Ethics Commission.

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

2.4.5. When for any reason collusion is suspected among any bidders or offers, a written notice of the facts giving rise to such suspicion shall be transmitted to the Attorney General.

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

SECTION 3 CODE OF ETHICS AND PROFESSIONAL BEHAVIOR

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

3.2. It is the policy of RIHEAA that public officials and employees must adhere to the highest standard of ethical conduct, respect the public trust and the rights of all persons, be open, accountable and responsive, avoid the appearance of impropriety, and not use their positions for private gain or advantage.

3.3. Prohibited activities under the Rhode Island Conflict of Interest Statutes.

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

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

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

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

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

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

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

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

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

3.4.1.2. To support and carry out RIHEAA policies;

3.4.1.3. To buy without prejudice;

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

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

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

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

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

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

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

3.4.2.3. R.I.H.E.A.A. officials shall observe a commitment to maintain the confidentiality of information submitted by suppliers and potential suppliers.

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

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

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

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

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

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

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

3.4.2.4. Social interaction between personnel involved in the procurement process and any present or prospective contractors, subcontractors or suppliers and their representatives creating the impression of favoritism shall be avoided. However, this regulation does not prohibit social interactions between RIHEAA employees and representatives of suppliers who are clearly of a personal nature, in which the parties involved would normally be expected to reciprocate, and in which no reimbursement from RIHEAA is sought by the employee. For example, the supplier's representative may be an acquaintance, neighbor, and relative or former state employee. The responsibility rests on the individual employee to regulate his/her own actions and to seek advice from Purchasing Management or the Ethics Commission if concerned about an apparent conflict of interest.

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

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

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

- receives personal enrichment as a result of an award, or
- holds a secured financial interest or a firm offering such goods or services, or,
- receives indirect or subsequent income, by way of employment, retainer, consultant, or other remuneration from a firm offering such goods or services, or,
- has an immediate family member or blood relative holding an equity interest, or

management or directorial position in a firm offering such goods or services;

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

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

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

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

3.4.4.1.1. Reassignment of the procurement official or other RIHEAA employee involved;

3.4.4.1.2. Termination of employment of the procurement official or other RIHEAA employee involved; and

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

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

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

3.4.7. Purchasing personnel shall not make purchases for personal use in the name of RIHEAA or through the use of any RIHEAA procurement form.

SECTION 4 - VENDOR QUALIFICATION,

PREQUALIFICATION AND SOLICITATION

4.1 DEFINITIONS

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

4.1.2 "Bidder List" shall mean a list maintained by the Purchasing Agent contain the names and addresses of suppliers of various goods and services from whom bids, proposals, and quotations can be solicited.

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

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

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

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

4.1.7. "Responsible Bidder" shall mean a qualified bidder who has the capability in all respects including financial responsibility to perform fully the contract requirements and the integrity and reliability, which will assure good faith performance.

4.1.8. A "Small Disadvantaged Business" shall be synonymous with a "minority business enterprise" as defined above.

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

4.1.10. "Vendor" shall mean supplier or contractor.

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

4.3 RESPONSIBILITIES OF BIDDERS AND OFFERORS

4.3.1 A reasonable inquiry to determine the responsibility of a bidder or offeror may be conducted. A written determination of responsibility of a bidder or offeror shall be made and it shall be made in accordance with regulations issued by the Chief Purchasing officer. The failure of a bidder or offeror to supply information promptly in connection with an inquiry related to responsibility may be grounds for a determination of non-responsibility.

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

4.3.1.2. Except as otherwise provided, by law, information furnished by a bidder or offeror pursuant to this Section may not be disclosed outside of the RIHEAA without prior written consent of the bidder or offeror.

4.3.1.3. The Purchasing Agent may utilize factors such as financial capability, reputation, management, etc, to evaluate the responsibility and qualifications of potential suppliers in order to develop a list of prospective bidders qualified to be sent invitations to bid.

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

4.4.1. The Bidders List shall be formatted in a manner, which identifies those suppliers certified as small disadvantaged business by the Rhode Island Department of Economic Development.

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

4.4.3. The Bidders List may consist of:

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

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

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

4.4.4.1 Restriction shall relate to:

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

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

4.4.4.2. The Purchasing Agent shall notify in writing any supplier whose inclusion on the Bidders List has been restricted and the reason for such action, informing the vendor that he has a right to request reconsideration of such decision.

4.4.4.2.1. Upon receipt of a request for reconsideration from a vendor providing sufficient justification for such reconsideration, the Purchasing Agent may amend the Bidders List.

4.4.4.2.2. Within fifteen (15) calendar days after a request for reconsideration has been denied in writing by the Purchasing Agent, a vendor may submit an appeal to the Chief Purchasing Officer, providing justification for his appeal.

4.4.4.2.3. The Chief purchasing Officer shall make a determination on the appeal within thirty (30) calendar days. Such decision shall be final.

4.4.5. The Purchasing Agent may require registered suppliers to resubmit updated Bidder Registration Forms annually, but not less than every five years.

4.4.6. The Purchasing Department shall maintain Vendor Information Files for the following documentation purposes:

4.4.6.1. General

4.4.6.1.1. Bidder Registration Forms

4.4.6.1.2. Results of investigations for pre-qualification, responsibility, suspension, debarment, restriction, and nonperformance.

4.4.6.1.3. Certifications;

4.4.6.1.4. Correspondence;

4.4.6.2. Bidding history; and

4.4.6.3. Performance history;

4.4.6.3.1. Departments shall be surveyed to develop information on the quality of goods and services received.

4.4.6.3.2. The Purchasing Department shall conduct inspections to verify that the specifications for a commodity or service and terms of delivery are fulfilled.

4.4.6.3.3. Solicited and unsolicited reports regarding contract performance(e.g., quality, and responsibility) and bid procedure shall be recorded in the Vendor Information File.

4.4.6.3.4. Complaints shall be investigated by the Purchasing Agent and the results of such investigations shall be maintained in the Vendor Information File.

4.5 PREQUALIFICATION OF CONTRACTORS

4.5.1. General Procurement - The Chief Purchasing Officer may provide for pre-qualification of suppliers as responsible prospective contractors for particular types of supplies, services, and construction. Solicitation mailing lists of potential contractors of such supplies, services, and construction shall include but need to be limited to such pre-qualified contractors. Pre-qualification shall not foreclose a written determination:

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

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

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

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

4.5.3.1. requirement for additional certification

4.5.3.2. requirement for demonstration of additional licensure

4.5.3.3. requirement of recent financial information

4.5.3.4. submission of an affirmative action employment plan

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

4.5.4. Inclusion of a supplier on the Bidder List shall constitute a pre-qualification determination.

4.6 DEBARMENT AND SUSPENSION

4.6.1. The Chief Purchasing Officer may exclude a supplier from RIHEAA's bidders list.

4.6.1.1. "Exclusion" shall refer to:

4.6.1.1.1. Debarment - permanent removal from the Bidders List; or

4.6.1.1.2. Suspension - temporary removal from the Bidders List; or

4.6.1.1.3. Rejection - lack of inclusion on the Bidders List.

4.6.2. Just cause for debarment may include but shall not be limited to:

4.6.2.1. Conviction of fraud or perjury;

4.6.2.2. Falsification of information on a Bidder Registration Form;

4.6.2.3. Substantial nonperformance on more than two contracts;

4.6.2.4. Debarment by the federal government; or

4.6.2.5. Lack of responsibility - withdrawal of more than two bids after an award has been announced without written consent of the Purchasing Agent.

4.6.3. Just cause for suspension may include but shall not be limited to:

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

4.6.3.2. Suspension by the federal government;

4.6.3.3. Substantial nonperformance on at least one contract;

4.6.3.4. Failure to respond to three consecutive solicitations for commodities which the vendor has indicated on the Bidder Registration Form that he could supply; or

4.6.3.5. Lack of responsibility evidenced by:

4.6.3.5.1. Withdrawal of more than two bids with a two-year period, even with the consent of the Purchasing Agent,
or

4.6.3.5.2. Correction of more than three bids within a two-year period, with or without the consent of the Purchasing Agent.

4.6.4. Just cause for rejection may include but shall not be limited to:

4.6.4.1. Lack of a properly prepared and submitted Bidder Registration Form;

4.6.4.2. Refusal to submit a Bidder Registration form;

4.6.4.3. Falsification of information on Bidder Registration or Certification Form;

4.6.4.4. Suspension or debarment by the federal government;

4.6.4.5. Conviction of fraud or perjury; or

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

4.6.5. The Purchasing Agent shall notify in writing any registered vendor whom he intends to debar, suspend or reject .

4.6.5.1. Such notice shall:

4.6.5.1.1. state the nature of and, in the case of suspension, the duration of the sanction;

4.6.5.1.2. provide the vendor with a rationale for the decision,

4.6.5.2. The provision for a reconsideration period shall not apply to those circumstances where the Purchasing Agent has determined that issuance of a purchase order to a particular vendor may represent a serious compromise of the interests of RIHEAA.

4.6.5.3. Upon the expiration of the reconsideration period, the Purchasing Agent shall notify the affected vendor of his final decision. If no request for consideration has been submitted, the Purchasing Agent shall implement the appropriate action.

4.6.6. The Purchasing Agent may suspend a vendor for not less than a three-month and not more than a two-year period, depending on the severity of a particular violation.

4.6.7. A vendor who has been suspended or rejected from the Bidders List shall not be reinstated until he has submitted a new request for reinstatement to the Purchasing Agent with a new Bidder Registration Form. Such requests shall be submitted with evidence that the reason for suspension or rejection has been corrected.

4.6.8. Reconsideration of suppliers who have been rejected shall be undertaken on a case-by-case basis.

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

4.6.10. Pest Control Services [37-2-731] Upon receipt of an order from the Director of Environmental Management pursuant to section 23-25-28(a)(1) RIGL, the Purchasing Agent shall take such steps as are necessary to insure that the

named business or commercial applicator shall not be eligible to receive state contracts for pest control services for the duration of the period encumbered in said Director's order.

SECTION 5 - COMPETITIVE REVIEW AND SOURCE SELECTION

5.1 DEFINITIONS

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

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

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

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

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

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

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

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

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

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

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

5.1-10 [37-2-15(2)] "Established catalog price" shall mean the price included in the most current catalog, price schedule or other form that:

- (a) is regularly maintained by a manufacturer or vendor of an item; and
- (b) is either published or otherwise available for inspection by customers; and
- (c) states prices at which sales are currently or were last made to a significant number of any category of buyers, or to the general buying public for that item; and
- (d) states prices that are obtained from the most recent industry wide publications and informational journals if any.

5.1.11. "Evaluated bid price" shall mean the dollar amount of a bid after bid price adjustments are made pursuant to objective measurable criteria, set forth in the invitation for bids, which affect the economy and effectiveness in the operation or use of the product, such as reliability, maintainability, useful life, and residual value.

5.1.12. "Evaluation of Bid" shall mean the process of examining a bid after opening to determine the bidder's

responsibility, responsiveness to requirements, and to ascertain other characteristics of the bid that relate to determination of the successful bidder.

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

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

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

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

5.1.17 "Request for Proposal (RFP) " shall mean all documents, whether attached or incorporated by reference, utilized for soliciting (competitive) proposals.

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

5.1.19 "Requisition" or a "purchase request" shall mean a document whereby a using agency requests that a contract be entered into to obtain goods and/or services for a specified need, and may include, but, is not limited to, the technical description of the requested item, delivery requirements, transportation mode request, criteria for evaluation of proposals, and/or suggested sources of supply, and information supplied for the making of any written determination and finding required by section 37-2-6 of this chapter. For the purposes of establishing rules and regulations pursuant the Chapter 37-2, a "requisition" shall also mean an internal document by which a using Department requests the Purchasing Office to initiate a procurement. The request may include, but is not limited to, a performance or technical description of the requested item, delivery schedule, transportation mode, criteria for evaluation, suggested sources of supply, and information related to the making of any written determination required by policy or procedure.

5.1.20 "Responsive Bidder" shall mean a person who has submitted a bid under these Purchasing Procedures which conforms in all material respects to the invitation for bids, so that all bidders may stand on equal footing with respect to the method and timeliness of submission and as to the substance of any resulting contract. For the purposes of establishing rules and regulations pursuant the Chapter 37-2, a "responsive bidder" shall also mean a bid that conforms in all material respect to the terms and conditions, specifications and any other requirements of the Bid Invitation.

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

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

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

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

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

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

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

5.1.26 "Supplies" shall mean all property, including but not limited to leases of real property, printing and insurance, except land or permanent interest in land.

5.1.27 "Vendor" shall mean a supplier or contractor.

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

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

5.2.2. Objective standards of comparison are fairly and impartially applied;

5.2.3. Offers are evaluated within a market context:

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

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

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

5.3 CENTRALIZATION

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

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

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

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

5.3.3. Delegated Purchases.

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

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

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

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

5.3.4. Violations of Purchase Authority

5.3.4.1. The Controller shall review all documents for which RIHEAA undertakes purchasing actions and shall report suspected violations of delegated purchasing authority to the Chief Purchasing Officer.

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

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

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

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

5.4 GENERAL PROVISIONS

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

5.4.1.1. Competitive sealed bidding; or

5.4.1.2. Competitive negotiation; or

5.4.1.3. Non-competitive negotiation; or

5.4.1.4. Small purchase procedures; or

5.4.1.5. Requests for Proposal; or

5.4.1.6. Where permitted by law, grants.

5.5 RULES FOR SOLICITATION

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

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

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

5.5.2.2. For all awards of \$250 or less, RIHEAA shall attempt to utilize small, disadvantaged businesses as suppliers.

5.5.3. Notification and Advertising

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

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

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

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

5.5.3.2.3. that a purchase is unusually large or infrequent. .

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

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

5.5.4. The Purchasing Agent may consider soliciting offers from prospective suppliers not on the Bidders List upon written recommendation by a user Department; however, contract award shall be subject to the bidder satisfying all requirements for Bid Registration prior to a bid opening or award of contract.

5.5.5. RIHEAA shall be under no obligation to consider an offer which has been submitted without solicitation.

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

Source Selection 5-8

5.5.7. All material submitted by requisitioners to the Purchasing Department for action shall be in sufficient detail and shall contain adequate supportive information to:

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

5.5.7.2. Identify measurable criteria for evaluation of others including, but not limited to, acceptance testing.

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

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

5.5.8.2. The Purchasing Department shall develop Standards Committees (product advisory committees) to review, develop, and update specifications and standard item designations for frequently and/or extensively used products.

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

5.5.9.1. The invitation for bids shall state whether award shall be made on the basis of the lowest bid price or the lowest evaluated or responsive bid price. If the latter basis is used, the objective measurable criteria to be utilized shall be set forth in the invitation for bids, if available.

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

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

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

5.5.9.3. Used Items may be purchased to achieve financial benefit if the manufacturer will provide warranties for maintenance requirements and for the replacement of parts. Such certification/warranties shall be the same as that provided for new equipment. Purchase of used items which exceed a value of \$250 shall require approval by the Purchasing Department.

5.6 BIDDER SECURITY

5.6.1. Bidder's security shall be a bond provided by a surety company authorized to do business in the State of Rhode Island, or the equivalent in cash, in a form satisfactory to RIHEAA.

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

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

5.6.1.3. All such sureties shall be made payable to the RIHEAA.

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

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

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

5.6.3. Bidder's security shall be in an amount equal to at least five percent (5%) of the amount bid.

5.6.4. When the invitation for bids requires that bid security be provided, noncompliance requires that the bid be rejected provided, however, that the Chief Purchasing Officer may set forth by regulations exceptions to this requirement in the event of-substantial compliance.

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

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

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

5.7. CANCELLATION OF INVITATION FOR BIDS AND REQUESTS FOR PROPOSALS.

An invitation for bids, a request for proposals, and other solicitation may be canceled, or all bids or proposals may be rejected, if it is determined in writing that the action is taken in the best interest of RIHEAA and approved by the Chief Purchasing Officer.

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

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

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

5.8. CORRECTION OR WITHDRAWAL OF BIDS

5.8.1. Correction or withdrawal of bids may be allowed only to the extent permitted by regulations issued by the Chief Purchasing officer.

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

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

5.8.4. Correction of a bid.

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

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

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

5.8.5. Withdrawal of bids.

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

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

5.9 SOLICITATION METHODOLOGY

5.9.1. Competitive offers shall be solicited for all cure value greater than \$250.00 except under specifically prescribed circumstances set forth herein.

5.9.2. Small Purchases. Procurements not to exceed an aggregate amount of five thousand dollars (\$5000) for construction and two thousand five hundred dollars (\$2500) for all other purchases may be made in accordance with small purchase regulations promulgated by the Chief Purchasing Officer. Procurement requirements shall not be artificially divided so as to constitute a small purchase under this section.

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

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

5.9.4. Public Competitive Bids. Sealed written competitive bids shall be required for purchase orders exceeding five thousand dollars (\$5000) for construction contracts and two thousand five hundred (\$2500) for all other purchases unless such method is not practicable.

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

5.9.4.2. Adequate public notice of the invitation for bids shall be given a sufficient time prior to the date set forth therein for the opening of bids. Such notice may consist of a written invitation soliciting quotations from suppliers on RIHEAA's approved vendors list. Such notice may include publication in a newspaper of general circulation in the state as determined by the Chief Purchasing Officer not less than seven (7) days nor more than twenty-one (21) days before the date set for the opening of the bids. The Chief Purchasing Officer may make a written determination that there is a need to waive the twenty-one (21) day limitation. The written determination shall state the reason why the twenty-one (21) day limitation is being waived and shall state the number of days, giving a minimum and maximum, before the date set for the opening of bids when public notice is to be given.

5.9.4.3. Bids shall be opened publicly at the time and place designated in the invitation for bids. Each bid, together with the name of the bidder, shall be recorded and an abstract made available for public inspection. Subsequent to the awarding of the bid, all documents pertinent to the awarding of the bid shall be made available and open to public inspection and retained in the bid file.

5.9.5. Formal Competitive Bids.

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

5.9.5.2. A formal bid shall be distinguished by:

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

5.9.5.3. All Formal Competitive Bids shall be issued by the Purchasing Department.

5.9.6. Informal Competitive Bids

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

5.9.6.2. An informal bid shall be distinguished by:

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

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

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

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

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

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

5.9.7. Requests for Proposal

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

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

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

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

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

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

5.9.7.3. Offers shall be evaluated by a committee comprised of a representative of the Purchasing Department, representative of the user department and other appropriate parties on the basis of:

5.9.7.3.1. The qualifications of the offerers, established by professional accomplishment and previous experience;

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

5.9.7.3.3 Other provisions of offers which are determined to serve the best interests of RIHEAA.

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

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

5.10 SOURCE SELECTION AND CONTRACT AWARD

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

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

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

5.10.1.2.1. the solicitation provides for such consideration;

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

5.10.1.2.3. the price offer made by the MBE is determined to be within a competitive range (not to exceed Source Selection 5-17 five percent (5%) higher than the lowest responsive price offer) for the product or service; and

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

5.10.2. In accordance with the provisions of Chapter 37-14.1-7 ten percent (10%) of the dollar value of the work performed against contracts for construction exceeding five thousand dollars (\$5,000) shall be performed by Minority Business Enterprises where it has been determined that subcontract opportunities exist, and where certified MBE contractors are available.

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

SECTION 6 - NEGOTIATION

6.1 GENERAL PROVISIONS

6.1.1 Definitions

6.1.1.1 "Negotiation" shall mean contracting by the provisions set forth in section 37-2-19, 37-2-20, and 37-2-21. These sections refer to competitive negotiation, noncompetitive negotiation, and sole source and emergency procurements.

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

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

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

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

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

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

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

6.1.3.3 Single or sole source procurements are made;

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

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

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

6.2 COMPETITIVE NEGOTIATION

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

6.2.2 Contracts may be competitively negotiated when it is determined in writing by the Purchasing Agent that the bid prices received by competitive sealed bidding either are unreasonable as to all or part of the requirements, or were not independently reached in open competition, and for which:

(a) Each competitive bidder has been notified of the intention to negotiate and is given reasonable opportunity to negotiate; and

(b) The negotiated price is lower than the lowest rejected bid by any competitive bidder; and

(c) The negotiated price is the lowest negotiated price offered by a competitive offeror.

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

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

6.3 PROCEDURES

6.3.1 Request for Proposal

6.3.1.1 Adequate public notice of the request for proposals shall be given in the same manner as provided for Competitive Sealed Bidding.

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

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

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

6.3.2 Review and Discussion

6.3.2.1 Written or oral discussion shall be conducted with all responsible offerors who submit proposals determined in writing to be reasonably susceptible of being selected for award. Discussions shall not disclose any information derived from proposals submitted by competing offerors. Discussions need not be conducted:

(a) With respect to prices, where such prices are fixed by law or regulation, except that consideration shall be given to competitive terms and conditions; or

(b) Where time of delivery or performance will not permit discussions; or

(c) Where it can be clearly demonstrated and documented from the existence of adequate competition or accurate prior cost experience with the particular supply, service, or construction item, that acceptance of an initial offer without discussion would result in fair and reasonable prices, and the request for proposals notifies all offerors of the possibility that award may be made on the basis of the initial offers.

6.3.2.2 Responses to the Request for Proposal shall be evaluated:

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

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

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

6.3.2.3 Where there is more than one bidder, competitive negotiations shall be conducted with the three (two if there are only two) bidders determined in writing to be the lowest responsive and responsible bidders to the competitive sealed bid invitation. Such competitive negotiations shall be conducted under the following restrictions:

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

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

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

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

6.3.4 Request for Best and Final Offer

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

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

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

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

6.4 NONCOMPETITIVE NEGOTIATION

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

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

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

6.4.3.1 A single or sole source procurement is involved, or

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

6.4.3.3 Collusive or exclusionary selling practices are in evidence.

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

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

6.5 TRUTH IN NEGOTIATIONS REQUIREMENTS - COST OR PRICING DATA

6.5.1 A contractor shall submit cost or pricing data and shall certify that, to the best of his knowledge and belief, the cost or pricing data submitted were accurate, complete, and current as of a mutually determined specified date prior to the date of:

(a) The pricing of any negotiated contract where the total contract price is expected to exceed fifty thousand dollars (\$50,000); or

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

6.5.2 Applicability

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

6.5.2.2 The requirements of this section need not be applied to contracts 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 it is determined in writing by the Chief Purchasing Officer that the requirements of this section may be waived, and the reasons for such waiver are stated in writing.

6.5.3 Cost or pricing data may include such verifiable factors as all vendor quotations, nonrecurring costs, changes in production methods and production or procurement volume, data in support of contractor projection of business prospects and objectives, together with related costs of operations, unit cost trends such as those associated with labor efficiency, make-or-buy decisions and estimated resources to attain business goals and any other management decisions which reasonably could be expected to have a significant bearing on costs under a proposed contract.

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

6.6 SUBCONTRACTING REQUIREMENTS

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

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

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

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

6.7 GUIDELINES IN NEGOTIATIONS

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

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

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

6.7.2 Contracts shall contain an audit clause which provides that if, after award, the Purchasing Agent obtains information that submitted data were inaccurate, incomplete or not current, or if the data were not adequately verified at the time of negotiation, then a post-award audit shall be undertaken.

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

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

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

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

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

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

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

SECTION 7 - SUPPLEMENTAL SERVICES

7.1 DEFINITIONS

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

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

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

7.1.2 "Consultant" shall mean any person with whom RIHEAA has a contract which contract provides for the person to give direction or information as regards [a] particular area of knowledge in which the person is a specialist and/or has expertise.

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

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

welfare or the safeguarding of life, health, or property is involved or concerned, and including such architectural work as is incidental to the practice of engineering.

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

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

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

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

7.1.4.3 Examples of professional services include:

7.1.4.3.1 client services (medical treatments, hospital staff coverage, counseling, therapy, and individual rehabilitation plans)

7.1.4.3.2 legal representation in litigation and administrative advice (interpretation of law, contracts, etc.)

7.1.4.3.3 computer programming

7.1.4.3.4 education (training, teaching)

7.1.4.3.5 construction management

7.2.4.3.6 arbitration.

7.1.4.4. "Special services" shall mean services which the state deems necessary or desirable to purchase provided by individuals or firms possessing special knowledge or skills for which formal licensing certification is not necessarily required. Examples of special services include:

7.1.4.4.1 expert witness testimony;

7.1.4.4.2 art, music, and dance;

7.1.4.4.3 interpreting (languages, deaf);

7.1.4.4.4 public information (drug and alcohol abuse); and

7.1.4.4.5 training (foster parenting).

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

7.1.4.5.1 "Employee" shall mean an individual drawing a salary from RIHEAA and any non-salaried individual performing personal services for RIHEAA.

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

7.1.4.5.3 An "employee contractor" shall mean a person on RIHEAA's payroll who has been employed by RIHEAA in an advisory capacity. (An example of such employment would be URI professors employed by MHRH to develop policy analyses.) 1

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

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

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

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

7.1.5.3 Examples of professional consultations include:

7.1.5.3.1 systems analysis (computer, personnel, management review);

7.1.5.3.2 program analysis (medical program planning); and

7.1.5.3.3 policy recommendations (abandonment or adoption of programs, establishment of decision criteria).

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

7.2 GENERAL PROVISIONS

7.2.1 User departments shall recommend the final selection of providers of legal services. Departments shall not commit funds for proposed services prior to receiving approval of the recommended provider from the Chief Purchasing Officer or his designee.

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

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

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

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

7.3 PROCUREMENT PLANNING FOR SUPPLEMENTAL SERVICES.

Annually, at a date which coincides with the development of the state budget, RIHEAA Department Managers shall submit to the Chief Purchasing Officer a Supplemental Service Utilization Plan.

7.3.1 Plans shall provide the following information about proposed services:

7.3.2.2 number of services;

7.3.1.2 estimated costs of each contract/ relationship;

7.3.1.3 anticipated effective period of each relationship;

7.3.1.4 whether activities are ongoing or new endeavors;

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

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

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

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

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

7.5 ARCHITECTURAL, ENGINEERING AND CONSULTANT SERVICES SELECTION PROCESS FOR SERVICES NOT EXCEEDING \$20,000.

When a professional consultant contract is estimated (reasonably) to be between five thousand dollars (\$5000) and twenty thousand dollars (\$20,000) the Purchasing Agent may establish a technical review committee to evaluate the qualifications of potential suppliers. Membership shall be determined on a case by case basis. The technical committee shall recommend no more than three candidates to the Purchasing Agent, who shall forward his recommendations to the Chief Purchasing Officer.

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

7.6.1 Solicitation

7.6.1.1 Public Announcement. The Chief Purchasing Officer shall give public notice of the need for professional architectural, engineering or consultant services.

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

7.6.1.1.2 The notice shall:

(a) contain a brief statement of the services required;

(b) describe the project;

(c) specify how specific information on the project may be obtained; and,

(d) be published in a newspaper of general circulation in the state and in such other publications as in the judgment of the Chief Purchasing Officer shall be desirable.

7.6.1.2 [37-2-61] The solicitation shall describe RIHEAA's requirements and set forth evaluation criteria for the selection of the successful candidate and shall be distributed to interested persons.

7.6.2 A bidder's conference shall be held at which the following shall be provided:

7.6.2.1 a description of the criteria to be used in evaluating a bidder's statement of qualifications and performance date for the purpose of selecting a firm;

7.6.2.2 a discussion and further definition of the scope of work; and

7.6.2.3 an on-site review, if appropriate.

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

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

7.6.5 Final Selection - the Chief Purchasing Officer shall be responsible for the final selection and shall so inform the Division of Budget.

7.7 EVALUATION FOR SELECTION

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

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

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

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

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

7.7.2 The Committee shall evaluate the following in light of the criteria set forth in the solicitation:

7.7.2.1 statements submitted in response to the solicitation of consultant services, and

7.7.2.2 other required statements of qualifications and performance data.

7.8 REQUIREMENTS FOR SUPPLEMENTAL LEGAL SERVICES

7.8.1 Professional services--Legal--State--Before RIHEAA procures the services of an attorney, the Chief Purchasing Officer shall demonstrate the following:

- (A) 1. The need for the services required including the scope of the services to be performed;
2. That no legal personnel employed by the state on a full-time basis is available to perform such services;

3. That funding is available, indicating from which sources such funding is to be provided;
4. That attorneys to be engaged meet the following minimum requirements;
 - (a) appropriate professional licensing;
 - (b) competence to perform such services as reflected by formal training and education, general experience and experience in providing the required services and the qualifications and competence of persons who would be assigned to perform the services; and
 - (c) ability to perform the services as reflected by workload and availability of adequate personnel, equipment and facilities to perform the services expeditiously.

(B) The attorney shall enter into a letter of engagement with RIHEAA. The letter of engagement shall state the rate of compensation, the scope of the services to be performed for the compensation and provision for the payment of expenses incurred in connection with legal services. The letter of engagement shall certify that the rate of competition does not exceed the rate of compensation charged by counsel to his/her preferred public or private clients. A letter of engagement shall not be for more than one(1) year.

7.8.2. In accordance with Chapters 37-2-69 and 37-2-71 of the RIGL, prior to procuring the services of an attorney RIHEAA must document the following:

7.8.2.1 Justifications for need may include, but need not be limited to, consideration of:

7.8.2.1.1 legal mandates/court orders or consent decrees;

7.8.2.1.2 licensing/certification requirements;

7.8.2.1.2 minimum standards of service.

7.8.2.2 Presentation shall include copies of relevant laws, standards or other citations used for justification.

7.8.2.3 The scope of services shall described:

7.8.2.3.1 The time period for the proposed contract;

7.8.2.3.2 Services or outcomes; tasks, reports, or other products.

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

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

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

7.8.3.1 RIHEAA may obtain annual verification of the status of an attorneys from the Supreme Court listing of members of the Rhode Island Bar.

7.8.3.2 The Chief Purchasing Officer may delegate authority to determine the appropriateness of qualifications to department executives subject to the following:

7.8.3.2.1 Such delegation shall be at the request of and justified by the department executive; and

7.8.3.2.2 A complete description of the evaluation procedure is provided; and

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

7.9 INDEPENDENT AUDITING

7.9.1 In accordance with [37-2-59(3)] independent auditing shall be subject to the provisions of Section 22-13-6 of the General Laws of Rhode Island which requires that the Auditor General shall review and approve:

7.9.1.1 the proposed scope of services for an independent audit; and

7.9.1.2 the firm selected to conduct the audit.

7.9.2 Requisitions for independent audit services shall be submitted to the Purchasing Department with written verification of the Auditor General's approval of the proposed purchase of services. Copies of correspondence from the Auditor General to the RIHEAA shall be considered sufficient authorization to proceed.

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

SECTION 8 - CONTRACTS

8.1 DEFINITIONS

8.1.1 "Change order" shall mean a written order signed by the Purchasing Agent, or the contractor directing or allowing the contractor to make changes which the changes clause of the contract authorizes the Purchasing Agent or contractor to order without the consent of the contractor or Purchasing Agent.

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

8.1.3 [37-2-7(6)] "Contract Modification" shall mean any written alteration in the specifications, delivery point, rate of delivery, contract period, price, quantity, or other contract provisions of any existing contract, whether accomplished by unilateral action in accordance with a contract provision, or by mutual action of the parties to the contract. It shall include bilateral actions, such as change orders, administrative changes, notices of termination, and notices of the exercise of a contract option.

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

8.1.5 "Contractor" shall mean any person having a contract with RIHEAA.

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

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

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

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

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

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

8.1.7 "cost-reimbursement contract" shall mean a contract under which RIHEAA reimburses the contractor for those contract costs, within a stated ceiling, which are allowable and allocable in accordance with cost principles established by the Chief Purchasing Officer herein, and a fixed fee.

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

8.1.9 "Punitive Termination" shall mean termination at the discretion of RIHEAA for failure of the contract perform with no liability on the part of RIHEAA.

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

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

8.1.12 "Supplemental Agreement" shall mean any contract modification which is accomplished by the mutual action of the parties.

8.2 FUNDAMENTAL REQUIREMENTS AND PRINCIPLES FOR RIHEAA CONTRACTS

A contract shall mean a promise, or a set of promises, for breach of which the law gives a remedy, and the performance of which the law recognizes as a duty.

8.2.1 No purchase or contract shall be binding on RIHEAA thereof unless approved by the Chief Purchasing Officer or made under general regulations which the Chief Purchasing Officer may prescribe.

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

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

8.2.1.1.2 Oral Agreements - Any alleged oral agreement or arrangements made by a bidder or contractor with RIHEAA or an employee of the Purchasing Department may be disregarded and shall not be binding on RIHEAA.

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

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

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

8.2.2. No RIHEAA purchasing regulation shall change in any way a contract commitment by RIHEAA or of a contractor to RIHEAA which was in existence on the effective date of this regulation.

8.2.3 The provisions of RIHEAA purchasing regulations shall be considered to be incorporated by operation of law in all RIHEAA contracts

8.2.4 Contract provisions and contracts entered into in violation of RIHEAA purchasing regulations shall be void from inception.

8.2.5 Supplemental Principles of Law - Obligation of Good Faith.

8.2.5.1 Unless displaced by the particular provisions of this chapter [37-21, the principals of law and equity, including the uniform commercial code, the law merchant, and the law of contracts, including, but not limited to, agency, fraud, misrepresentation, duress, coercion, mistake, and bankruptcy, shall supplement these provisions.

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

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

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

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

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

8.3 GENERAL CHARACTERISTICS OF RIHEAA CONTRACTS

General Terms and Conditions - The Purchasing Department shall develop and make available to potential suppliers a document stating the general terms and conditions applicable to all quotations and RIHEAA purchasing contracts.

8.3.1.1. The General Terms and Conditions shall:

8.3.1.1.1. be referenced and made a part of all solicitations for proposals and quotations; all RIHEAA purchase orders, contracts, and letters of authorization; and bidder registration documentation.

8.3.1.1.2 provide notice to bidders that contract award may be subject to the bidder signing an affirmation (certification) regarding certain legal requirements or restrictions relating to foreign corporations, goods produced in South Africa, disadvantaged business enterprises, labor rates, local product preference, etc., as required by the Purchasing Agent.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8.3.7 Length of contract period shall be specified.

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

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

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

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

8.4 THE PURCHASE ORDER CONTRACT

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

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

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

8.4.3.2 RIHEAA's General Terms and Conditions;

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

8.4.3.4 As appropriate, additional contract provisions.

8.5 MULTI-YEAR CONTRACTS

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

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

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

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

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

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

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

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

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

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

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

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

8.5.3 When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent year of a multi-year contract, the contract for such subsequent year may be cancelled and the contractor shall be reimbursed for reasonable value of nonrecurring costs incurred but not amortized in the price of the supplies or services delivered under the contract.

The cost of cancellation may be paid from:

(a) Appropriations currently available for performance of the contract; or

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

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

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

8.5.4.2 Maintenance and repair of specialized equipment;

8.5.4.3 Special licensing agreements (computer, communication);

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

8.5.4.5 Supplemental services, the approval of which is based upon the recommendation and selection by the Chief Purchasing Officer.

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

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

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

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

8.6.2. Such instrument shall:

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

8.6.2.2 Be superseded by a definitive contract at the earliest practicable date not later than the greater of the following:

8.6.2.2.1 the expiration of 180 days from the date of the LA or

8.6.2.2.2 delivery of 40% of the contract.

8.6.2.3 Be specifically negotiated and shall address the following contractual requirements that:

8.6.2.3.1 the expiration of 180 days from the date of the LA or

8.6.2.3.1 The vendor will proceed immediately with performance of the contract, including procurement of necessary materials;

8.6.2.3.2 the extent and method of payments in the event of termination for the convenience of RIHEAA or for default;

8.6.2.3.3. the vendor is not authorized to expend monies or incur obligations in excess of the maximum liability of RIHEAA as set forth in the letter contract;

8.6.2.3.4 the type of definitive contract contemplated;

8.6.2.3.5 as many definitive contract provisions as possible;

8.6.2.3.6 the vendor shall provide such price and cost information as may reasonably be required by RIHEAA; and

8.6.2.3.7 the vendor and RIHEAA shall enter into negotiations promptly and in good faith to reach agreement and execute a definitive contract.

8.7 CHANGES TO PURCHASE ORDERS

8.7.1 Agreements and changes to scope of work, price, or other terms shall be incorporated into purchase orders via "change order" documents incorporating contract amendments.

8.7.2 Change Orders issued by the Purchasing Department shall be the only binding documents which may create a change in a purchase order.

8.7.3 Personnel shall not commit RIHEAA to technical/contractual changes to purchase orders without first securing all necessary approvals.

8.7.4 All discussions of potential changes (oral or written) may be disclaimed as not being binding on the supplier or RIHEAA until formally incorporated in the purchase order.

8.7.5 In general, change orders shall be issued by the Purchasing Department following receipt of quotations and discussions of price and delivery with the supplier. If circumstances preclude immediate issuance of a formal change order, interim direction to the supplier may be made via a letter of authorization signed by the Purchasing Agent.

8.8 TERMINATION OF CONTRACT

8.8.1 If required bidder certifications are determined to be invalid, the Purchasing Agent shall declare the purchase order void.

8.8.2 Notice of termination by either party shall be submitted in writing to the other party in accordance with the termination clause of the contract.

8.8.3 Cancellation of a Contract by RIHEAA

8.8.3.1 Cancellations of Purchase Order Contracts or Master Pricing Agreements shall require the signature of the Purchasing Agent.

8.8.3.2 A contract may be cancelled or annulled at the contractor's expense upon determination by the Purchasing agent that a condition of nonperformance exists.

8.8.3.3. "Nonperformance" shall mean lack of compliance with the contract specifications and/or terms and conditions.

8.8.3.4 Cancellation by the Purchasing Agent for nonperformance shall be subject to the following rules:

8.8.3.4.1 A formal complaint of nonperformance or unsatisfactory performance shall be submitted by a RIHEAA official to the Purchasing Agent. Such complaint shall provide a description of and justification for the complaint.

8.8.3.4.2 The Purchasing Department shall be authorized to attempt to resolve the problem to the satisfaction of the user Department.

8.8.3.4.4 The Purchasing Agent shall determine whether the problem requires formal action, and if the problem has not been resolved, the Purchasing Agent shall notify the contractor in writing that he/she is not in compliance with the contract. Such notice of nonperformance shall:

8.8.3.4.4.1 specify the nature of the complaint ;

8.8.3.4.4.2 direct the contractor to take corrective action;

8.8.3.4.4.3 direct the contractor to respond in writing to the notice of nonperformance within a specified time period; and

8.8.3.4.4.4 notify the contractor that failure to respond as directed may result in cancellation of the order.

8.8.3.5 If a contractor fails to take corrective action and/or respond to a notice of nonperformance, the Purchasing Agent may issue a change order canceling the contract.

8.8.3.6 If, after reviewing the contractor's response, the Purchasing Agent determines that the contractor is not out of compliance with the contract requirements, he shall so notify the use department and the contractor in writing, providing a rationale for his decision.

8.8.3.7 If the Purchasing Agent determines that valid extenuating circumstances out of the control of the contractor have prevented compliance with the contract requirements, he shall so inform the user department and may amend the contract to provide for a reasonable opportunity for the vendor to perform the contract, if necessary.

8.8.3.8 If the Purchasing Agent believes that a contractor's action or lack thereof presents a clear and immediate danger to the public interest, he may request in writing that the Chief Purchasing Officer authorize immediate termination of the contractual relationship.

8.8.3.9 Copies of all communications with a contractor regarding nonperformance shall be sent to the contractor's bonding company, attorney and RIHEEA's legal counsel.

8.8.3.10 If the Purchasing Agent determines that a contractor is unwilling or unable to perform a contract, he shall:

8.8.3.10.1 direct the contractor's bonding company to assume responsibility for the performance of the contract, if a performance bond has been issued; and

8.8.3.10.2 so notify the user agency and contractor; and

8.8.3.10.3 notify the contractor whether he/she has been temporarily suspended or permanently debarred from the RIHEEA's Bidders List and shall be responsible for any costs incurred by RIHEEA in the completion of the contract.

8.9 TYPES OF PURCHASE ORDER CONTRACTS

8.9.1 Fixed Price (FP)

8.9.1.1 The Firm Fixed Price (FFP) contract shall mean one which provides for a price which is not subject to any adjustment by reason of the seller's cost experience in the performance of the contract. This type of contract should be used when the price is based on credible cost data for the completion of the order.

8.9.1.2 The Fixed Price with Economic Price Adjustment (FPW/EPA) contract shall mean one which provides for the upward or downward revision of the state price upon the occurrence of certain economic conditions which are specifically defined in the contract. These conditions are limited to those beyond the control of the seller.

8.9.1.3 A Fixed Price Pre-determinable (FPP) contract shall mean one which permits reconsideration of price at a stated time after contract initiation when the only supplier capable of performing a job cannot quote a fixed price with full assurance that it will be fair and reasonable.

8.9.1.4 The Fixed Price Incentive (FPI) contract shall mean one which provides for the adjustment of profit (fee) and price according to a sharing arrangement based on the relationship which final negotiated total cost bears to the negotiated target cost.

8.9.2 Cost Reimbursement

8.9.2.1 A Cost No Fee (CNF) contract shall mean one under which the seller receives no fee.

8.9.2.2 A Cost Sharing (CS) contract shall mean one under which the seller not only receives no fee but is reimbursed for only an agreed upon portion of its allowable costs.

8.9.2.3 A Cost Plus Fixed Fee (CPFF) contract shall mean one which provides for the payment of a fixed fee to the seller. The fixed fee negotiated does not vary with actual cost, but may be adjusted as a result of any subsequent changes in the work or service to be performed under the purchase order.

8.9.2.4 A Cost Plus Incentive Fee (CPIF) contract shall mean one which provides for a fee which is adjusted by formula in accordance with the relationship which total allowable costs bear to target costs, a target fee, a minimum and maximum fee, and a fee adjustment formula. Upon completion of the order, the fee is determined in accordance with the established formula as an incentive for performance efficiency; however, there is no ceiling price specified and the seller is under no obligation to complete the order once the funds obligated have been exhausted.

8.9.2.5 A Cost Plus Percentage of Cost (CPPC) contract shall mean one which provides for a fee which is adjusted by percentage formula in accordance with the relationship to total cost. The percentage formula may be fixed, but fee paid may be adjusted as a result of any subsequent changes in the work or service to be performed under the purchase order.

8.9.2.6 A Time and Materials (T/M) contract shall mean one which provides for the purchase of supplies or services on the basis of (1) direct labor hours at specified fixed hourly rates (which rates include direct and indirect labor, overhead and profit) and (2) material at cost. Material handling costs may be included to the extent they are clearly excluded from any factor of the charge computed against direct labor hours (L/H).

8.9.3 A To Be Determined (TAD) contract shall mean one which enables the buyer and the seller to enter into a relationship with no, pre-determined terms at the initiation of the contract.

8.9.4 A Blanket Order shall mean an arrangement under which a purchaser contracts with a vendor to provide the purchaser's requirements for an item(s) or a service, on an as-required and often over-the-counter basis. Such an arrangement sets a limit on the period of time it is valid and the maximum amount of money which may be spent at one time or within a specified period.

8.9.4.1 A Pricing Agreement (PA) shall mean a special blanket order which establishes the terms and conditions under which a specific item or a specific category of items in an indefinite quantity, are to be purchased for a specific period of time, usually one year.

8.9.4.2 A Master Pricing Agreement (CPA) shall mean a pricing agreement which has been established on behalf of more than one entity.

8.9.4.3 A "Term Contract" shall be synonymous with an MPA contract.

8.10 PRINCIPLES FOR SELECTION OF TYPE OF PURCHASE ORDER CONTRACT - The selection of the appropriate type of contract is a matter which requires the exercise of judgment in order to obtain fair and reasonable prices in accordance with the circumstances of the procurement.

8.10.1 In determining the type of contract to be use, consideration shall be given but not limited to such factors as:

8.10.1.1. Type and complexity of the item or scope of work to be performed;

8.10.1.2 Urgency of the requirement;

8.10.1.3 Prospective period of contract performance;

8.10.1.4 Degree of competition present;

8.10.1.5 Extent of completion of baseline and detail design; which in turn may influence other considerations as the adequacy and firmness of specifications, and the availability of relevant historical pricing data and prior experience;

8.10.1.6 Availability of comparative price data, or lack of firm market prices or wage levels;

8.10.1.7 Prior experience with the supplier;

8.10.1.8 Extent and nature of subcontracting contemplated;

8.1.1.9 Assumption of business risk;

8.10.1.10 Supplier technical capability and financial responsibility;

8.10.1.11 Administrative costs;

8.10.1.12 Adequacy of the supplier's accounting system; and

8.10.1.13 Other concurrent contracts.

8.10.2 Except with respect to firm fixed price contracts, no contract type shall be used unless it has been determined in writing that the proposed contractor's accounting system will permit timely development of all necessary cost data in the form required by the specific contract type contemplated and that the contractor's accounting system is adequate to allocate costs in accordance with generally accepted accounting principles.

8.10.2.1 The firm fixed price contract shall be used in applications and under limitations hereinafter set forth, unless the use of another type of contract is more appropriate.

8.10.3 Subject to the limitations on entering into cost plus percentage of cost and cost reimbursement contracts set forth herein, any type of contract which will promote the best interests of RUIHEAA may be used.

8.10.4 Cost Reimbursement Contracts.

8.10.4.1 [37-2-29] The Cost Plus a Percentage of Cost (CPPC) contract is prohibited.

8.10.4.2 (37-2-30(l)) No contract providing for the reimbursement of the contractor's cost plus a fixed fee (cost reimbursement) may, be made through negotiation or in sole source or emergency procurements unless it is determined in writing by the Chief Purchasing Officer that such contract is likely to be less costly to RIHEAA than any other type of contract, or that it is impracticable to obtain supplies or service of the kind or quality required except under such a contract.

8.10.4.3 Each contractor under a cost reimbursement type contract shall obtain consent from the Chief Purchasing Officer, as provided for in the contract, before entering into:

(a) a cost reimbursement subcontract; or

(b) any other type of subcontract involving more than ten thousand (\$10,000) or ten percent (10%) of the estimated cost of the prime contract [whichever is greater].

8.10.4.4 All cost reimbursement contracts shall contain a provision that only costs recognized as allowable, in accordance with cost principles set forth in regulations issued by the Chief Purchasing Officer will be reimburse.

8.10.5 When a FP W/EPA contract is employed, provisions shall be included for downward adjustment of the contract price in those instances where the prices or rates may be expected to fall below the base price agreed to by contract.

8.10.5.1 Types of economic adjustments shall include but shall not be limited to:

8.10.5.1.1 Price Adjustment - a modification of the base purchase order price on the basis of increases or decreases in published or established prices of specific items.

8.10.5.1.2. Labor and Material Adjustment – a modification of the contract base price on the basis of increases or decreases of wage rates, specific material costs, or both, using agreed upon standards or indices.

8.10.5.1.3 This type of contract may be appropriate where valid doubt exists as to the predictability of economic conditions which will exist during a multi-year contract period. Price adjustment provisions shall not be used to provide protection to contractors against contingencies which arise from inaccurate estimates of the quantities of labor or materials required for completion of a contract.

8.10.6 When FPR contracts are employed the basis for adjustments shall be established when the contract is negotiated and a cost baseline shall be established.

8.10.6.1. The following data shall be secured from each source before placing a pre-determinable order: number of estimated hours and method used in arriving at hours; direct labor rates per hour; material cost, including both quantities and unit prices; overhead rates (categorized by element); profit, any other data deemed pertinent for analysis of the prices quoted.

8.10.6.2. The establishment of a pre-determinable type of contract shall require the written authorization of the Chief Purchasing Officer. Upon analysis conducted jointly by the use Department and the Purchasing Agent, a request and justification for considering pre-determinable pricing provisions shall be submitted in writing by the Purchasing Agent to the Chief Purchasing Officer.

8.10.7 When FPI contracts are employed:

8.10.7.1 There shall be an initially negotiated firm target cost, a target profit, a price ceiling and a final profit and price adjustment formula. After completion, a final cost shall be negotiated and a final price established in accordance with the pre-determined formula.

8.10.7.2 The circumstances must be such that targets are reasonably free of contingencies and provided that a fair and reasonable incentive formula can be established at the time of initial contract negotiation and the contract is of sufficient duration to permit achievement of substantial cost reductions.

8.10.7.3 The same supplier cost data shall be required as for a re-determination contract.

8.10.8. A CNF contract may be used for research and development work particularly with nonprofit organizations and educational institutions.

8.10.9 A CS contract is suitable for:

8.10.9.1 Jointly sponsored research and development with educational institutions or other nonprofit organizations.

8.10.9.2 Other research and development work where the results of the contract may have commercial benefit to the seller.

8.10.10 A CPFF contract is suitable when

8.10.10.1 The scope and nature of work cannot be definitely specified.

8.10.10.2 Definite specifications exist but the seller lacks a valid basis for estimating costs because the supplies called for are not items regularly manufactured, or the services called for have not been previously performed, or partial experience will not reveal a proper pricing basis for the remainder of the contract.

8.10.10.3 Specifications are not complete or major changes substantially affecting the scope of production or construction work are expected.

8.10.10.4 Work is to be performed in a RIHEAA-owned facility with the use of RIHEAA-owned equipment, materials, or personnel

8.10.11 A T/M contract shall include the establishment of a cost limitation which the seller may not exceed (except at his/her own risk). A T/M contract shall be used only in situations when:

8.10.11.1 it is not possible at the time of placing the order to estimate the extent of the work or to anticipate final costs with any reasonable degree of accuracy such as: (1) engineering and design services, (2) certain repair, maintenance or overhaul work, (3) emergencies.

8.10.11.2 provision is made for appropriate surveillance by RIHEAA personnel during performance.

8.10.12 L/H contracts based solely on labor hours shall be considered a subcategory of T/M contracts, subject to the same restrictions as the T/M contract and shall be used only after the Purchasing Agent has determined that no other type of contract is suitable for meeting the needs of the requisitioner.

8.10.13 Employment of TBD contracts shall be prohibited.

8.10.14 Considerations for use of a MPA contract--

8.10.14.1 The MPA shall specifically state the term and probable volume consideration of the agreement.

8.10.14.2 The seller shall be authorized to ship to RIHEAA only those items specified by a delivery request (on a form to be provided) issued under the authority of the Master Pricing Agreement. RIHEAA obligated for payment only to the extent of the specific quantities set forth in the delivery request or for express considerations applicable to the contract itself. .

8.10.14.3 The specific category of items to be purchased may be listed in a catalog prepared specifically for the agreement, a catalog of items offered for sale by a supplier, a national catalog published by a catalog publishing firm, or such other lists of items as may, from time to time, be determined as being a legally sufficient description of the item or items being purchased.

8.11 CONSTRUCTION CONTRACTING MANAGEMENT. Responsibility for selection of methods of construction contracting management. The Chief Purchasing Officer shall issue regulations providing for as many alternative methods of management of construction contracting as he may determine to be feasible, setting forth criteria to be used in determining which method of management of construction is to be used for a particular project, and granting to the Purchasing Agent the discretion to select the appropriate method of construction contracting for a particular project, provided, however, that the Chief Purchasing Officer shall execute and include in the contract file a written statement setting forth the facts which led to the selection of a particular method of management of construction contracting in each instance.

8.11.1 The Chief Purchasing Officer may delegate to the Purchasing Agent authority to select the appropriate contract type for construction management projects.

SECTION 9 - EXCEPTIONS TO COMPETITIVE BIDDING REQUIREMENTS

9.1 **AUTHORITY TO MAKE EXCEPTIONS TO THE REQUIREMENT FOR COMPETITION.** In certain circumstances competitive bidding for purchases may not be the most cost-effective approach to procurement. The Purchasing Agent may, with the approval of the Chief Purchasing Officer, waive requirements for competitive sealed bidding in accordance with the grounds permitted by law.

9.2 **CIRCUMSTANCES PRESCRIBED BY LAW:** In accordance with Chapter (37-2-541), the following exceptions to competitive bidding are permitted by statute; however, the Chief Purchasing Officer may require competitive bidding in any circumstance where he deems that competition may enhance RIHEAA's ability to attain cost savings:

9.2.1 Contractual services where no competition exists, such as telephone service, electrical energy, and other public utility services.

9.2.2 Instructional materials available from only one source;

9.2.3 Where rates are fixed by law or ordinance;

9.2.4 Commercial items purchased for resale;

9.2.5 Professional, technical, or artistic services;

9.2.6 Interests in real property.

9.3 **GOODS OR SERVICES OBTAIN BY ONE STATE AGENCY FROM ANOTHER,** such as printing from Prison Industries or use of Central Service Accounts, shall be exempt from competition. However, internal service fund purchases shall be made in accordance with all policies and procedures for competitive procurements.

NOTE: Purchases of services from state higher educational institutions are subject to competitive review and require the submission of requisitions.

9.4 **SMALL PURCHASES NOT EXCEEDING \$250:** Competitive bids shall not be required for purchase orders up to \$250 in value if prices are considered to be reasonable; however, RIHEAA officials shall be encouraged to obtain informal quotes.

9.4.1 It shall be the responsibility of RIHEAA personnel to exercise good judgment as to what is a fair and reasonable price.

9.4.2 Specific action to verify the reasonableness of a price shall be taken when it is suspected that the price may not be reasonable, e.g., comparison to previous price paid or person knowledge of the item involved.

9.4.3 RIHEAA Department Executives shall establish guidelines to evaluate periodically the reasonableness of pricing for purchase orders up to \$250.

9.4.4 Purchase orders up to \$250 in value shall be distributed equitably among suppliers. Quotations should be solicited from the previous supplier and other bidders prior to placing a repeat order so as to ensure equitable distribution and enhance competition. Additional bidders should be different from previously unsuccessful bidders. When practicable, effort shall be made to solicit small disadvantaged minority or women-owned business.

9.4.5. Under no circumstance shall purchases exceeding \$250 be artificially divided into component parts to circumvent the competitive process. User Department abuses of this limitation will be reported to the Chief Purchasing Officer who will hold Department executive accountable for violations.

9.5 **SOLE SOURCE.** A contract may be awarded for a supply, service, or construction item without competition when, under published regulations, the Chief Purchasing Officer determines, in writing, that there is only one source for the required supply, service, or construction item.

9.5.1 The Chief Purchasing Officer may delegate the authority for determination of sole source to the Purchasing Agent.

9.5.2 Sole source categories may include:

- (a) items of a unique nature which are unavailable from to other sources due to patents or proprietary processes;
- (b) books, maps, periodicals, and technical pamphlets, films, video and audio cassettes obtained from publishers;
- (c) certain computer software;
- (d) licenses computer software, electronic transmittal
- (e) specialized replacement/repair parts or expansion parts necessary to maintain the integrity of system or function, e.g. scientific research;
- (f) works of art for museum or public display;
- (g) specialized services for which there is only one documented accepted source, such as transactions involving unique professional services and/or educational services and/or educational institutions, e.g., visiting speakers or professors, and performing artists; repair/maintenance agreements with manufacturers;
- (h) advertisements, public notices in magazines, trade journals, newspapers, television;

NOTE: Purchase of advertising and public relations campaign services must be established through a competitive selection process.

9.5.3 This provision excepting sole source procurements from competitive bidding shall not be interpreted to reduce the responsibility of the Purchasing Department to evaluate the market continuously to research product alternatives and develop additional sources (distributors).

9.5.4 In attempting to achieve the goal of maximizing competition to the greatest extent possible, alternative distributors and manufacturers shall be pursued to sole source items by using compatible replacement parts as long as warranties are not affected by substitution.

9.5.5 Because certain manufacturers may not be either a sole source for obtaining an item nor offer the most competitive price, departments shall submit requisitions for sole source purchases in excess of \$250 unless specifically delegated such authority by regulation or by the Purchasing Agency.

9.5.6 Maintenance contracts based upon sole source determination shall be subject to the following:

9.5.6.1 Annual maintenance contracts shall require approval by the Purchasing Department.

9.5.6.2 All multi-year contracts shall require approval by the Purchasing Department.

9.5.6.3 To achieve better pricing, when the total amount for all contracts with the same supplier exceed one thousand dollars (\$1,000), the department shall submit a single purchase requisition consolidating all requirements.

9.5.7 The Chief Purchasing Officer or his designee may, at his initiation or upon the review of a justified request and/or recommendation from the department executive, make a determination that a category of nonprofit providers constitutes sole source suppliers for certain types of service.

9.6 EMERGENCIES Notwithstanding any other provision of Chapter 37-2, the Purchasing Agent may make or authorize others to make emergency procurements when there exists a threat to public health, welfare or safety under emergency conditions as defined in regulations; provided, that such emergency procurements shall be made with such

competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the contractor shall be included in the contract file.

9.6.1 In accordance with procedures established by the Purchasing Agent, authorized officials in user departments shall be permitted to react quickly to critical situations when the cost for a remedy or repair is in excess of \$250 and there is not sufficient time to undertake a public, formal, or informal bidding process.

9.6.2 An emergency shall mean a situation to which an urgent response is required. Immediate dangers to health and safety, threats to Property and necessary functions, and failures of critical equipment constitute emergencies.

9.6.3 Inadequate anticipation of need shall not be considered justification for "emergency" purchases.

9.6.4 Commitments which extend beyond the immediate response to the dysfunctional emergency shall be prohibited, i.e. prevention of future problems by corrective measures other than the immediate restoration of function must be pursued through the Purchasing Department competitive purchasing process.

9.6.5 The Purchasing Department shall establish, through competitive bidding, a list of emergency response vendors and shall make such lists available to user departments.

9.6.5.1 When possible, departments shall obtain services from a list of vendors selected by competitive process to Provide specialized trade in emergencies.

9.6.5.2 If an emergency cannot be addressed by a designated vendor, the Purchasing Department shall assist in obtaining names and telephone numbers of responsible vendors.

9.6.6. If the emergency occurs outside of business hours for the Purchasing Department, the user department shall be authorized to proceed in accordance with the principles and policies of sound procurement practices outlined herein.

9.6.7 All emergency purchases shall be documented in accordance with procedures established by the Purchasing Agent. The user department shall submit documentation for the emergency situation and response action in writing to the Purchasing Agent with the voucher for payment. All emergency documentation forms shall be signed by the department director.

9.7 STANDARD OR ESTABLISHED CATALOG ITEMS may be identified by the Chief Purchasing Officer as exceptions to competitive bidding. Department officials may submit requests and justification for Delegated Purchase Authority for the acquisition of such items to the Purchasing Agent, who shall recommend an appropriate course of action to the Chief Purchasing Officer.

9.8 SPOT PURCHASES of certain items (e.g., food, heating oil) sold on the basis of posted market prices may be exempted from competition by the Purchasing Agent when market analysis indicates that such procurements are in the best interest of RIHEAA. Opportunities to take advantage of seasonal and supply/demand influences shall be taken into account when determining whether to pursue formal competitive procedures.

9.9 EXPENDITURES WHEN ARE NOT PROCUREMENTS: GRANTS, BENEFITS, ENTITLEMENTS, SUBSIDIES AND REIMBURSEMENTS

9.9.1 Definitions

9.9.1.1 "Benefits" shall mean monies or gifts provided by the RIHEAA to or on behalf of individuals or entities (clients, patients, inmates, employees, nonprofit service providers) the distribution of which may not be prescribed by statute, regulation, or program provisions.

9.9.2.2 "Grants" shall mean monies provided by RIHEAA to or on behalf of individuals or entities to underwrite specific costs of services or programs. Although grants may be distributed for specific purposes, payment is not based upon supply of specific units of services or products.

9.9.1.3 Entitlement shall mean monies or gifts provided RIHEAA as part of subsidy programs for which the distribution of funds is determined in accordance with specific eligibility criteria or by formula. Examples included but shall not be limited to: food stamps, general public assistance, medical assistance payments, and school aid formula funds.

9.9.1.4 "Purchase of Services" shall mean monies expended for the provision of specific units of time and effort rather than an end product.

9.9.1.5 "Reimbursement" shall mean monies paid to a beneficiary, client, or claimant to make restoration for expenses such person has undertaken.

9.9.2 For the purpose of administering Chapter 37-2, grants, benefits, entitlements, subsidies and reimbursements shall not be considered procurements. The following types of expenditures shall not be subject to the provisions of Chapter 37-2 for competitive procurement:

9.9.2.1 Reimbursement to local governments (e.g., for educational expenses).

9.9.2.2 Entitlements for specific recipients or categories of recipients as prescribed by legislative mandate (including federal programs).

9.9.2.3 Grants, subsidies, entitlements or benefits purchased on behalf of, or paid directly to, individuals. Examples including but shall not be limited to:

(a) transportation services - public bus, taxicabs, ferry;

(b) education and recreation benefits;

(c) fees - tuition costs, registration; and

(d) medical, dental, food stamps, etc.

9.9.2.4 Employee expenses, subsidies and benefits. Examples include but shall not be limited to:

(a) travel, meals, parking, and mileage;

(b) allowance (e.g., tools, and clothing) per union contract ;

(c) fees - dues/membership, tuition cost, conference registration.

(d) tuition; and

(e) tests/examinations/certifications.

9.9.2.6 Claims - reimbursement for damages. Vouchers for tort claims authorized by the General Assembly, accompanied by a copy of the appropriate legal decision and authorized by the Budget Office may be submitted directly to the Controller for payment.

9.9.3 Responsibility of RIHEAA to Promote Competition

9.9.3.1 RIHEAA may obtain services or provide programs on behalf of clients through grants to nonprofit or other entities; however, the purchase of services and programs for which recipients can be defined as suppliers/vendors shall be obtained by a request for proposal procedure to obtain the advantages of competition.

9.9.3.2 Non-profit status shall not automatically exempt organizations from being subject to competitive purchasing principles.

9.9.3.3 RIHEAA may utilize the Office of Purchases to undertake Request for Proposal procedures: however, agency representatives shall be responsible for assisting in the establishment of evaluation criteria and in the review of responses.

9.4.4 Special Provisions for Grants

9.9.4.1 Grants in the form of subsidies or general assistance shall be administered by RIHEAA in accordance with such mandates restricting or defining the use of such funds.

9.4.4.2 Grants for the provision of programs, services, and facility improvements shall not be provided without agreements or contracts which:

9.9.4.2.1 specify the purpose of the grant;

9.9.4.2.2 specify method and term of payment;

9.9.4.2.3 define service or product, if required;

9.9.4.2.4 outline any legal limitations on the funding;

9.9.4.2.5 set a time limit for distribution of funds;

9.9.4.2.6 require maintenance of records for a specific period of time;

9.9.4.2.7 provide for auditing; and

9.9.4.2.8 provide for termination of agreement/contract.

9.9.4.3 All contracts entered into by RIHEAA shall be subject to an audit of competitive practices by the Purchasing Department.

SECTION 10 - INVENTORY WAREHOUSING MANAGEMENT

10.1 Authority for the centralization of management and control of warehousing is set forth in RIGL [37-2-12(1)].

10.1.1 Under the jurisdiction of the Chief Purchasing Officer or his designee, action as appropriate shall be taken and continuously maintained to assure least cost availability of supplies, foodstuffs, and other commodities necessary to the efficiency of RIHEAA services.

10.1.2 A decision to classify a storage facility as a storeroom or as a warehouse shall be at the discretion of the Chief Purchasing Officer.

10.2 The Chief Purchasing Officer, shall be responsible for assessment of current systems and procedures and to assure compliance with these regulations.

10.3 Cost effective controls, either manual or computerized shall be implemented and maintained to achieve appropriate inventory and warehouse objectives.

10.3.1 The following inventory control techniques, as defined in a glossary published by the American Production and Inventory Control Society (APICS), and held to be widely accepted practices relative to inventory control, shall be implemented where appropriate.

10.3.1.1 Reorder point determination based on factors of delivery lead time and safety stock to assure timely order without incurring stock-outs of critical supplies, foodstuffs, or other commodities.

10.3.1.2 Inventory Classification procedure to stratify inventory items by value based on factors of unit cost and usage, with controlling inventory policy dependent upon value. Such inventory classification is known as "ABC" inventory classification or "Pareto" distribution.

10.3.1.3 Economic lot sizing for de-termination of replenishing order quantity utilizing one or more of a variety of proven techniques and incorporating factors of usage, lead time, acquisition cost inventory, carrying costs, an unit cost.

10.3.1.4 Safety stock calculation based upon inventory cost and criticality of stock-out situations. Factors of even/ uneven usage and varying replenishment lead time shall be determined and applied as appropriate.

10.3.2 Efficient warehouse operation shall require, but is not limited to, the following procedures as appropriate:

10.3.2.1 Physical lot control procedures or methods shall be used to prevent or minimize economic loss of inventory due to deterioration in storage, obsolescence, or expired data code or shelf life.

10.3.2.2. Cycle counting of inventory or periodic physical inventories as prescribed shall be taken to reconcile inventory balances and assure highest inventory accuracy.

10.3.2.3 Inventory Accuracy objectives shall be established based upon inventory stratification by value (ABC analysis) and accuracy levels. These shall be published and monitored. Any required corrective action as a result of these procedures shall be taken by appropriate supervisory personnel.

10.3.2.4 Inventory location systems as appropriate shall be implemented to maximize space utilization and efficient of order picking, inventory accessibility, and prevention of accidental injury.

10.3.2.5 Safety rules shall be developed, communicated and enforced to prevent accidental injury due to improper operation of material handling equipment, to ensue routine use of personal safety equipment, and to preclude other breach of safety rules.

10.3.2.6 Housekeeping and general warehouse cleanliness shall be maintained to a high standard.

10.3.2.7 Security of warehouse facilities shall be of a quality to prevent loss of inventory due to theft or pilferage, or damage or destruction to facility due to fire or other external causes resulting from failure to properly secure the facility.

10.4 At any time, the Chief Purchasing Officer may direct or require reports, presentations, or field audits to measure levels of compliance and shall direct correction of deficiencies discovered.

10.5 As required under routine established procedure or as directed by the Chief Purchasing Officer or his designee, RIHEAA staff shall prepare periodic forecasts of requirements to identify and report upward or downward shifts 'in projected usage, thereby mitigating inventory surpluses or shortages resulting from inventory replenishment decisions or techniques based solely on historical usage.