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## TITLE 835 – NARRAGANSETT BAY COMMISSION

### CHAPTER 30 – PURCHASING AND ACQUISITIONS

#### SUBCHAPTER 00 - N/A

#### PART 1 – Purchasing Rules and Regulations

### 1.1 General Provisions

#### 1.1.1 Authority

This Part is established pursuant to R.I. Gen. Laws §§ 37-2-1 *et seq.* (State Purchases Act) and 46-25-26 (Narragansett Bay Commission Act) to insure fair and equitable treatment of all persons and entities conducting business with the Narragansett Bay Commission (NBC).

#### 1.1.2 Purpose

The purpose of this Part is to increase public confidence in the procedures followed in the public purchasing of goods and services while maintaining the quality, integrity, and high ethical standards of the NBC.

#### 1.1.3 Definitions

- A. For the purposes of this Part, the following words and terms shall have the following meanings:
1. "Architectural services" means services performed by a person who, in accordance with R.I. Gen. Laws § 5-1-2 is by reason of his/her knowledge of mathematical and physical sciences, and the principles of architecture and architectural design, acquired by professional education, certification, practical experience, or all is qualified to engage in the practice of architecture as attested by licensing as an architect in the State.
  2. "Board" means the Narragansett Bay Commission Board of Commissioners.
  3. "Chief Purchasing Officer" means the Executive Director of the NBC who is responsible for overseeing all of the daily purchasing activities of the NBC. The Chief Purchasing Officer shall have the power to delegate such authority as he sees fit.

4. "Competitive negotiation" means a specialized bidding procedure used to modify the specifications or the terms or conditions of the offers of at least two vendors solicited by the NBC.
5. "Construction firms" means companies under contract to the NBC to construct, alter, repair, improve, or demolish any NBC structure, building, or facility.
6. "Consulting services" means services performed by any person with whom the NBC contracts to provide direction, guidance or information with regard to a particular area of knowledge in which the person is a specialist and/or has expertise. Some examples of consulting services include, but are not limited to: systems analysis, application implementation and financial advising.
7. "Contractor" means an entity that has entered into a contract with NBC for goods, services, supplies or construction.
8. "Design-build services" means a method by which one entity (design-builder) executes a single contract with the NBC to provide architectural engineering and construction services.
9. "Engineering services" means services performed by a person who by reason of his/her 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 experience, is qualified to practice engineering as attested by licensing as an Engineer in the State and to provide planning, design, and construction support services for NBC projects.
10. "Legal services" includes but is not be limited to research, drafting documents, providing legal advice, representing NBC before courts, arbitrators, boards, administrative agencies, and other bodies.
11. "Lowest bid price" means the lowest price that is offered by vendors / contractors.
12. "Lowest evaluated bid price" means the lowest price after bid adjustments are made pursuant to objective measurable criteria that are stated in the invitation for bids.
13. "M/WBE" or "Minority or Women Business Enterprises" means a small business owned and controlled by one or more minorities or women certified by the Rhode Island Department of Administration to meet the definition established by R.I. Gen. Laws Chapter 37-14.1.

14. "Negotiation" means the process of establishing contractual provisions and of gaining contractual acceptance, other than solely as the result of normal competitive bidding. For the purpose of this definition, two distinct categories of negotiation shall be recognized: competitive negotiation and noncompetitive negotiation.
15. "Noncompetitive negotiation" means the establishment of contractual terms and conditions, including but not limited to contract price, by discussion with a single vendor, outside of the procedures established for competitive bidding.
16. "Person" means any business, individual, organization, or group of individuals.
17. "Purchasing" means the procuring, buying, renting, leasing, or otherwise obtaining of any supplies, services, equipment, or construction. It shall also include all functions that pertain to the obtaining of any supply, service, equipment, or construction item, including description of requirements, selection and solicitation of sources, preparation and award of contracts, and all phases of contract administration.
18. "Prime contractor" means a contractor who engages subcontractors in the course of satisfying the requirements of fulfilling a contract.
19. "Resident engineering services" means those services provided by an engineer acting as the NBC's onsite agent through the construction phase of a project. Services may include one or more of the following: Basic Office and Field Construction Services (bidding services, shop drawing review, general consultation, and advising on construction matters and records drawings); Resident Engineering and Inspection (schedule and shop drawing review, act as NBC's liaison with the construction contractor, review work completed and rejection of defective work, interpret construction drawings, maintain job site records and reports, and certification of payment requisition); Operations and Maintenance Manual (describes the proper procedures for operating and maintaining the facilities safely); Startup Services (coordinate final equipment checkout, provide expert operational assistance for fine tuning after initial startup, and revise Operations and Maintenance Manual if necessary); Operation Training (train NBC personnel on operating new facilities); CPM Scheduling (review of the Contractor's Critical Path Method schedule).
20. "Request for Proposals (RFP)" means a request by the NBC to interested firms to submit all documents, whether attached or incorporated by reference, utilized for soliciting proposals.

21. "Request for Qualifications (RFQ)" means a request by the NBC to all interested firms to submit all documents evidencing experience and eligibility with regard to the solicitation of proposals.
22. "Request for Qualifications / Request for Proposals (RFQ/RFP)" means a request by the NBC to all interested firms to submit all documents evidencing experience and eligibility with regard to the solicitation of proposals along with all documents utilized for soliciting of proposals.
23. "Responsible bidder / proposer" means a qualified bidder or proposer who has the capability in all respects, including financial responsibility to fully perform the contract requirements, and the integrity and reliability to ensure good faith performances.
24. "Responsive bidder / proposer" means a person who has submitted a bid or proposal that conforms in all material respects to the invitation for bids or RFP, so that all bidders / proposers may stand on equal footing with respect to the method and timeliness of submission and as to the substance of any resulting contract.
25. "Sole source" means the awarding of a contract for a supply, service, equipment, or construction item without competition when the Chief Purchasing Officer or his designee determines in writing that there is only one source for the required supply, service, equipment, or construction item.
26. "Special services" means services that the Chief Purchasing Officer deems necessary or desirable to purchase and are provided by individuals or firms possessing special knowledge or skills for which formal licensing or certification is not necessarily required. Some examples of Special Services include, but are not limited to, expert witness testimony and lecturers; interpretation (languages, hearing impaired); public information (drug and alcohol abuse, water conservation and pretreatment).
27. "Spot purchases" means one time purchases of items sold on the basis of posted market prices, which are deemed by the Chief Purchasing Officer to be in the best interests of the NBC because of advantageous fluctuations in seasonal and supply / demand factors.
28. "Standard or established catalogue items" means, as shall be identified by the Chief Purchasing Officer as, exceptions to the competitive bidding process.
29. "Vendor" means any person who provides supplies, services, or construction under a contract.

#### **1.1.4 Vendor Registration**

All goods and services shall be solicited in accordance with this Part. Bid awards are contingent upon registration procedures as set forth by the NBC.

#### **1.1.5 Chief Purchasing Officer**

The Executive Director of the NBC shall act as the Chief Purchasing Officer of the NBC in accordance with R.I. Gen. Laws § 38-2-7(3).

#### **1.1.6 Application of this Part**

- A. This Part shall apply to all expenditures of NBC and public funds, unless otherwise provided by law, by the NBC under any contract or like business agreement, excepting only those contracts or like business agreements between the NBC and the State and or its political subdivisions or other government.
- B. This Part shall not prevent the NBC from complying with the terms and conditions of any grant, gift, bequest, or agreement.
- C. This Part shall not prevent the NBC from accepting assignments of any contracts from the State of Rhode Island or any of its departments; provided, however, that any such contract shall have been awarded in accordance with the requirements of the State Purchases Act.
- D. This Part shall be incorporated by reference into all contracts of the NBC to which they apply.
- E. Contracts entered into in violation of this Part shall be null and void.

#### **1.1.7 Application of the State Purchases Act**

While not mandated under state law to utilize the State Central Purchasing Authority, the NBC shall adhere to the general principles and philosophies set forth in the State Purchases Act, pursuant to R.I. Gen. Laws §§ 37-2-2 and 37-2-12.

#### **1.1.8 NBC Board of Commissioners**

Upon a decision of the NBC Board of Commissioners, the purchasing authority designated to the Chief Purchasing Officer in this Part may be increased.

### **1.2 Methods of Source Selection**

- A. The NBC shall utilize the Rhode Island Vendor Information Program to implement the requirements of R.I. Gen. Laws §§ 37-2-17 and 37-2-17.1. All

contracts of the NBC shall be awarded by competitive sealed bidding or alternative procurement methods.

- B. If the Chief Purchasing Officer makes a determination in writing that competitive sealed bidding is not in the best interest of the NBC, any one or combination of the following alternative procurement methods may be utilized:
1. Negotiation, § 1.4 of this Part;
  2. Spot Purchases, § 1.5 of this Part;
  3. Small purchases, § 1.6 of this Part;
  4. Sole source, § 1.7 of this Part;
  5. Construction Services, § 1.8 of this Part;
  6. Architectural, Engineering, Consulting, or Resident Engineering Services, § 1.9 of this Part;
  7. Architectural, Engineering, and Construction Services - Design Build, § 1.10 of this Part;
  8. Architectural, Engineering, and Construction Services - Construction Manager At-Risk, § 1.11 of this Part; or
  9. Legal Services, § 1.12 of this Part.

### **1.3 Competitive Sealed Bidding**

- A. Pursuant to R.I. Gen. Laws § 37-2-18(a), contracts exceeding ten thousand dollars (\$10,000) for construction and five thousand dollars (\$5,000) for all other purchases shall be awarded by competitive sealed bidding unless it is determined that this method is not practicable. Said determination shall be set forth in writing by the Chief Purchasing Officer. In determining whether competitive sealed bidding is appropriate and practical, the Chief Purchasing Officer shall consider:
1. Whether specifications can be prepared that permit an award on the basis of the lowest evaluated bid price that is responsive and responsible; and
  2. The available sources; and
  3. The time and place of performance; and
  4. Other relevant circumstances.

- B. Invitation to Bid: The invitation for bids shall state that an award shall be made based on the lowest evaluated bid price that is responsive and responsible. The general terms and conditions for NBC Contracts, which are located in the NBC's Purchasing Department, are applicable to all bids.
- C. Public Notice: Unless the invitations for bid are accessible under the provisions of R.I. Gen. Laws § 37-2-17.1, adequate public notice of the invitation to bid shall include publication in a newspaper of general circulation in the State of Rhode Island and may include other publications as determined by the NBC not less than seven (7) days nor more than twenty-eight (28) days before the date set for the opening of bids. In the event that the NBC determines that there is a need to waive the twenty-eight (28) day limitation, the NBC shall make a written determination stating the reasons why the limitation is being waived and shall state the number of days, giving a minimum and maximum, before the date set for the opening of bids when public notice is to be given.
- D. Opening of Bids: Pursuant to R.I. Gen. Laws § 37-2-18(d), bids shall be opened publicly at the time and place designated in the invitation for bids. Each bid, together with the name of the bidder, shall be recorded and an abstract made available for public inspection as soon as practicable thereafter. Pursuant to R.I. Gen. Laws § 37-2-18(g), subsequent to the awarding of the bid, all documents pertinent to the awarding of the bid shall be made available and open to public inspection and retained in the bid file.
- E. Award: Pursuant to R.I. Gen. Laws § 37-2-18(h), the contract shall be awarded with reasonable promptness to the responsive and responsible bidder whose bid is either the lowest bid price or lowest evaluated bid price.

## **1.4 Negotiation**

### **1.4.1 Procedures for Negotiation**

- A. The objective of negotiation shall be to secure advantageous terms and conditions and/or to exact improvements in terms and conditions offered to the NBC to reduce potential costs to the NBC.
- B. Negotiation shall be used to establish or modify contractual provisions in all cases where:
  - 1. Fixed pricing is not the sole determinant for award;
  - 2. Responses to competitive bidding or requests for proposal suggest that lower pricing, or other improvements in offers, are achievable;
  - 3. Sole source purchases are made;

4. Responses to the competitive bidding or requests for proposal do not permit effective comparison, due to the differing nature of the responses;
  5. The scope of a contract changes during the performance period, such that modification of price or of other provisions may be warranted;
  6. The Chief Purchasing Officer has determined in writing that a product or the market in which a product is sold is noncompetitive in nature; or
  7. The Chief Purchasing Officer has determined in writing that the NBC is in need of special services.
- C. The Chief Purchasing Officer may delegate authority for directing and negotiating change orders to subordinate personnel. Such delegation shall be in accordance with specific limitations defined by the Chief Purchasing Officer.
- D. Competitive Negotiation
1. Contracts may be competitively negotiated when it is determined in writing by the Chief Purchasing Officer that the bids or proposals received by competitive sealed bidding or sealed request for proposals are either unreasonable as to all or part of the requirements or were not independently reached in open competition and for which:
    - a. Each responsible / responsive bidder or proposer 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 price or proposal price by any responsible / responsive bidder or proposer; and
    - c. The negotiated price is the lowest negotiated price offered by any responsible / responsive bidder or proposer.
  2. Competitive negotiation may be used in any case where the scope, term, or other requirements of the purchase have not been determined at the time that a requisition is issued, or where optional bids or proposals are desired and encouraged, or where the value of the purchase has not been definitively established.
  3. Procedures: Requests for Proposals in Competitive Negotiations:
    - a. Public Notice: Unless the invitations for bid are accessible under the provisions of R.I. Gen. Laws § 37-2-17.1, adequate public



notice of the request for proposals (RFP) shall include publication in a newspaper of general circulation in the State of Rhode Island and may include other publications as determined by the NBC not less than seven (7) days nor more than twenty-eight (28) days before the date set for the opening of the RFP. In the event that the NBC determines that there is a need to waive the twenty-eight (28) day limitation, the NBC shall make a written determination stating the reasons why the limitation is being waived and shall state the number of days, giving a minimum and maximum, before the date set for the opening of RFP when public notice is to be given.

- b. The RFP shall describe and enumerate the item(s) covered, their specification(s), contract term(s), and any other special provisions or requirements. The RFP shall indicate the relative importance of the evaluation factors including price.
- c. At a public opening of responses to the RFP, the Chief Purchasing Officer shall not be required to reveal any information other than the names of those responding. The nature of responses shall not be subject to public disclosure until a contract has been awarded.
- d. Review and Discussion: Written or oral discussion shall be conducted with all responsible and responsive proposers who submit proposals determined in writing to be potentially selected for award. Discussions shall not disclose any information derived from proposals submitted by competing proposers. Discussion need not be conducted under the following circumstances:
  - (1) 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
  - (2) Where time of delivery or performance will not permit discussions; or
  - (3) Where it can be clearly demonstrated and documented from the existence of adequate competition or accurate prior cost experience with the particular supply, service equipment, or construction item, that acceptance of an initial proposal without discussion may result in fair and reasonable prices and the RFP notifies all proposers of the possibility that the award may be made on the basis of the initial offers.

- e. Evaluation: Responses to the request for proposals shall be evaluated:
  - (1) To determine nonresponsive proposals, which shall be eliminated from further consideration; and
  - (2) To determine the lowest cost combination of options, terms, and conditions, establishing a base-line; and
  - (3) To establish a cost ranking of responses to that base-line.
  
- f. Where there is more than one proposer, competitive negotiations shall be conducted with the three (two if there are only two) proposers who have been determined in writing to be the lowest responsive and responsible proposers to the RFP. Such competitive negotiations shall be conducted under the following restrictions:
  - (1) All potential proposers shall have equal opportunity to take part in discussions pertaining to the revision of the scope of services in a contract.
  - (2) In a case where a revised request for proposals is requested, it shall be issued as promptly as possible and shall demand a diligent response to the revised requirements. The award shall be granted upon the basis of the lowest evaluated proposed price submitted by any responsive and responsible proposer.
  - (3) In the event that all proposals submitted pursuant to this article result in offers in excess of the funds available for the purchase and the lowest proposal is ten percent (10%) greater than the next lowest price offer then the Chief Purchasing Officer has the option of accepting the lowest cost bid rather than negotiating.
  
- g. 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, the State of Rhode Island, 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 the General Service Administration or the State of Rhode Island and the vendor affected.

h. Request for Best and Final Proposal

- (1) On the basis of discussions with proposers, a request for best and final proposal, which describes the requirements of the purchase in the final form, shall be issued to all proposers still under consideration.
- (2) Each proposer shall submit a best and final proposal, which defines their best price and other terms, for the purchase.
- (3) Best and final proposals shall be evaluated and awarded to the responsible proposer whose proposal is determined in writing to be the most advantageous to the NBC taking into consideration price and the evaluation factors set forth in the RFP.

E. Noncompetitive Negotiation

1. In the event that all sealed bids submitted through a formal solicitation result in bid prices in excess of the funds available for the purchase, and the Chief Purchasing Officer determines in writing that there are no additional funds available from any source so as to permit an award to the lowest responsive and responsible bidder, and the best interest of the NBC will not permit the delay attendant to a re-solicitation under revised specification or for revised quantities under competitive sealed bidding, then a negotiated award may be made as set forth in this section.
2. Noncompetitive negotiation may be used to improve the price offered on the lowest evaluated bid price that is both responsive and responsible to any competitive bid.
3. The Chief Purchasing Officer may authorize the award of a contract on the basis of noncompetitive negotiation, where it has been determined in writing that:
  - a. Sole source purchasing is appropriate; or
  - b. The product or market in which a product is sold is noncompetitive in nature; or
  - c. Deceptive or exclusionary selling practices are in evidence.
4. Noncompetitive negotiation may be used to modify a contract during its performance, provided that no attempt is made to reduce the contractual obligations of the supplier, vendor, or contractor or the contract term is not

extended except in response to a request by the supplier, vendor, or contractor in consideration for other substantive changes and where such extension of the contract term is determined in writing by the Chief Purchasing Officer to be in the NBC's best interest.

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

#### **1.4.2 Truth in Negotiations: Requirement Cost or Pricing Data**

- A. A vendor/contractor shall submit cost or pricing data and shall certify that, to the best of his/her knowledge and belief, the cost or pricing data submitted is accurate, complete, and current as of a mutually determined date. The cost or pricing data is necessary when:
  1. The pricing of any negotiated contract where the total contract price is expected to exceed fifty thousand dollars (\$50,000); or
  2. 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 Chief Purchasing Officer and approved by the Board.
- B. Applicability
  1. The requirements of § 1.4.2(A) of this Part apply to all purchase order supplements over twenty-five thousand dollars (\$25,000) incorporating an aggregate of changes equal to this value, e.g., an additive change of twenty thousand dollars (\$20,000) and a deductive change of eleven thousand dollars (\$11,000) are equal to an aggregate change value of thirty-one thousand dollars (\$31,000) and this is subject to the requirements of § 1.4.2 of this Part.
  2. The requirements of § 1.4.2 of this Part need not be applied to contracts where the price negotiated is based on adequate price competition, established catalogue or market prices of commercial items sold in substantial quantities to the general public, prices met by law or regulation, or in exceptional cases where it is determined in writing by the Chief Purchasing Officer that the requirements of § 1.4.2 of this Part may be waived and the reasons for such waiver are stated in writing.
- C. Cost or pricing data may include such verifiable factors as all vendor quotations, nonrecurring cost, changes in production methods and production of purchasing

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 that reasonably could be expected to have a significant bearing on cost under a proposed contract.

- D. The requirement for submission of cost or pricing data is met when all data reasonably available to the vendor/contractor has 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 purpose of verification and agreement.

### **1.4.3 Subcontracting Requirements**

- A. Prime contractors shall require subcontractors to submit cost or pricing data for purchases in excess of fifty thousand dollars (\$50,000) unless exempted herein.
- B. 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.
- C. Any contract, change, or modification thereto under which a certificate is required shall contain a provision that the price to the NBC, including profit or fee, shall be adjusted to exclude any significant sums by which the Chief Purchasing Officer finds that such price was increased because the contractor furnished cost or pricing data, as of the date agreed upon between the parties, which was inaccurate, incomplete, or not current.
- D. Prime contractors must agree that the prime contract price shall be reduced in any significant amount by which the prime contract price was overstated because a subcontractor did not submit accurate, complete, and current cost or pricing data when required by law.

### **1.4.4 Guidelines in Negotiations**

- A. The Chief Purchasing Officer shall be responsible for preparing a written statement at the conclusion of each negotiation phase setting forth the principal elements of the price negotiations.
  - 1. Sufficient detail shall be recorded to reflect the most significant considerations controlling the establishment of the price.
  - 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 was not a factor in the price negotiated shall be recorded.

- B. All contracts shall contain a clause providing for a post award audit to be undertaken when, after an award, the NBC obtains information that submitted data was inaccurate, incomplete, not current, or if the data was not adequately verified at the time of negotiations.
- C. To the extent possible, contracts shall contain language that provides for unit pricing of potential change orders.
- D. The NBC may conduct or may obtain price analyses to ascertain whether the price quoted is fair and reasonable in relation to comparable purchases when the absence of open market competition precedes the use of sealed bidding.
- E. In the negotiation of settlements of contracts that have been terminated:
  - 1. Contract settlement shall be made in accordance with the terms specified in the purchase order.
  - 2. In the absence of appropriate contract language, the vendor shall be paid a reasonable profit plus costs incurred from the effective date of the contract until the contract was terminated.
  - 3. Penalties due to the NBC in accordance with a contract may be deducted from any payment to which a vendor is entitled.
- F. Under contract provisions that provide for the reimbursement of costs, reimbursement shall be made only upon the presentation of documented, demonstrative evidence to the NBC that the vendor has incurred an eligible expense.

#### **1.4.5 Modifications of Bids:**

- A. Correction or withdrawal of bids will be allowed only in the following circumstances:
  - 1. A bidder will not be permitted to correct a bid mistake after bid opening that would cause such bidder to have the low bid unless the mistake is clearly evident from the bid documents and verified by the NBC, for example, an error in addition.
  - 2. An otherwise low bidder may be permitted to correct a material mistake of fact in its bid, including price, when the intended bid is obvious from the bid document or is otherwise supported by proof that has evidentiary

value. A low bidder will not be permitted to correct a bid for mistakes or errors in judgment.

3. In lieu of bid correction, a low bidder alleging a material mistake of fact will be permitted to withdraw its bid when there is reasonable proof, as determined by the NBC, that a mistake was made and the intended bid cannot be ascertained with reasonable certainty.
4. After bid opening, an otherwise low bidder shall not be permitted to make exceptions to the bid condition or specifications that affect price or substantive obligation; however, such bidder shall be permitted the opportunity to furnish other information called for by the invitation for bids and not supplied due to oversight, so long as it does not affect responsiveness.

## **1.5 Spot Purchases**

Spot Purchases of certain items sold on the basis of certain market prices shall be exempt from ordinary methods of source selection by the Chief Purchasing Officer when market analysis indicates that such purchases are in the best interests of the NBC. Opportunities to take advantage of seasonal and/or supply/demand influences shall be taken into account when determining whether to pursue formal competitive bid procedures.

## **1.6 Small Purchases**

- A. The NBC's Small Purchases shall not exceed an aggregate amount of ten thousand dollars (\$10,000) for construction and five thousand dollars (\$5,000) for all other purchases. Small Purchases shall be made in accordance with the following procedure:
  1. No purchase can be made without an approved purchase order.
  2. A ten percent (10%) variance shall be allowed for unit cost adjustment, when and where applicable, with the approval of the purchasing manager.
  3. Purchasing requirements shall not be artificially divided so as to constitute small purchases under this section.

## **1.7 Sole Source**

- A. Sole Source Purchases of certain items shall be exempt from ordinary methods of source selection by the Chief Purchasing Officer when there is no reasonable alternative on the market and such purchases are in the best interest of the NBC. This provision excepting sole source purchases from competitive bidding shall

not be interpreted to reduce the responsibility of the NBC to investigate alternative sources.

- B. Sole source categories shall include but are not limited to, the following examples:
1. Items of a unique nature which are unavailable from other sources due to patents or proprietary processes;
  2. Books, maps, periodicals, and technical pamphlets, films, video, CDs, DVDs and audiocassettes obtained from publishers;
  3. Certain computer software, hardware, or maintenance service;
  4. Licenses pertaining to computer software or electronic transmittal;
  5. Specialized replacement/repair parts or expansion parts necessary to maintain the integrity of systems functions;
  6. Specialized services for which there is only one documented accepted source, such as transactions involving unique services and/or educational institutions, e.g., lecturers or professors; repair/maintenance agreements with manufacturers;
  7. Advertisement, public notices in magazines, trade journals, newspapers and television.

## **1.8 Selection of Construction Firms**

### **1.8.1 Public Announcement**

- A. The NBC shall give public notice of the need for construction firms. Such public notice shall be published sufficiently in advance of the date when responses must be received (at least 21 days).
- B. The notice shall describe the project and how to obtain a copy of the plans and specifications.
- C. The notice shall be published in a newspaper of general circulation in the State of Rhode Island and may be published in such other publications as determined by the NBC.

### **1.8.2 Pre-Bid Conference**

A meeting shall be held for the purpose of answering any questions pertinent to the plans and specifications of the project.



### **1.8.3 Bid Procedure**

- A. Formal bids, together with the bid surety, are forwarded and opened at a designated time and location determined by the NBC.
- B. A record of all bids, together with the bid surety for the lowest three bidders, is kept in the Purchasing Section of the NBC.
- C. Surety must be certified or bank check or bid bond or substitute acceptable to NBC.
- D. Bid bonds must be supplied by a reputable firm licensed in the State of Rhode Island.
- E. All other surety will be returned to the bidders.

### **1.8.4 Review of Bids**

- A. The Construction Manager together with the Consulting Engineer, if any, will review all bids and recommend to the Chief Purchasing Officer the lowest evaluated bid price that is both responsive and responsible.
- B. The Chief Purchasing Officer will then recommend the lowest evaluated bid price that is both responsive and responsible to the Construction, Engineering and Operations Subcommittee (CEO) of the NBC Board.
- C. The CEO Committee will then recommend to the full Board the lowest responsive and responsible bid.
- D. The full Board will make the final selection for contract award.

### **1.8.5 Notification**

- A. Notice of intent to award is made to the contractor selected by the full Board.
- B. Award shall be subject to receipt of Payment Bond, Performance Bond, Insurance Certificate, State EEO approval, and documentation of compliance with State M/WBE requirements.
- C. A notice to proceed will be issued and the purchase order will be processed upon contractor's compliance with § 1.8.5(B) of this Part. Upon issuance of notice to proceed, the bid surety being held in the NBC's Purchasing Department will be returned to the two contractor's not being awarded the contract.

## **1.9 Selection of Architectural, Engineering, Consulting, or Resident Engineering Services**

### **1.9.1 Public Announcement**

- A. The NBC shall give public notice of the need for architectural, engineering, consulting, or resident engineering services that are reasonably estimated to exceed \$20,000. Such public notice shall be published sufficiently in advance of the date when responses must be received in order to allow interested parties an adequate opportunity to submit a statement of qualifications.
- B. The notice shall contain a brief statement of the services required, describe the project, and specify how a solicitation containing specific information on the project may be obtained.
- C. The notice shall be published in a newspaper of general circulation in the State of Rhode Island and in such other publications as determined by the NBC.

### **1.9.2 Solicitation**

- A. A solicitation shall be prepared that describes the proposed project and the information that must be submitted to the NBC for evaluation and sets forth the evaluation criteria. It shall be distributed to interested persons upon request.
- B. For services reasonably estimated to exceed \$20,000, a meeting shall be held by the staff member in charge of the project for the purpose of describing the criteria to be used in evaluating the statement of qualifications and selection of firms to all interested parties. Criteria shall include but are not limited to:
  - 1. Competence to perform the services as reflected by technical training and education; general experience; experience in providing the required services; and the qualifications and competence of persons who would be assigned to perform the services; and
  - 2. Ability to perform the services as reflected by work load and the availability of adequate personnel, equipment, and facilities to perform the services expeditiously; and
  - 3. Past performance as reflected by the evaluation of private persons/entities and officials of other governmental entities that have retained the services of the firm with respect to such factors as control of cost, quality of work, and an ability to meet deadlines; and
  - 4. The proposed approach to the project, where applicable.

- C. The Scope of work shall be discussed and further defined at the bidder's conference, including on-site visits, if appropriate.

### **1.9.3 Review and Evaluation of Statement of Qualifications and Proposals for Architectural, Engineering, and Resident Engineering Services**

- A. The Chief Purchasing Officer may designate a Project Manager who will coordinate a Review Committee to complete the initial review and rating of the statements of qualifications. All statements of qualifications shall be evaluated in accordance with criteria set forth in the solicitation for architectural, engineering, and resident engineering services.
- B. Once the Review Committee has rated the statements of qualifications, the Project Manager shall submit the names of all firms submitting qualification statements, along with the recommendation of the firms that are considered to be the most professionally and technically qualified to the Chief Purchasing Officer.
- C. The Chief Purchasing Officer shall review the recommendation of the Project Manager to ensure that all policies, procedures, technical, and financial considerations have been addressed and shall select a short list of firms that will receive a request for proposals.
- D. Upon receipt of the short list of qualified firms from the Chief Purchasing Officer, the Project Manager will forward a request for proposals to the firms. Depending upon the complexity of the project, the Project Manager may conduct a pre-proposal conference prior to the submission of the formal proposals.
- E. The Project Manager and the Review Committee may conduct interviews of the firms after the proposals are submitted. The appropriate Board Committee shall be notified of the time, date, and location of the interviews. The interviews shall be conducted by the Project Manager and members of the Review Committee designated by the Chief Purchasing Officer. The Project Manager may, with the approval of the Chief Purchasing Officer, require that additional information on proposals be submitted from the firms to be interviewed prior to the interview. Once the interviews have been concluded, the Project Manager shall submit a summary of the evaluations of the proposal and interview to the Chief Purchasing Officer.
- F. The Chief Purchasing Officer or his/her designee shall consider the evaluations of the Project Manager, the qualifications of the firm, the quality of the proposal, as well as the price in selecting or considering his/her recommendation to the appropriate Board Committee.

### **1.9.4 Review and Evaluation of Statement of Qualifications and Proposals for Consulting Services**

- A. For consulting services, the Chief Purchasing Officer or his/her designee shall review the qualification statements and proposals submitted by firms.
- B. The Chief Purchasing Officer or his/her designee shall consider any evaluations of staff, the qualifications of the firm, the quality of the proposal, as well as the price in developing his/her recommendation to the appropriate Board Committee.

#### **1.9.5 Concurrent submittal and evaluation of Requests for Qualifications and Proposals**

- A. The NBC may, when determined to be in its best interest, solicit Requests for Qualifications and Requests for Proposals (RFQ/RFP) for architectural, engineering, consulting, and resident engineering services in one solicitation.
- B. The Chief Purchasing Officer may designate a Project Manager who will coordinate a Review Committee to complete the review and rating of the statements of qualifications and proposals. All statements of qualifications and proposals shall be evaluated in accordance with criteria set forth in the solicitation for architectural, engineering, consulting, and resident engineering services.
- C. Depending upon the complexity of the project, the Project Manager may conduct a pre-proposal conference prior to the submission of the statement of qualifications and proposal.
- D. The Project Manager and the Review Committee may conduct interviews of the firms after the statement of qualifications and proposals are submitted. The appropriate Board Committee shall be notified of the time, date, and location of the interviews. The interviews shall be conducted by the Project Manager and members of the Review Committee designated by the Chief Purchasing Officer. The Project Manager may, with the approval of the Chief Purchasing Officer, require that additional information on the statement of qualifications and proposals be submitted from the firms to be interviewed prior to the interview.
- E. Once the Review Committee has evaluated the statements of qualifications and proposals and has conducted interviews, the Project Manager shall submit a summary of the evaluations of the statement of qualifications, proposal, and interview to the Chief Purchasing Officer.
- F. The Chief Purchasing Officer shall review the recommendation of the Project Manager to ensure that all policies, procedures, technical, and financial considerations have been addressed.
- G. The Chief Purchasing Officer or his/her designee shall consider the evaluations of the Project Manager, the qualifications of the firm, the quality of the proposal

as well as the price in developing his/her recommendation to the appropriate Board Committee.

### **1.9.6 Final Selection of Architectural, Engineering, Consulting, and Resident Engineering Services**

- A. For every project that requires architectural, engineering, consulting, or resident engineering services, the fees for which are not reasonably expected to exceed twenty thousand dollars (\$20,000), the Chief Purchasing Officer shall be responsible for the final selection of a qualified architectural, engineering, consulting, or resident engineering services firm for such project. Upon a decision by the Board, the Chief Purchasing Officer's authority to make final selections may be increased beyond the \$20,000 allotment.
- B. The Chief Purchasing Officer shall use the criteria set forth in R.I. Gen. Laws § 37-2-66 in making such selection. That determination shall be justified in writing.
- C. For architectural, engineering, consulting, and resident engineering services greater than \$20,000, the Chief Purchasing Officer, or his/her designee, shall submit his/her recommendation to the appropriate Committee of the Board as determined by the Chief Purchasing Officer. The Committee shall submit its recommendation for a preferred vendor to the Board. The Board shall vote on the recommendation of the Committee. An affirmative vote authorizes the award and directs the Chairman and the Chief Purchasing Officer to negotiate a contract within the specific limitations of the Board's Resolution. A negative vote returns the item to the Committee for further action.

### **1.9.7 Issuance of Notice to Proceed**

Upon execution of the negotiated contract by all authorized parties, the Chief Purchasing Officer shall issue a Notice to Proceed to the vendor pursuant to the provisions of such contract.

## **1.10 Selection of Architectural, Engineering, and Construction Services for Design-Build Projects**

### **1.10.1 Purpose**

Taking into account a variety of factors including time and costs, the Chief Purchasing Officer may determine that it is in the best interest of the NBC not to select separate architectural, engineering, and construction services but to instead execute a single contract with one entity called a design builder to provide all services.

### **1.10.2 Public Announcement**

- A. The NBC shall give public notice of the need for a design builder for projects that are reasonably estimated to exceed \$20,000. Such public notice shall be published sufficiently in advance of the date when responses must be received in order to allow interested parties an adequate opportunity to submit a statement of qualifications.
- B. The notice shall contain a brief statement of the services required, describe the project, and specify how a solicitation containing specific information on the project may be obtained.
- C. The notice shall be published in a newspaper of general circulation in the State of Rhode Island and in such other publications as determined by the NBC.

### **1.10.3 Solicitation**

- A. A solicitation shall be prepared that describes the proposed project and the information that must be submitted to the NBC for evaluation and sets forth the evaluation criteria. It shall be distributed to interested persons upon request.
- B. For services reasonably estimated to exceed \$20,000, a pre-submittal conference shall be held by the staff member in charge of the project for the purpose of describing the criteria to be used in evaluating the statement of qualifications and selection of firms to all interested parties. Criteria shall include but are not limited to:
  - 1. Competence to perform the services as reflected by technical training and education; general experience; experience in providing the required services; and the qualifications and competence of persons who would be assigned to perform the services; and
  - 2. Ability to perform the services as reflected by work load and the availability of adequate personnel, equipment, and facilities to perform the services expeditiously; and
  - 3. Past performance as reflected by the evaluation of private persons/entities and officials of other governmental entities that have retained the services of the firm with respect to such factors as control of cost, quality of work, and an ability to meet deadlines; and
  - 4. The proposed approach to the project, where applicable.
- C. The Scope of work shall be discussed and further defined at the pre-submittal conference, including on-site visits, if appropriate.

#### **1.10.4 Review and Evaluation of Statement of Qualifications and Proposals for Design-Build Services**

- A. The Chief Purchasing Officer may designate a Project Manager who will coordinate a Review Committee to complete the initial review and rating of the statements of qualifications. All statements of qualifications shall be evaluated in accordance with criteria set forth in the solicitation for design-build services.
- B. Once the Review Committee has rated the statements of qualifications, the Project Manager shall submit the names of all firms submitting qualification statements, along with the recommendation of the firms that are considered to be the most professionally and technically qualified to the Chief Purchasing Officer.
- C. The Chief Purchasing Officer shall review the recommendation of the Project Manager to ensure that all policies, procedures, technical, and financial considerations have been addressed and shall select a short list of firms that will receive a request for proposals.
- D. Upon receipt of the short list of qualified firms from the Chief Purchasing Officer, the Project Manager will forward a request for proposals to the firms. Depending upon the complexity of the project, the Project Manager may conduct a pre-proposal conference prior to the submission of the formal proposals.
- E. The Project Manager and the Review Committee may conduct interviews of the firms after the proposals are submitted. The appropriate Board Committee shall be notified of the time, date, and location of the interviews. The interviews shall be conducted by the Project Manager and members of the Review Committee designated by the Chief Purchasing Officer. The Project Manager may, with the approval of the Chief Purchasing Officer, require that additional information on proposals be submitted from the firms to be interviewed prior to the interview. Once the interviews have been concluded, the Project Manager shall submit a summary of the evaluations of the proposal and interview to the Chief Purchasing Officer.
- F. The Chief Purchasing Officer or his/her designee shall consider the evaluations of the Project Manager, the qualifications of the firm, the quality of the proposal, as well as the price in selecting or considering his/her recommendation to the appropriate Board Committee.

#### **1.10.5 Concurrent submittal and evaluation of Requests for Qualifications and Proposals**

- A. The NBC may, when determined to be in its best interest, solicit Requests for Qualifications and Requests for Proposals (RFQ/RFP) for design-build services in one solicitation.

- B. The Chief Purchasing Officer may designate a Project Manager who will coordinate a Review Committee to complete the review and rating of the statements of qualifications and proposals. All statements of qualifications and proposals shall be evaluated in accordance with criteria set forth in the solicitation for design-build services.
- C. Depending upon the complexity of the project, the Project Manager may conduct a pre-proposal conference prior to the submission of the statement of qualifications and proposal.
- D. The Project Manager and the Review Committee may conduct interviews of the firms after the statement of qualifications and proposals are submitted. The appropriate Board Committee shall be notified of the time, date, and location of the interviews. The interviews shall be conducted by the Project Manager and members of the Review Committee designated by the Chief Purchasing Officer. The Project Manager may, with the approval of the Chief Purchasing Officer, require that additional information on the statement of qualifications and proposals be submitted from the firms to be interviewed prior to the interview.
- E. Once the Review Committee has evaluated the statements of qualifications and proposals and has conducted interviews, the Project Manager shall submit a summary of the evaluations of the statement of qualifications, proposal, and interview to the Chief Purchasing Officer.
- F. The Chief Purchasing Officer shall review the recommendation of the Project Manager to ensure that all policies, procedures, technical, and financial considerations have been addressed.
- G. The Chief Purchasing Officer or his/her designee shall consider the evaluations of the Project Manager, the qualifications of the firm, the quality of the proposal, as well as the price in developing his/her recommendation to the appropriate Board Committee.

#### **1.10.6 Final Selection of Design-Build Services**

- A. For every project that requires design-build services, the fees for which are not reasonably expected to exceed twenty thousand dollars (\$20,000), the Chief Purchasing Officer shall be responsible for the final selection of a design-build services firm for such project. Upon a decision by the Board, the Chief Purchasing Officer's authority to make final selections may be increased beyond the \$20,000 allotment.
- B. The Chief Purchasing Officer shall use the criteria set forth in R.I. Gen. Laws § 37-2-66 in making such selection. That determination shall be justified in writing.



- C. For design-build services greater than \$20,000, the Chief Purchasing Officer, or his/her designee, shall submit his/her recommendation to the appropriate Committee of the Board as determined by the Chief Purchasing Officer. The Committee shall submit its recommendation for a preferred vendor to the Board. The Board shall vote on the recommendation of the Committee. An affirmative vote authorizes the award and directs the Chairman and the Chief Purchasing Officer to negotiate a contract within the specific limitations of the Board's Resolution. A negative vote returns the item to the Committee for further action.

#### **1.10.7 Issuance of Notice to Proceed**

Upon execution of the negotiated contract by all authorized parties, the Chief Purchasing Officer shall issue a Notice to Proceed to the vendor pursuant to the provisions of such contract.

### **1.11 Selection of Architectural, Engineering, and Construction Services for Construction Manager At-Risk Projects**

#### **A. Construction Manager At-Risk**

1. The terms "Construction Manager at Risk", "construction management at-risk services," "construction management at-risk delivery method" shall all be limited to that certain construction method defined by R.I. Gen. Laws § 37-2-7(30). The terms "construction manager at-risk" and "construction management at-risk firm" shall be limited as defined by R.I. Gen. Laws § 37-2-7(31).
2. The construction manager at-risk method of construction management may be selected for a project only when it is determined in writing by the Chief Executive Officer that all criteria mandated by R.I. Gen. Laws § 37-2-27.1, as amended, have been met.
  - a. The Chief Executive Officer shall file copies of the written determination with the president of the senate, the speaker of the house, the senate fiscal advisor, and the house fiscal advisor no later than three (3) business days after executing the written determination.
  - b. At the time that the construction management at-risk delivery method is selected, the Chief Purchasing Officer shall adopt internal written procedures to ensure fairness in competition, evaluation, and reporting of results at every stage in the procurement process.

3. The Director of Construction and Engineering, or any employee of the NBC who meets the requirements of R.I. Gen. Laws § 37-2-27.2, may act as the Owner's Program Manager.

## **1.12 Selection of Legal Services**

### **A. Purchasing of Legal Services**

1. Legal services shall be purchased as deemed necessary by the Chief Purchasing Officer in accordance with the NBC's Bylaws.
2. Before the services of an attorney are purchased, the following shall be demonstrated:
  - a. The need for the services required, including the scope of the services to be performed; and
  - b. That no legal personnel employed by the NBC on a full-time basis is available to perform those services given the workload, availability, or expertise required by the assignment; and
  - c. That funding is available; and
  - d. That attorneys to be engaged meet the following minimum requirements:
    - (1) Appropriate professional licensing;
    - (2) Competence to perform those services as reflected by formal 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;
    - (3) Ability to perform the services as reflected by workload and availability of adequate personnel, equipment, and facilities to perform the services expeditiously.
3. The attorney shall enter into a letter of engagement with the agency. The letter of engagement shall state the rate of compensation, the scope of the service to be performed for the compensation, and provision for the payment of expenses incurred in connection with legal services. The letter of engagement shall certify that the rate of compensation does not exceed the rate of compensation charged by counsel to his or her preferred public

or private clients. A letter of engagement shall not be for more than one year.

## **1.13 Continuation, Modification, and Termination of Contracts**

### **1.13.1 Continuation of Contracts**

- A. The NBC shall generally negotiate the continuation of contracts for planning, design, and resident engineering services, which is consistent with Environmental Protection Agency Regulations. Firms that have been competitively selected for planning and/or preliminary engineering services on projects shall be considered for such design and construction engineering contracts if the NBC is satisfied with their work. The negotiations shall be based upon person hour projections and/or estimated number of design sheets utilizing unit costs as accepted within the trade, and EPA approved or equivalent overhead rates.
- B. The NBC always reserves the right to seek proposals rather than continue contracts when and where the Chief Purchasing Officer determines that it would be in the NBC's best interest to do so.

### **1.13.2 Modification of Contracts**

The NBC may require clauses in its contracts to which it is a party permitting changes or modifications by the NBC.

### **1.13.3 Termination of Contracts**

- A. The NBC may provide that a contract be terminated for default of the vendor and may provide for liquidated damages.
- B. The NBC may provide that a contract be terminated for the convenience of the NBC or the vendor and in such cases shall provide appropriate adjustments in price, including, where applicable, reimbursement for the reasonable value of any non-recurring costs incurred but not amortized in the price of any item, service, or construction delivered under the contract.
- C. In accordance with R.I. Gen. Laws § 37-2-43, the Chief Purchasing Officer shall terminate a contract upon notification by the Director of the Department of Environmental Management that there has been a final adjudication or other resolution, as a result of which a fine of five thousand dollars (\$5,000) or more has been imposed, that a contractor has violated any state law or regulation pertaining to the protection of fresh water wetlands (R.I. Gen. Laws Chapter 2-1), coastal wetlands, (R.I. Gen. Laws Chapter 46-23), air quality (R.I. Gen. Laws Chapter 23-23), water quality (R.I. Gen. Laws Chapter 46-12), the installation of

individual sewage disposal systems (R.I. Gen. Laws Chapter 42-17.1), the handling and/or disposal of solid waste (R.I. Gen. Laws Chapter 23-19), or hazardous waste (R.I. Gen. Laws Chapter 23-19.1), whether or not such violation has any relation to the contract to be terminated.

## **1.14 Cost and Pricing Principles**

- A. Except as otherwise provided by contract, the NBC shall use generally accepted accounting principles for the following:
1. As guidelines in the negotiations of:
    - a. Estimated costs for a contract when the absence of open market competition precludes the use of competitive sealed bidding or price proposals; and
    - b. Adjustments for changes or modification in contract performance required by the NBC; and
    - c. Settlement of contracts that have been terminated.
  2. To determine the eligibility of incurred costs for the purposes of reimbursing costs under contract provisions that provide for the reimbursement of costs; and
  3. As appropriate in any other situation where determinations of the estimated or incurred costs of performing a contract may be required.

## **1.15 Exclusion**

### **1.15.1 Exclusion Authority**

The Chief Purchasing Officer may exclude a vendor from the NBC's Bidder List for just cause with proper notification.

### **1.15.2 Forms of Exclusion**

- A. Exclusion shall refer to:
1. Debarment - permanent removal from the Bidder List.
  2. Suspension - temporary removal from the Bidder List.
  3. Rejection - lack of inclusion on the Bidder List.

### **1.15.3 Just Cause for Debarment**

- A. Just cause for Debarment shall include, but shall not be limited to:
1. Convictions of fraud or perjury;
  2. Falsification of information on a Bidder Registration Form;
  3. Substantial nonperformance on more than two (2) contracts;
  4. Debarment by the federal or state government, or;
  5. Lack of responsibility by withdrawal of more than two (2) bids after an award has been announced by the Chief Purchasing Officer.

#### **1.15.4 Just Cause for Suspension**

- A. Just cause for Suspension shall include, but shall not be limited to:
1. Any cause for debarment, depending on the severity of the violation;
  2. Suspension by federal or state government;
  3. Substantial nonperformance on at least one (1) contract;
  4. Failure to respond to three (3) consecutive bid solicitations for goods that the vendor has indicated on the Bidder Registration Form that the firm could supply;
  5. Lack of responsibility by withdrawal of more than two (2) bids within a two (2) year period, even with the consent of the Chief Purchasing Officer;
  6. Correction of more than three (3) bids within a two (2) year period, with or without the consent of the Chief Purchasing Officer.

#### **1.15.5 Just Cause for Rejection**

- A. Just cause for Rejection shall include but shall not be limited to:
1. Lack of properly prepared and submitted Bidder Registration Form;
  2. Refusal to submit a Bidder Registration Form;
  3. Falsification of information on Bidder Registration Form or Certification Forms;
  4. Suspension or debarment by the federal or state government;
  5. Conviction of fraud or perjury; or

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

#### **1.15.6 Notification**

- A. The Chief Purchasing Officer's Notification shall be in writing to any affected vendor who he/she intends to debar, suspend, or reject. Such notice shall:
  1. State the nature, and in the case of suspension, the duration of the sanction;
  2. Provide the vendor with a rationale for the decision;
  3. Establish a specific time for reconsideration not less than two (2) weeks nor more than three (3) weeks within which the vendor may provide justification for why such action should not be implemented.
    - a. The provision for reconsideration shall not apply under those circumstances where the Chief Purchasing Officer has determined that issuance of a purchase order to a particular vendor may present a serious compromise of the NBC.
- B. The Chief Purchasing Officer shall notify the affected vendor of his/her final decision upon the expiration of such period. If no request for reconsideration has been submitted, or has been determined to be inappropriate, the Chief Purchasing Officer shall implement and take appropriate action.

#### **1.15.7 Suspension/Rejection Duration**

- A. The Chief Purchasing Officer may suspend or reject a vendor for not less than a three (3) month and not more than a two (2) year period, depending on the severity of a particular violation.
- B. A vendor who has been suspended or rejected from the Bidder List shall not be reinstated until the firm has submitted a request for reinstatement to the Chief Purchasing Officer with a new Bidder Registration Form. Such request shall be submitted with evidence that the reason for the suspension or rejection has been corrected.
- C. Reconsideration of vendors who have been rejected shall be undertaken on a case-by-case basis.

## 1.16 Remedies

### 1.16.1 Breach of Contract Disputes

- A. Authority to resolve contract or breach of contract controversies shall reside with the Chief Purchasing Officer, prior to the institution of arbitration, litigation, claim, or controversy concerning any contract, subject to any limitations or conditions imposed by the Board to settle, compromise, pay, or otherwise adjust the claim or controversy by, against, or with a vendor or contractor relating to a contract entered into by the NBC, including a claim or controversy based on a contract and/or a mistake, misrepresentation, or other cause for contract modification or recession, 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.
- B. Contract dispute shall mean conflicting interpretations of the requirements, limitations, or compensation for the performance of a contract.
- C. The Chief Purchasing Officer shall be authorized to resolve contract disputes between the vendor or contractor and the NBC upon the submission of a request in writing from either party, which request shall provide:
  - 1. A description of the problem, including all appropriate citations and references from the contract in question; and
  - 2. A clear statement of the party's interpretation of the contract; and
  - 3. A proposed course of action to resolve the dispute.
- D. The Chief Purchasing Officer shall determine whether:
  - 1. The interpretation provided is appropriate; and
  - 2. The proposed solution is feasible; and
  - 3. Another solution may be negotiable.
- E. Failure to render timely decisions shall apply to a claim or controversy arising under contracts between the NBC and its vendors or contractors. If such a claim or controversy is not resolved by mutual agreement, the Chief Purchasing Officer or his/her designee shall promptly issue a decision in writing. A copy of the decision shall be mailed or otherwise furnished to the vendor or contractor. If the Chief Purchasing Officer does not issue a written decision within thirty (30) days after a written request for a final decision or within such longer period as might be

established by the parties to the contract in writing, then the vendor or contractor shall proceed as if an adverse decision had been rendered.

### **1.16.2 Protest and Resolution of Protest**

- A. Protest of decisions rendered by the Chief Purchasing Officer shall be processed in accordance with the requirements of R.I. Gen. Laws Chapter 37-2.
- B. The decision of any official, board member, agent, or other person engaged by the NBC concerning any controversy arising under or in conjunction 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 NBC; made upon unlawful procedure; affected by other errors of law; clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or arbitrary or capricious or characterized by the abuse of discretion or clearly unwarranted exercise of discretion.
- C. The Chief Purchasing Officer or his/her 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. In the event the Chief Purchasing Officer is the person being challenged, the Board shall determine the validity of any claims and take appropriate action.
- D. A protest or notice of other controversy must be filed in writing within two (2) calendar weeks after such aggrieved person knows or should have known of the facts giving rise thereto. In the event of a protest, the solicitation or award shall not proceed further until the Chief Purchasing Officer makes a written determination that continuation is necessary to protect the NBC.

### **1.16.3 Pest Control Services**

Upon receipt of an order from the Director of Environmental Management, pursuant to R.I. Gen. Laws Chapter 23-25, the Chief Purchasing Officer shall take such steps as are necessary to insure that the named business or commercial applicator shall not be eligible to obtain NBC contracts for pest control services for the duration of the period enumerated in said Director's order.

## **1.17 Emergency Response**

### **1.17.1 Authority**

- A. The Chief Purchasing Officer may make or authorize others to make emergency purchases when there exists a "threat to life, public health, welfare, safety, property or critical equipment, interceptor failure or other necessary functions".



Emergency purchasing authority enables authorized officials of the NBC to react quickly to critical situations, when the cost for a remedy or repair is in excess of \$500 and there is insufficient time to undertake a formal bidding process. However, in these circumstances, sound purchasing practices must be applied in seeking competitive pricing from appropriately qualified, experienced, and proven vendors as much as possible given the nature of the emergency.

- B. The Chief Purchasing Officer shall authorize individuals as emergency response officials who will have the authority in his/her absence to determine whether a situation requires an emergency response and to then certify such emergency. Such officials are the Director of Executive Affairs and/or the Director of the Division who is accessible to address the emergency situation.
- C. All emergency purchasing authorizations shall be specific as to:
  - 1. Maximum levels of expenditure commitment; and
  - 2. Program account(s).

### **1.17.2 Documentation**

- A. The emergency response official shall maintain records of all emergency purchasing transactions. Records shall contain notes of the following: the time the emergency occurred, the time a vendor(s) was contacted, the name of the vendor's representative with whom the contact occurred, the description of the situation provided to the vendor(s), and the time the vendor(s) arrived to address the emergency.
- B. Emergency purchasing documentation such as vouchers and justification forms shall be signed or initialed by duly authorized officials constituting certification by the official that the action meets the administrative responsibility under their position of authority.

## **1.18 Minority/Women/Veteran-Owned Business Enterprises**

### **1.18.1 Policy**

It is the policy of the NBC that minority business enterprises, women owned business enterprises and veteran-owned business enterprises (M/W/VBEs) shall have the maximum opportunity to participate in the performance of purchasing transactions pursuant to R.I. Gen. Laws §§ 37-14.1 and 37-14.3.

### **1.18.2 Inclusion of Minority/Women/Veteran-Owned Business Enterprises**

- A. Whenever possible M/W/VBEs shall be afforded the opportunity to be included in all state and federal funded purchases and construction projects, pursuant to R.I. Gen. Laws §§ 37-14.1, 37-14.3, and the Regulations governing participation by M/W/VBEs.
- B. In accordance with R.I. Gen. Laws §§ 37-14.1 and 37-14.3, the Chief Purchasing Officer may, after considering the overall cost to the NBC prior to making a final determination of award, apply special consideration to the offers of M/W/VBEs when:
  - 1. The solicitation provides for such consideration; and
  - 2. The offer is fully responsive to the terms and condition of the solicitation; and
  - 3. The price offer made by the M/W/VBE is determined to be within a competitive range (not to exceed five percent (5%) higher than the lowest responsive price offer) for the product or services; and
  - 4. The firm making the offer conforms to the definition of an M/W/VBE.
- C. In accordance with the provisions of R.I. Gen. Laws § 37-14.1-7, it will be NBC's goal to make all efforts to award ten percent (10%) of the dollar value of the work performed against state and federal funded purchasing and contracts for construction exceeding five thousand dollars (\$5,000.00) to M/WBE where it has been determined that subcontract opportunities exist and where certified M/WBE contractors are available.
- D. In accordance with the with the provisions of R.I. Gen. Laws § 37-14.3-4, it will be NBC's goal to make all efforts to award three percent (3%) of the dollar value of the work performed against state and federal funded purchasing and contracts for construction exceeding five thousand dollars (\$5,000.00) to VBE where it has been determined that subcontract opportunities exist and where certified VBE contractors are available.

## **1.19 Code of Ethics and Professional Behavior**

### **1.19.1 Ethics Policies**

- A. It is the Policy of the NBC that employees must adhere to the highest standard of ethical conduct as set out by the R.I. Ethics Commission, 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.

- B. All NBC officials and employees shall be subject to the provisions of R.I. Gen. Laws Chapter 36-14, as amended from time to time (the Code of Ethics), and all regulations promulgated by the R.I. Ethics Commission, as amended from time to time, and any policies and/or rules and regulations promulgated by the NBC.

### **1.19.2 Rhode Island Whistleblowers' Protection Act**

- A. In accordance with R.I. Gen. Laws Chapter 28-50, as amended, an employer shall not discharge, threaten, or otherwise discriminate against an employee regarding the employee's compensation, terms, conditions, location, or privileges of employment:
1. because the employee, or a person acting on behalf of the employee, reports or is about to report to a public body verbally or in writing, a violation the employee knows or reasonably believes has occurred or is about to occur, or a law or regulation or rule promulgated under the law of this State, a political subdivision of this State or the United States, unless the employee knows or has reason to know that the report is false, or
  2. because an employee is requested by a public body to participate in an investigation, hearing, or inquiry held by that public body, or a court action, or service.

## **1.20 Interpretation of Requirements**

### **1.20.1 Construction**

The provisions of this Part with respect to the meaning of specific terms and phrases shall be interpreted by the Chief Purchasing Officer.

### **1.20.2 Captions**

Captions and heading are for reference only and shall not limit or otherwise affect the meaning of the provisions there under.

### **1.20.3 Severability**

If any provision of this Part shall be adjudged to be inconsistent with any State or Federal law or the application thereof to any person or circumstances is held invalid by a court or competent jurisdiction, the remainder of this Part shall not be affected thereby. The invalidity of any section or sections or parts of any section or sections shall not affect the validity of the remainder of this Part.

### **1.20.4 Residual Clause**

- A. Issues that have not been specified in this Part shall be interpreted under the Rhode Island General Laws and as necessary by the NBC.
- B. In the event that the Rhode Island General Laws pertaining to this Part change, the relevant provisions contained in said Part would be automatically amended to reflect the changes.