

# **RULES OF THE QUONSET DEVELOPMENT CORPORATION FOR THE PROCUREMENT OF SUPPLIES AND SERVICES**

## **Article I – General Provisions**

### **Section 1.1 Introduction.**

Pursuant to Chapter 64.10, Section 10(e) of Title 42 of the Rhode Island General Laws, the purpose of these rules (the “Rules”) is to comply with the principles, policies and practices of Chapter 2 of Title 37 of the Rhode Island General Laws (the “State Purchases Act”), and to set forth procedures to ensure fair and equitable treatment of all persons who deal with the Corporation’s procurement system, increase economy in the Corporation’s procurement activities by fostering effective competition, and to provide safeguards for the maintenance of a procurement system for the Corporation of quality, integrity and the highest ethical standards.

Notwithstanding anything contained in these Rules to the contrary, the Corporation shall have and may exercise all general powers set forth in Section 42-64.10 of the Rhode Island General Laws necessary or convenient to effect its purposes, which include the power to acquire and to dispose of real property, without the necessity of obtaining the approval of the state properties committee or otherwise complying with the provisions of the State Purchases Act.

### **Section 1.2 Definitions.**

The words defined in this section shall have the meanings set forth below wherever they appear in these Rules, unless the context in which they are used clearly requires a different meaning.

- (1) “Change order” shall mean a written order signed by the Chief Purchasing Officer directing the contractor to make changes which the changes clause of the contract authorizes the Chief Purchasing Officer to order without the consent of the contractor.
- (2) “Chief Purchasing Officer” shall mean the Managing Director of the Corporation acting with the consent of the Corporation.
- (3) “Contract” shall mean all types of agreements, including orders, for the purchase or disposal of supplies and services. It shall include awards; contracts of a fixed-price, cost, cost-plus-a fixed fee, or incentive type contract; contracts providing for the issuance of job or task orders; leases; letter contracts and purchase orders. “Contract” shall include supplemental agreements with respect to any of the foregoing. “Contract” does not include any labor contract with employees of the Corporation.
- (4) “Contract modification” shall mean any written alteration, amendment, or change-order 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

supplemental agreements, and unilateral actions, such as change orders, administrative changes, notices of termination, and notices of the exercise of a contract option.

- (5) “Contractor” shall mean any person who is a party to a contract with the Corporation.
- (6) “Corporation” shall mean the Quonset Development Corporation.
- (7) “Department of Administration” shall mean the Department of Administration of the State of Rhode Island.
- (8) “Equal Opportunity Office” shall mean the equal opportunity office of the Department of Administration of the State of Rhode Island.
- (9) “Established catalogue price” shall mean the price included in the most current catalogue, price list, schedule, or other form that:
  - (i) Is regularly maintained by the manufacturer or vendor of an item; and
  - (ii) Is either published or otherwise available for inspection by customers; and
  - (iii) States prices at which sales are currently or were last made to a significant number of buyers constituting the general buying public for that item; and
  - (iv) States prices which are obtained from the most recent industry-wide publications and informational journals, if any.
- (10) “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.
- (11) “Invitation for bids” shall mean all documents, whether attached or incorporated by reference, utilized for soliciting bids in accordance with the procedures set forth in Section 2.1.2 of these Rules.
- (12) “Negotiation” shall mean contracting by any of the methods set forth in Sections 2.1.3, 2.1.4, or 2.1.5.
- (13) “Office of the Corporation” shall mean 95 Cripe Street, North Kingstown, Rhode Island, or such other principal office of the Corporation as the Corporation may from time to time determine.
- (14) “Person” shall mean any business, individual, organization, or group of individuals.
- (15) “Procurement” shall mean the purchasing, buying, renting, leasing (excluding the leasing of real property or improvements), 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 contract, and all phases of contract administration.

- (16) “Purchasing agent” shall mean any person authorized by the Corporation to enter into and administer contracts and make written determinations and findings with respect to contracts.
- (17) “Request for proposals” shall mean all documents, whether attached or incorporated by reference, utilized for soliciting proposals in accordance with the procedures set forth in Sections 2.1.3, 2.1.4, and 2.1.5 of these Rules.
- (18) “Responsible bidder or offeror” shall mean a qualified bidder who has the capability in all respects, including professional competence and the financial responsibility, to perform fully the contract requirements, and the integrity and reliability of which will assure good faith performance.
- (19) “Responsive bidder” shall mean a person who has submitted a bid or proposal which conforms in all material respects to the invitation for bids, so that all bidders may stand on equal footing with respect to the method and timeliness of submission and as to the substance of any resulting contract. A bidder who submits a bid based on alternative specifications to those contained in the invitation to bid will be responsive only if, in the judgment of the Chief Purchasing Officer, the alternative specifications meet the performance objectives of the Corporation with respect to the item or service to be purchased and the invitation to bid states that alternative specifications will be considered.
- (20) “Services” shall mean the rendering, by a contractor, of its time and effort rather than the furnishing of a specific end product, other than reports which are merely incidental to the required performance of services. “Services” does not include labor contracts with employees of state agencies.
- (21) “State” shall mean the State of Rhode Island and Providence Plantations and any of its departments or agencies and public agencies.
- (22) “Supplemental agreement” shall mean any contract modification which is accomplished by the mutual action of the parties.
- (23) “Supplies” shall mean all personal property (specifically excluding leases of real property), printing and insurance, and excluding land or improvements or permanent interest in land or improvements.

### **Section 1.3 Application of Rules.**

These Rules shall apply to all expenditures of funds by the Corporation under a contract, except (i) with respect to the acquisition, disposal, leasing, financing, and operation of real property and

improvements, (ii) with respect to contracts between the Corporation and the State and contracts between the Corporation and political subdivisions of the State or other governments, and (iii) as otherwise provided by law. Nothing in these Rules shall prevent the Corporation from complying with the terms and conditions of any grant, gift, bequest, or cooperative agreement except where such terms and conditions may conflict with requirements of law. The provisions of these Rules shall be considered to be incorporated in all contracts of the Corporation to which they apply.

In addition, competitive bids shall not be required:

- (1) For contractual services where no competition exists such as sewage treatment, water, and other public utility services;
- (2) When, in the judgment of the Chief Purchasing Officer, food, clothing, equipment, supplies, or other materials to be used in laboratory and experimental studies can be purchased otherwise to the best advantage of the state;
- (3) When instructional materials are available from only one source;
- (4) Where rates are fixed by law or ordinance;
- (5) For library books;
- (6) For commercial items that are purchased for resale;
- (7) For professional, technical, or artistic services, which shall be procured pursuant to the provisions of Article IV hereof;
- (8) For all other commodities, equipment, and services which, in the reasonable discretion of the Chief Purchasing Officer, are available from only one source;
- (9) For interests in real property.
- (10) For works of art for museum and public display;
- (11) For published books, maps, periodicals, newspaper or journal subscriptions, and technical pamphlets;
- (12) For licenses for use of proprietary or patented systems;
- (13) For services of visiting speakers, professors, performing artists, and expert witnesses; and
- (14) For the acquisition of pre-owned motor vehicles.

#### **Section 1.4 Procurement Decisions of the Corporation.**

Every determination required by these Rules shall be in writing and based upon written findings of fact by the Corporation. These determinations and written findings shall be retained in an official contract file in the Office of the Corporation pursuant to the records retention policies adopted by the Corporation from time to time.

### **Article II – Source Selection and Contract Formation**

#### **2.1 Source Selection.**

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

- (1) Competitive sealed bidding, pursuant to Section 2.1.2 of these Rules; or
- (2) Competitive negotiation, pursuant to Sections 2.1.3 and 2.1.4 of these Rules; or

- (3) Non-competitive negotiation, pursuant to Section 2.1.5 of these Rules; or
- (4) Small purchase procedures, pursuant to Section 2.1.6 of these Rules.

### **2.1.2 Competitive Sealed Bidding.**

- a) Contracts exceeding the amount provided by Section 2.1.6 of these Rules (Fifty Thousand and 00/100 Dollars (\$50,000) for construction and Twenty Five Thousand and 00/100 (\$25,000) for all other purchases) shall be awarded by competitive sealed bidding unless it is determined in writing that this method is not practicable. Factors to be considered in determining whether competitive sealed bidding is practicable shall include whether:
  - (i) Specifications can be prepared that permit an award on the basis of either the lowest bid price or the lowest evaluated bid price; and
  - (ii) The available sources, the time and place of performance, and other relevant circumstances as are appropriate for the use of competitive sealed bidding.
- b) The invitation for bids shall state whether an award shall be made on the basis of the lowest bid price or the lowest evaluated 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. All documents submitted in response to the bid proposal are public pursuant to Rhode Island General Laws Section 38-2 (Access to Public Records) upon opening of the bids. The invitation for bids shall state that each bidder must submit a copy of their bid proposal to be available for public inspection upon the opening of the bids. The burden to identify and withhold from the public copy that is released at the bid opening any trade secrets, commercial or financial information, or other information the bidder deems not subject to public disclosure pursuant to Rhode Island General Laws Section 38-2 shall rest with the bidder submitting the bid proposal.
- c) 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 include publication in a newspaper of general circulation in the State as determined by the Corporation not less than seven (7) days nor more than twenty-eight (28) days before the date set for the opening of the bids. The Chief Purchasing Officer or purchasing agent may make a written determination that the twenty-eight (28) day limitation needs to be waived. The written determination shall state the reason why the twenty-eight (28) day limitation is being waived and shall state the number of days, giving a minimum and maximum, before the date set for the opening of bids when public notice is to be given.
- d) Bids shall be opened and read aloud 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.
- e) Immediately subsequent to the opening of the bids, copies of bid documents submitted shall be made available for inspection by the public pursuant to these Rules. Any objection to any bid on the grounds that it is nonresponsive to the invitation for the bids must be filed with the Chief Purchasing Officer or purchasing agent within five (5)

business days of the opening of the bid. The Chief Purchasing Officer or purchasing agent shall issue a written determination to the objector and shall provide a copy of the determination to the objector and all those who submitted bids at least seven (7) business days prior to the award of the contract. If a bid is nonresponsive to the requirements in the invitation to bid, the bid is invalid and the Chief Purchasing Officer or purchasing agent shall reject the bid. The Chief Purchasing Officer or purchasing agent shall have no discretion to waive any requirements in the invitation to bid which are identified as mandatory. Nothing in this section shall be construed to interfere with or invalidate the results of the due diligence conducted by the Corporation to determine whether bids are responsive and responsible.

- f) Subsequent to the awarding of the bid, all documents pertinent to the awarding of the bid that were not made public shall be made available and open to public inspection and retained in the bid file pursuant to the records retention policies adopted by the Corporation from time to time. The copy of the bid proposal provided pursuant to subsection (b) above shall be retained until the bid is awarded.
- g) 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, lowest evaluated or responsive bid price.
- h) Correction or withdrawal of bids will be allowed only in accordance with the instructions to bidders set forth in the invitation to bid.

### **2.1.3 Competitive Negotiation.**

- a) When the Chief Purchasing Officer determines in writing that the use of competitive sealed bidding is not practicable, and except as provided in Sections 2.1.5 and 2.1.6 of these Rules, a contract may be awarded by competitive negotiation.
- b) Adequate public notice of the request for proposals shall be given in the same manner as provided in Section 2.1.2 (c) of these Rules.
- c) The request for proposals shall indicate the relative importance of price and other evaluation factors.
- d) Written or oral discussions shall be conducted with all responsible offerors who submit proposals determined in writing by the Chief Purchasing Officer to be reasonably suitable of being selected for award. All oral discussions conducted with responsible offerors who submit proposals shall be memorialized in writing and all such writings shall be deemed public record at the time the contract is awarded and shall be made available for public inspection. Discussions shall not disclose any information derived from proposals submitted by competing offerors. Discussions need not be conducted if the Chief Purchasing Officer or purchasing agent makes a written determination concerning one or more of the following:

- (i) With respect to prices, where such prices are fixed by law or regulation, except that consideration shall be given to competitive terms and conditions; or
  - (ii) Where time of delivery or performance will not permit discussion; or
  - (iii) Where it can be clearly demonstrated and documented from the existence of adequate competition or accurate prior cost experience with the particular supply, service, or construction item, that acceptance of an initial offer without discussion would result in fair and reasonable prices, and the request for proposals notifies all offerors of the possibility that award may be made on the basis of the initial offers.
- e) An award shall be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to the Corporation taking into consideration price and the evaluation factors set forth in the request for proposals.

#### **2.1.4 Negotiations after Unsuccessful Competitive Sealed Bidding.**

- a) Contracts may be competitively negotiated when it is determined in writing by the Chief Purchasing Officer that the bid prices received by competitive sealed bidding under Section 2.1.2 of these Rules were not independently reached in open competition, and for which:
- (i) Each competitive bidder has been notified of the intention to negotiate and is given reasonable opportunity to negotiate; and
  - (ii) The negotiated price is lower than the lowest rejected bid by any competitive bidder; and
  - (iii) The negotiated price is the lowest negotiated price offered by a competitive offeror.
- b) In the event that all bids submitted pursuant to competitive sealed bidding under Section 2.1.2 of these Rules result in bid prices in excess of the funds available for purchase, and Chief Purchasing Officer determines in writing:
- (i) That there are no additional funds available from any source so as to permit an award to the lowest responsive and responsible bidder, and
  - (ii) The best interest of the Corporation will not permit the delay attendant to a re-solicitation under revised specifications, or for revised quantities, under competitive sealed bidding as provided in Section 2.1.2 of these Rules, then a negotiated award may be made as set forth in subsection (c) or (d) of this Section 2.1.4.

- c) Where there is more than one bidder, competitive negotiations pursuant to Section 2.1.3 of these Rules shall be conducted with the three (two if there are only two) bidders determined in writing to be the lowest responsive and responsible bidders to the competitive sealed bid invitation. Such competitive negotiations shall be conducted under the following restrictions:
  - (i) If discussions pertaining to the revision of the specifications or quantities are held with any potential offeror, all other potential offerors shall be afforded an opportunity to take part in such discussions; and
  - (ii) A request for proposals, based upon revised specifications or quantities, shall be issued as promptly as possible, shall provide for an expeditious response to the revised requirements, and shall be awarded upon the basis of the lowest bid price or lowest evaluated bid price submitted by any responsive and responsible offeror.
- d) When, after competitive sealed bidding, it is determined in writing that there is only one responsive and responsible bidder, a noncompetitive negotiated award may be made with such bidder in accordance with Section 2.1.5 of these Rules.

#### **2.1.5 Non-Competitive Procurement.**

- a) Sole Source: A contract may be awarded for a supply, service or construction item without competition when the Chief Purchasing Officer determines, in writing, that there is only one source for the required supply, service, or construction item.
- b) Emergency: Notwithstanding any other provision of these Rules, the Chief Purchasing Officer may make emergency procurements when there exists a threat to public health, welfare or safety under emergency conditions, provided that such emergency procurements shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file.
- c) Noncompetitive negotiation after competitive solicitation: Contracts issued under procedures set forth herein may be negotiated with the successful vendor(s) subject to the provisions of Section 2.3.2 of these Rules. A written determination of the basis for the negotiated contract and supporting the negotiated price, shall be included in the contract file.

#### **2.1.6 Small Purchases.**

Procurements not to exceed Fifty Thousand and 00/100 Dollars (\$50,000) for construction and Twenty Five Thousand and 00/100 (\$25,000) for all other purchases may be made by the Corporation in any manner the Chief Purchasing Officer believes reasonable, and in accordance with the follow procedures:



(A) Procurements Other Than Construction:

Amount	Minimum Requirements
Up to and including \$500	No quote necessary – Must purchase through Accounting Department
Over \$500 up to and including \$2,000	3 telephone solicitations with written report thereof in memo format to Accounting Department
Over \$2,000 up to and including \$5,000	3 written quotations on vendor letterhead or facsimile
Over \$5,000 up to and including \$25,000	3 written quotations on vendor letterhead or facsimile, plus RI Vendor Information Program (State of RI on-line)

(B) Construction Procurements:

Amount	Minimum Requirements
Up to and including \$500	No quote necessary – Must purchase through Accounting Department
Over \$500 and up to and including \$50,000	3 written quotations on vendor letterhead or facsimile, plus RI Vendor Information Program (State of RI on-line)

**Section 2.2 Cancellation of Invitation for Bids and Requests for Proposals.**

The Chief Purchasing Officer may cancel an invitation for bids, a request for proposal, or negotiations in connection with the procurement of any supply, service, or construction item, or may reject all bids or proposals, if the Chief Purchasing Officer determines that such action is in the best interests of the Corporation. No such cancellation or rejection shall prevent the Chief Purchasing Officer from re-soliciting bids for the same supplies, services, or construction item on the same or different terms.

## **Section 2.3 Responsibility of Bidders and Offerors.**

### **2.3.1 Determination of Responsibility.**

- a) A written determination of responsibility of a bidder or offeror shall be made by the Chief Purchasing Officer in connection with the award of any contract.
- b) The Chief Purchasing Officer shall make reasonable inquiries to determine the financial strength and responsibility of the bidder and offeror. The failure of any bidder or offeror to promptly supply information in connection with such inquiries may be grounds for determining that such person is not responsible. Said financial analysis may include the review of the business by a nationally recognized commercial credit reporting bureau.
- c) Except as otherwise provided by law, information furnished by any bidder or offeror pursuant to this Section 2.3.1 may not be disclosed by the Corporation to any other person without the prior written consent of such person.

### **2.3.2 Cost or Pricing Data.**

- a) A contractor shall submit to the Chief Purchasing Officer cost or pricing data and shall certify that, to the best of his, her, or its knowledge and belief, any cost or pricing data required to be submitted was accurate, complete, and current as of a mutually determined specified date prior to the date of:
  - (i) The pricing of any negotiated contract where the total contract price is expected to exceed fifty thousand (\$50,000); or
  - (ii) The pricing of any change order or contract modification which is expected to exceed twenty-five thousand dollars (\$25,000).
- b) The Chief Purchasing Officer may require contractor certified cost or pricing data in connection with any bid, proposal, or contract without regard to the price ceilings set forth above if the Chief Purchasing Officer determines that such cost or price data is necessary to ensure a fair and reasonable contract price to the Corporation.
- c) When certified cost or pricing data must be submitted in connection with any contract, change, or modification thereto, the price to the Corporation, 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 which, as of the date agreed upon between the parties, was inaccurate, incomplete, or not current and any such contract, change, or modification shall contain an express provision consistent with this subsection (c).

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

## **2.4 Contracts.**

### **2.4.1 Types of Contracts.**

The Corporation may enter into any type of contract which will promote the best interests of the Corporation as may be determined by the Chief Purchasing Officer.

### **2.4.2 Partial, Progressive, and Multiple Awards.**

- a) A contract may provide for payments as work progresses under the contract, on the basis of costs incurred, on the basis of percentage of completion accomplished, or on the basis of a particular stage of completion.
- b) A contract may provide for payments upon submission of proper invoices or vouchers for supplies delivered and accepted, or services rendered and accepted, where such supplies and services are only part of total contract requirements.
- c) The Corporation may reserve the right to split a contract between two or more responsive and responsible bidders or offerors and to make an award for all or only part of the items, services or construction specified in the solicitation, if so stated in the invitation to bid or the request for proposal.

## **Section 2.5 Reporting of Anti-Competitive Practices.**

- a) If for any reason the Chief Purchasing Officer suspects collusion among bidders or offerors, the Chief Purchasing Officer shall transmit a written notice of the facts giving rise to such suspicion to the Attorney General of the State of Rhode Island (the "Attorney General").
- b) All documents involved in any procurement in which collusion is expected shall be retained until the Attorney General notifies the Chief Purchasing Officer that they may be released. All such documents shall be made available to the Attorney General or his or her designee upon request, notwithstanding any other provision of these Rules.

## **Article III – Cost Principles**

### **Section 3.1 Cost and Pricing Principle.**

Except as otherwise provided by contract, the Chief Purchasing Officer shall use generally accepted accounting principles:

- a) As guidelines in the negotiation of:
  - (i) Estimated costs for contracts when the absence of open market competition precludes the use of competitive sealed bidding;
  - (ii) Adjustments for changes or modifications in contract performance requested by the Corporation; and
- b) Settlements of contracts which have been terminated.
- c) To determine the allowability of incurred costs for the purposes of reimbursing costs under contract provisions which provide for the reimbursement of costs; and
- d) As appropriate in any other situation where determinations of the estimated or incurred costs of performing a contract may be required.

#### **Article IV – Professional Services**

##### **Section 4.1 Architectural, Engineering and Consultant Services.**

- a) It shall be the policy of the Corporation to publicly announce requirements for architectural and engineering services, which are reasonably estimated to exceed Twenty Thousand Dollars (\$20,000), and to negotiate contracts for those professional services on the basis of demonstrated competence and qualifications and at fair and reasonable prices.
- b) The Chief Purchasing Officer shall give public notice of the need for architectural, engineering, or consultant services which are reasonably estimated to exceed Twenty Thousand Dollars (\$20,000). The public notice shall be published sufficiently in advance of the date when responses must be received in order that interested parties have an adequate opportunity to submit a statement of qualifications and performance data. The notice shall contain a brief statement of the services required, describe the project, and specify how a solicitation containing specific information on the project may be obtained. The notice shall 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.
- c) A solicitation shall be prepared which describes the Corporation's requirements and sets forth the evaluation criteria. It shall be distributed to interested persons. Criteria shall include, but is not limited to:
  - (i) 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;
  - (ii) Ability to perform the services as reflected by workload and the availability of adequate personnel, equipment, and facilities to perform the services expeditiously;

- (iii) Past performance as reflected by the evaluation of private persons and officials of other governmental entities that have retained the services of the firm with respect to such factors as control of costs, quality of work, and an ability to meet deadlines; and
- (iv) The proposed approach to the project, where applicable.

The Chief Purchasing Officer shall evaluate:

- (i) Statements that may be submitted in response to the solicitation of architectural or engineering services; and
- (ii) Statements of qualifications and performance data, if their submission was required.

All statements and statements of qualifications and performance data shall be evaluated in light of the criteria set forth in the solicitation for architectural, engineering, or consultant services.

- d) The Chief Purchasing Officer shall select no more than (3) firms (or two (2) if only two (2) apply) evaluated as being professionally and technically qualified. The firms selected, if still interested in providing the services, shall make a representative available to the directors of the Corporation at such time and place as they shall determine, to provide such further information as they may require. The directors of the Corporation shall negotiate with the highest qualified firm for a contract for architectural, engineering, or consultant services for the Corporation at compensation which the directors determine to be fair and reasonable to the Corporation. In making the determination, the directors shall take into account the professional competence of the offerors, the technical merits of the offerors, and the price for which the services are to be rendered. The directors of the Corporation shall be responsible for the final selection of the providers of architectural, engineering, or consultant services.
- e) For every Corporation project requiring architectural, engineering, or consultant 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, or consultant firm for the project. The Chief Purchasing Officer shall notify the board of directors of the Corporation of that selection. The Chief Purchasing Officer shall use the criteria set forth above in making the determination. That determination shall be justified in writing.

#### **Section 4.2 Legal Services.**

- a) Before the Corporation shall procure the services of an attorney, the Chief Purchasing Officer shall demonstrate to the satisfaction of the directors of the Corporation the following:
  - (1) The need for the services, 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 those services;
  - (3) That funding is available, indicating from which sources the funding is to be provided;
  - (4) That attorneys to be engaged meet the following minimum requirements:
    - (i) Appropriate professional licensing;
    - (ii) 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; and
    - (iii) Ability to perform the services as reflected by workload and availability of adequate personnel, equipment, and facilities to perform the services expeditiously.
- b) The attorney shall enter into a letter of engagement with the Corporation. The letter of engagement shall state the rate of compensation, the scope of the services to be performed for the compensation, and provision for the payment of expenses incurred in connection with legal services. The letter of engagement shall certify that the rate of compensation does not exceed the rate of compensation charged by counsel to his or her preferred public or private clients. A letter of engagement shall not be for more than one year.

## **Article V - Dispute Resolution and Debarment**

### **Section 5.1 Resolution of Protests of Solicitations and Awards.**

- a) Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation or award of any 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.
- b) The Chief Purchasing Officer shall promptly issue a decision in writing regarding such protest. A copy of that decision shall be mailed or otherwise furnished to the aggrieved party and shall state the reasons for the action taken.

### **Section 5.2 Debarment and Suspension.**

After reasonable notice to the person involved and reasonable opportunity for that person to be heard, the Chief Purchasing Officer may debar a person for cause from consideration for award of contracts. The debarment shall not be for a period of more than three (3) years. In addition, the Chief Purchasing Officer may suspend a person from consideration for award of contracts if

there is probable cause for debarment. The suspension shall not be for a period exceeding three (3) months.

a) Causes for debarment or suspension include the following:

- (i) Conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in performance of such contract or subcontract;
- (ii) Conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, stolen property, or any other offense indicating a lack of business integrity or business honesty;
- (iii) Conviction under state or federal antitrust statutes arising out of the submission of bids or proposals;
- (iv) Violation of contract provisions, as set forth herein, of a character which is regarded by the Chief Purchasing Officer to be so serious as to justify debarment action;
- (v) Knowing failure without good cause to perform in accordance with the specifications or within the time limit provided in a contract with the Corporation;
- (vi) A recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts with the Corporation; provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment; or
- (vii) Any other cause the Chief Purchasing Officer determines to be so serious and compelling as to affect responsibility as a contractor, including debarment by a governmental entity.

b) The Chief Purchasing Officer shall issue a written decision to debar or suspend. The decision shall state the reasons for the action taken.

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

## **Article VI – Additional Matters**

### **Section 6.1 Equal Employment Opportunity.**

For all contracts for supplies and services exceeding Ten Thousand Dollars (\$10,000), contractors must comply with the requirements of Section 28-5.1-10 of the Rhode Island General Laws, the executive orders described therein and other regulations as issued by the State Equal Opportunity Office.

### **Section 6.2 Conflict of Interest.**

No employee, officer or director of the Corporation shall have any interest, financial or otherwise, direct or indirect, or engage in any activity which is in substantial conflict with the proper discharge of his or her duties as an employee, officer or director of the Corporation. The employees, officers and directors of the Corporation shall comply with the applicable provisions of the Rhode Island Code of Ethics (Rhode Island General Laws, Section 36-14 et. seq.) and Executive Order 03-01 entitled “Ethics and Integrity in State Government”.

### **Section 6.3 Minority and Women’s Businesses.**

The Chief Purchasing Officer shall, to the extent practicable, encourage minority business enterprises and women’s business enterprises to bid for contracts to be awarded by the Corporation.

## **Article VII – Effective Date**

### **Section 7.1 Effective Date.**

These rules shall become effective twenty (20) days following the date they are filed with the Secretary of State of the State.

### **Section 7.2 Contracts in Effect on Effective Date.**

These Rules shall not change in any way a contract commitment by the Corporation nor of a contract with the Corporation which was in existence on the effective date of these Rules.