

# **JUDICIAL PURCHASING RULES AND REGULATIONS**

## TABLE OF CONTENTS

Article I.	Authority .....	4
Article II.	Purpose and Policy.....	4
Article III.	Scope .....	4
Article IV.	Participation in Other State Contracts and Use of Services.....	5
Article V.	Waivers/Deviations .....	5
Article VI.	Procurement Integrity .....	5
Article VII.	Access to Information .....	5
Article VIII.	Judicial Purchasing Committee and Judicial Purchasing Structure .....	6
Section 8.01	Judicial Purchasing Committee.....	6
A.	Responsibilities of the Judicial Purchasing Committee.....	6
B.	Meetings of the Judicial Purchasing Committee .....	6
C.	Judicial Purchasing Structure and Responsibilities .....	7
Section 8.02	Chief Purchasing Officer .....	7
Section 8.03	Judicial Purchasing Agent.....	8
Article IX.	Definitions.....	8
Article X.	Methods of Source Selection .....	9
Section 10.01	Master Price Agreement (MPA) .....	9
Section 10.02	Competitive Sealed Bidding .....	9
A.	Standards and Specifications .....	10
B.	Solicitations.....	10
C.	Receipt of Offers.....	12
D.	Withdrawal or Correction of Offers.....	12
E.	Evaluation of Offers.....	13
F.	Awards .....	13
G.	Negotiations After Unsuccessful Competitive Sealed Bidding .....	14
H.	Protest Procedures.....	15
Section 10.03	Competitive Negotiations .....	16
A.	Content of Request for Proposal .....	16
B.	Procedure for Competitive Negotiations .....	17
Section 10.04	Non Competitive Negotiations .....	17

Section 10.05	Exceptions.....	17
A.	Emergency .....	18
B.	Sole source .....	18
C.	Professional, Technical and Consulting Assistance.....	19
D.	Small Purchases .....	19
E.	Informal Competitive Bids .....	19
F.	Direct Billing .....	20
Article XI.	Contractor Prequalification, Qualification and Solicitation.....	20
Section 11.01	Definitions.....	20
A.	Registered Suppliers .....	20
B.	Unregistered Suppliers.....	21
Section 11.02	Responsibilities of Bidders and Offerors .....	21
Section 11.03	Bidder Registration Form .....	22
Section 11.04	Bidder Registration Fee .....	22
Section 11.05	Vendor Information Files.....	22
A.	General.....	22
B.	Bidding History.....	23
C.	Performance History .....	23
Section 11.06	Prequalification of Contractors .....	23
Section 11.07	Construction Management .....	24
Section 11.08	Vendor Disqualification.....	24
A.	Rejection and Removal .....	25
B.	Debarment and Suspension from Bidders List .....	25
Section 11.09	Notification, Protest and Reconsideration .....	27
A.	Notice.....	27
B.	Protests .....	28
C.	Reconsideration.....	28
Section 11.10	Public Works Contracts .....	28
Article XII.	General Terms and Conditions of Purchase.....	28
Section 12.01	General Terms and Conditions .....	28
Section 12.02	Purchase Order Contracts .....	29

Article XIII.	Multi-Year Contracts .....	29
Article XIV.	Letter of Authorization .....	30
Section 14.01	Definition and Purpose .....	30
Section 14.02	Changes to Purchase Orders .....	31
Section 14.03	Suspension or Termination of Contract .....	31
A.	Suspension of a Contract by the Judiciary .....	31
B.	Termination of a Contract by the Judiciary .....	32
Article XV.	Presumption of Correctness and Finality of Determinations .....	33
Section 15.01	Decision Presumed To Be Correct.....	33
Section 15.02	Finality of Determinations .....	34
Article XVI.	Authority to Resolve Contract and Breach of Contract Controversies.....	34
Article XVII.	Dispute and Appeals Procedure .....	34
Article XVIII.	Records .....	35
Section 18.01	Report of Noncompetitive Negotiations and Small Purchases .....	35
Article XIX.	Grants.....	35
Section 19.01	Grants Not Considered Procurements.....	35
Section 19.02	Special Provisions and Requirements for Grants.....	36
A.	Contracting Authority.....	36
Article XX.	Fixed Asset Management.....	36
Article XXI.	Effective Date .....	36
Article XXII.	Amendment and Suspension of Rules and Regulations .....	36
APPENDIX A	<i>Rhode Island Judiciary General Terms and Conditions of Purchase</i> .....	1

## **Article I. Authority**

With the passage of 2004-2005 Budget Article 45 the Judiciary was given broad power over its administrative affairs. Specifically, the State Court Administrator and the Chief Justice of the Supreme Court now have sole power over judicial procurements and the power to enact the rules and regulations necessary to carry out the procurement power. R.I.G.L. § 8-15-4.

Article 45 had effectively taken judicial purchasing power away from the Department of Administration and vested it in the Court Administrator and the Chief Justice. The following Judicial Purchasing Rules and Regulations contain a fully integrated set of procedures to govern the Judiciary in its exercise of financial control, independent of the Executive Department.

## **Article II. Purpose and Policy**

The following Judicial Purchasing Rules and Regulations are made in compliance with G.L. 1956, 8-15-4(d), whose purpose is to affirm the right of the Judicial Department to be independent of and not subject to financial control exercised by the executive branch of government in matters relating to the operation of the unified state court system.

These rules and regulations take into consideration and conform to, where practicable, existing policies governing financial and purchasing practices within the executive branch of government. Overall, the Judicial Purchasing Rules and Regulations seek to further the policies of State Purchasing as set forth in Title 37, Chapter 2 of the Rhode Island General Laws.

Specifically, the Judicial Purchasing Rules and Regulations aim to:

- simplify, clarify, and modernize the law governing purchasing by the Judiciary;
- permit the continued development of judicial purchasing policies and practices;
- make judicial purchasing laws as consistent as possible with current purchasing laws;
- provide for increased public confidence in the purchasing procedures followed by the Judiciary;
- insure the fair and equitable treatment of all persons who deal with the procurement system of the Judiciary;
- provide increased economy in judicial procurement activities by fostering effective competition; and
- provide safeguards for the maintenance of a judicial procurement system of quality, integrity and highest ethical standards.

## **Article III. Scope**

The procedures established herein do not create any right or benefit, substantive or procedural, enforceable by a party against the Judiciary or the State of Rhode Island or their officers or employees.

#### **Article IV. Participation in Other State Contracts and Use of Services**

Whenever practicable, the Judiciary may utilize existing State of Rhode Island Division of Purchases contracts for products or services. Further, to assure that the lowest possible cost is achieved, the Judiciary may enter into cooperative purchasing agreements with other governmental entities.

Whenever practicable, the Judiciary may use the facilities of the Department of Administration Centralized Purchasing Office, and/or the common services and facilities available to other state entities including but not limited to payroll, central mail room, motor pool and data processing.

Whenever such services are rendered on a cost basis to other state entities, the same charges will apply to the Judiciary.

#### **Article V. Waivers/Deviations**

These regulations standardize the manner in which products and services are procured in the Judiciary to the greatest extent possible. Any deviation from the instructions contained herein shall be supported by a waiver signed by the Chairperson of the Judicial Purchasing Committee.

#### **Article VI. Procurement Integrity**

Judicial employees are held to the highest standards of conduct in the performance of their duties and must conduct themselves so as to avoid even the appearance of any impropriety. All employees of the Judiciary are to conduct all dealings with potential offerors and contractors in such a manner that no actual occurrence of, or appearance of, favoritism or competitive advantage is given to one business over another in dealing with the Judiciary in accordance with Rhode Island Code of Ethics and Regulations, Chapter 36, Title 14.

The State Court Administrator shall have authority to impose sanctions, in accordance with personnel regulations, on any Judiciary employee who has been found to have violated these regulations.

#### **Article VII. Access to Information**

Awarded contracts will generally be available for public inspection, including the successful offer to the extent the offer is incorporated by reference into the contract, including the disclosure of fixed unit prices. However, trade secret information, and confidential or commercial information will not be released.

## **Article VIII. Judicial Purchasing Committee and Judicial Purchasing Structure**

### **Section 8.01 Judicial Purchasing Committee**

There shall be a Judicial Purchasing Committee which shall consist of the Director of Finance/Chief Purchasing Officer, who shall be chairperson; Deputy Director of Finance, who shall be vice chairperson; Assistant State Court Administrator for Technology; Assistant State Court Administrator for Facilities and Operations; and the Judicial Purchasing Agent, who shall be Secretary, or their respective designees.

A quorum shall consist of three (3) members. The Judicial Purchasing Committee may delegate its authority to the Judicial Purchasing Agent, or any other agent(s) and/or employee(s) of the Judiciary.

#### **A. Responsibilities of the Judicial Purchasing Committee**

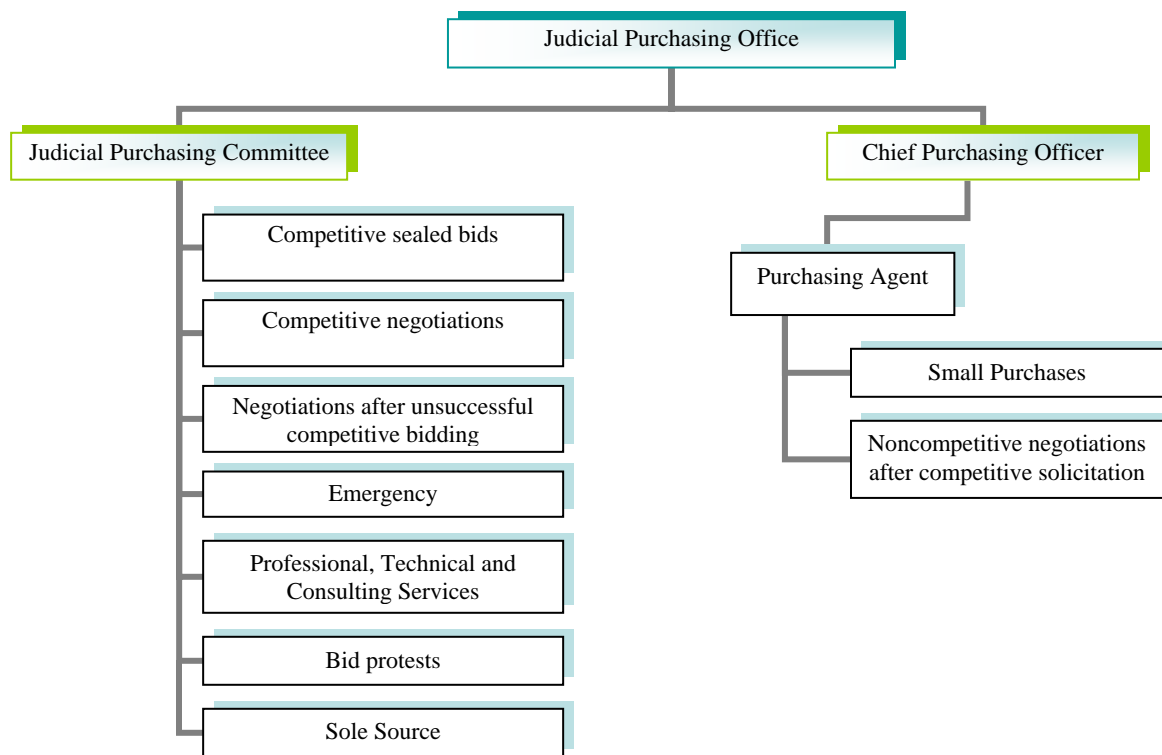
The responsibilities of the Judicial Purchasing Committee shall include but are not limited to:

1. hearing and deciding appeals on bids;
2. developing rules and regulations when necessary, which shall provide for the efficient and effective purchasing function within the Judiciary;
3. ensuring that all procurement activities foster effective competition, such that economies in expenditure can be obtained;
4. administering all procurement activities and determinations with respect to the solicitation and evaluation of competitive offers and to source selection;
5. acting as the sole point of contact with prospective and current offerors, relative to the business, financial and other commercial aspects of all solicitations and offers;
6. issuing specifications for supplies, services, and construction required by the Judiciary;
7. ensuring that all solicitations are prepared in a manner and form which enables suppliers to submit fully responsive and knowledgeable offers, and which clearly define the criteria to be used in evaluating responses;

#### **B. Meetings of the Judicial Purchasing Committee**

The Judicial Purchasing Committee shall meet as circumstances require, but in no event, less than once every one hundred eighty (180) calendar days.

### C. Judicial Purchasing Structure and Responsibilities



The Judicial Purchasing Committee may establish committees, subcommittees or workgroups as necessary to advise and assist it in carrying out its responsibilities, duties and powers under these Rules and Regulations. The committees, subcommittees or workgroups may be composed of members of the Judicial Purchasing Office, employees of the Judiciary, and/or other persons with the knowledge of the issues or areas of interest that arise before the Judicial Purchasing Committee in the performance of its duties. The committees, subcommittees or workgroups may monitor, study, report and make recommendations to the Judicial Purchasing Committee on any matter that arises during the exercise of its purchasing authority.

#### **Section 8.02 Chief Purchasing Officer**

The Chief Purchasing Officer shall attempt in every practicable way to insure that the Judiciary is supplying its needs at the lowest possible cost. The Chief Purchasing Officer shall have the power: to transfer between courts, to salvage, to exchange, and to condemn supplies, and equipment.

The State Court Administrator shall require the Chief Purchasing Officer to furnish an estimate of specific needs for supplies, materials, and equipment to be purchased by competitive bidding for the purpose of permitting scheduling of purchasing in large volume.

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

- (a) For contractual services where no competition exists such as sewage treatment, water, and other public utility services;



- (b) When instructional materials are available from only one source;
- (c) Where rates are fixed by law or ordinance;
- (d) For library books, research or reference materials, services or software;
- (e) For commercial items that are purchased for resale;
- (f) For professional, technical, or artistic services;
- (g) For all other commodities, equipment, and services which, in the reasonable discretion of the Chief Purchasing Officer, are available from only one source;
- (h) For interests in real property.
- (i) For works of art for museum and public display;
- (j) For published books, maps, periodicals, newspaper or journal subscriptions, and technical pamphlets;
- (k) For licenses for use of proprietary or patented systems; and
- (l) For services of visiting speakers, professors, performing artists, and expert witnesses.

Nothing in this section shall deprive the Chief Purchasing Officer from negotiating with vendors who maintain a general service administration price agreement with the United States of America or any agency thereof or other governmental entities, 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 and the vendor affected.

### **Section 8.03 Judicial Purchasing Agent**

Within the Judiciary, there shall be a Judicial Purchasing Agent who shall be designated by the Chief Purchasing Officer with the approval of the State Court Administrator, who shall exercise the powers and duties as set forth in these rules and regulations. The Judicial Purchasing Agent shall have the following authorities and responsibilities unless otherwise provided:

- (a) To serve as the central procurement and contracting agent of the Judiciary;
- (b) To recommend regulations, rules, and procedures to the Chief Purchasing Officer;
- (c) To purchase or otherwise acquire, or, with the approval of the Chief Purchasing Officer, to delegate the purchase and acquisition of all supplies, services, and construction for the Judiciary; and
- (d) Any other such duties and responsibilities as the State Court Administrator or Judicial Purchasing Committee shall require.

## **Article IX. Definitions**

The terms contained in these rules and regulations shall be defined according to Rhode Island General Laws Title 37, Chapter 2 and the Department of Administration's Division of Purchases Rules Regulation and General Conditions of Purchase unless the context in which they

are used clearly requires a different meaning or a different definition is prescribed for a particular section, group of sections, or provisions.

## **Article X. Methods of Source Selection**

The Judicial Purchasing Committee or the Chief Purchasing Officer may at any time, determine that it is in the best interest of the Judiciary to utilize those procurement practices and procedures as presently in place through the State of Rhode Island Division of Purchases.

When acquiring products or services, procuring officials must consider the following sources:

### **Section 10.01 Master Price Agreement (MPA)**

A Master Price Agreement (MPA) may be either a Judiciary-wide contract or a State of Rhode Island Division of Purchases contract that takes advantage of buying power and ensures that the Judiciary, through negotiated pricing, obtains the best overall value for products and services for which there are repetitive purchases, taking into account overall pricing structure; quality, delivery and service; support, training, exchange and return policies; compatibility with judicial systems and technology; financial stability; and other judicial requirements.

The Judicial Purchasing Committee may establish a Master Price Agreement under any schedule contract to fill repetitive needs for products or services, but shall use Master Price Agreements adopted by the Rhode Island Judiciary whenever feasible.

### **Section 10.02 Competitive Sealed Bidding**

Competitive sealed bidding means the competitive procurement of products and services made under procedures other than those applicable to small purchase procedures, or as otherwise specifically provided herein. The Judicial Purchasing Committee recognizes that special circumstances may not support the use of competitive bidding. *See Exceptions*. Factors to be considered in determining if competitive sealed bidding is practicable shall include whether specifications can be prepared which permit award on the basis of either the lowest bid price or the lowest evaluated bid price, the available sources, the time and place of performance, and other relevant circumstances appropriate for the use of competitive sealed bidding.

The Judicial Purchasing Committee shall ensure that all procurement activities foster effective competition, such that economies in expenditure can be obtained. A competitive environment shall be considered to exist when two or more items or offers can be compared to determine relative merit and/or objective standards of comparison are fairly and impartially applied. An equal opportunity for participation in any procurement applies to all prospective offerors, and affirmative action to achieve participation in the procurement process as a means of achieving social objectives is accomplished without violation of these general principles.

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

Information concerning the competitive sealed bidding process shall be confidential.

#### A. Standards and Specifications

The Judicial Purchasing Committee or its designee shall have the responsibility for issuing specifications for supplies, services, and construction required by the Judiciary. Among its duties, it shall, to the greatest extent practicable:

1. Prepare and issue standard specifications for supplies, services, and construction required by the Judiciary.
2. All specifications shall be drafted so as to maximize, to the extent practicable, competition in fulfillment of the Judiciary requirements.
3. Solicitations shall be prepared in a manner and form which enables suppliers to submit fully responsive and knowledgeable offers, and which clearly define the criteria to be used in evaluating responses.
4. All material submitted by requisitioners to the Judicial Purchasing Office for action shall be in sufficient detail and shall contain adequate supportive information to:
  - (i) Adequately describe the purpose, use, or desired performance level of the requirement; and
  - (ii) Identify measurable criteria for evaluation of offers including, but not limited to, acceptance testing.
  - (iii) Wherever possible, solicitations shall incorporate a standard specification, describing the level of performance required, and measurable criteria which define acceptance.
5. In certain cases, following detailed evaluation, brand name or other designations may be defined as standard items, where it is determined to be in the best interest of the Judiciary with regard to economies of scale, or cost or value analysis.

Unless alternate offers are clearly requested or allowed, only those offers which are responsive, in all material respects, to the terms of the solicitation shall be considered. Alternate specifications may be considered only where it has been determined that the alternate satisfies all objective performance characteristics of the procurement, and represents a reduction in expenditure.

#### B. Solicitations

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

Judicial employees may be authorized by the Judicial Purchasing Agent to contact suppliers to obtain technical data only prior to the award of a contract.

At least one representative of the Judicial Purchasing Committee shall be present at, or party to, all discussions with suppliers with respect to current solicitations, or with respect to price or delivery information, or with respect to modifications of any contract.

##### 1. Method of Solicitation

The Judicial Purchasing Committee will ensure that all solicitations are prepared in a manner and form which enables suppliers to submit fully responsive and

knowledgeable offers, and which clearly define the criteria to be used in evaluating responses. In general, solicitations will be sent only to those suppliers who have formally expressed a desire to bid on the particular types of items which are the subject of the bid solicitation; however, the Judicial Purchasing Agent may determine that competition would be enhanced by soliciting bidders who are not on the established Judiciary Bidders List.

## 2. Content of Solicitation

The Judicial Purchasing Committee shall have the responsibility for issuing specifications for supplies, services, and construction required by the Judiciary. Competitive bids shall be obtained from a sufficient number of suppliers to be considered representative of the industry cited. Although three bids shall be considered the minimum, the Judicial Purchasing Committee may in some instances declare the existence of two bids to be considered to provide adequate price competition.

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

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

## 3. Notification and Advertising

The Chief Purchasing Officer will determine the method by which the solicitation is delivered to potential offerors. This determination will take into consideration such choices as sent via regular mail, or electronic mail, print advertisement or publication, or posted on a website. Advertisements may be placed in publications or on websites directed to minority communities and/or women to enhance opportunities for disadvantaged businesses to participate in the bidding process.

Notices shall be published in sufficient time to afford suppliers a fair opportunity to respond prior to the bid opening date and time, not less than seven (7) days nor more than twenty-eight (28) days before the date set for the opening of the bids. The Judicial Purchasing Agent may make a written determination that there is a need to waive the twenty-eight (28) day limitation. 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.

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

- (i) that the commodity or service is of such special nature that opportunities for competition will be enhanced by extending invitations to other than known suppliers; and/or

- (ii) that a purchase will be of interest to supportive industries, e.g. construction projects; and/or
- (iii) that a purchase is unusually large or infrequent.

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

#### 4. Amendment or Cancellation of Solicitation

An invitation for bids, a request for proposals, and other solicitation may be cancelled or amended, or all bids or proposals may be rejected, if it is determined in writing that the action is taken in the best interest of the Judiciary and approved by the Judicial Purchasing Committee.

An amendment to a solicitation must be issued in sufficient time to permit offerors to consider it in submitting or modifying their offers.

#### C. Receipt of Offers

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.

#### D. Withdrawal or Correction of Offers

Correction or withdrawal of bids may be allowed only to the extent permitted by the Judicial Purchasing Committee. The Judicial Purchasing Committee shall be the sole determiner of whether correction or withdrawal of bids may be made without penalty.

Requests by the apparent low bidder for correction of bids identifying all error(s) and specifying corrective action shall be submitted in writing to the Judicial Purchasing Committee and shall be re-evaluated with all other offers. Requests for withdrawal of bids shall be submitted in writing to the Judicial Purchasing Agent, providing an explanation for the action and advising the Judicial Purchasing Committee as to why the bidder should not be suspended from the Judiciary Bidders List.

Correction of a bid at any time prior to bid opening may be permitted by the Judicial Purchasing Committee without penalty when a bidder requests that the bid be returned and a corrected bid resubmitted prior to the bid opening. A vendor who fails to resubmit a corrected bid before the bid opening shall be considered nonresponsive.

The Judicial Purchasing Committee shall respond to requests for correction or withdrawal within ten (10) working days, notifying the bidder of the status of his bid and continued inclusion in the Judiciary Bidders List.

#### E. Evaluation of Offers

Offer evaluation is an assessment of both the offer and the offeror's ability (as demonstrated by the offeror) to perform the prospective procurement successfully. Offers shall be evaluated by the Judicial Purchasing Committee or its designee on the basis of:

1. The qualifications and reliability of the offerors, established by professional accomplishment and previous experience;
2. The quality of the materials, equipment, services, or supplies to be furnished;
3. The conformity of the offer with the specifications;
4. The purposes for which required;
5. The terms of delivery;
6. Aspects of offers which provide benefit, other than those based on cost; and
7. Other provisions of offers which are determined to serve the best interests of the Judiciary.

Nothing herein shall be construed to preclude the possibility of determining an award solely on the basis of cost. The evaluation of offers, including the weight assigned to various aspects of the offerors, and all award determinations, including the reasons for a selection recommendation, shall be fully documented.

All offers received by the Judicial Purchasing Committee may be rejected if the Judicial Purchasing Committee determines that (1) the prices proposed are unreasonable and discussions have not resulted in a reasonable price or price; (2) all offers are technically unacceptable; or (3) offers were not independently arrived at in open competition, were collusive, or were submitted in bad faith. Under any such circumstances, the Judicial Purchasing Committee may declare all bids unacceptable and re-solicit the procurement.

If a solicitation results in only one proposal, the Judicial Purchasing Committee may evaluate and consider the bid for award or declare the bid unacceptable and either re-solicit the procurement or ask that the price be negotiated with the vendor.

The Judicial Purchasing Committee may eliminate bidders whose offers are clearly noncompetitive prior to resolicitation.

#### F. Awards

The bid will be awarded to the offeror whose offer receives the highest evaluation in accordance with the specifications of the bid. Evaluations can be made based on the technically acceptable/lowest price of the offeror who meets the technical requirements in the solicitation or based on best value. The contract shall be awarded with reasonable promptness by written notice to the responsive and responsible bidder whose bid is either the lowest bid price or lowest evaluated or responsive bid price.

Bids may not be withdrawn during this period without penalty without the express permission of the Judicial Purchasing Committee.

The Judicial Purchasing Committee may, after considering the overall cost to the Judiciary prior to making a final determination of award, apply special consideration to the offers of minority business enterprises when:

1. the solicitation provides for such consideration;
2. the offer is fully responsive to the terms and conditions of the solicitation;
3. the price offer made by the MBE is determined to be within a competitive range (not to exceed five percent (5%) higher than the lowest responsive price offer) for the product or service; and
4. the firm making the offer conforms to the definition of a minority business enterprise.

An award may be made by written acceptance of an offer or by execution of a procurement by both parties.

G. Negotiations After Unsuccessful Competitive Sealed Bidding

1. In the event that all bids submitted pursuant to competitive sealed bidding under Section 10.02 (“Competitive Sealed Bidding”) result in bid prices in excess of the funds available for the purchase and the 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 state will not permit the delay attendant to a resolicitation under revised specifications, or for revised quantities, under competitive sealed bidding as provided in Section 10.02 (“Competitive Sealed Bidding”), then a negotiated award may be made as set forth in subsection (2) or (4) of this section.

2. Where there is more than one bidder, competitive negotiations, pursuant to Section 10.02 (“Competitive Sealed Bidding”), shall be conducted with the three (3) or two (2) if there are only two (2) bidders, determined in writing to be the lowest responsive and responsible bidders to the competitive sealed bid invitation. 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.

3. Contracts may be competitively negotiated when it is determined in writing by the Judicial Purchasing Agent that the bid prices received by competitive sealed bidding 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.

4. When, after competitive sealed bidding, it is determined in writing that there is only one responsive and responsible bidder, a negotiated award may be made with the bidder.

#### H. Protest Procedures

A mere disagreement with the decision of the Judicial Purchasing Committee does not constitute grounds for a protest. A “protest” for purposes of these procedures is a written objection by an interested party to any of the following:

- a solicitation of other requests for offers for the procurement of products or services;
- an award or proposed award of a procurement; and
- a cancellation of the solicitation or other request.

##### 1. Interested Parties

For purposes of filing a protest, an interested party means an actual or prospective offeror whose direct economic interest would be affected by the award of a procurement or by the failure to award a procurement.

##### 2. Filing and Form of Protest

A Judiciary protest must be filed in writing with the Chief Purchasing Officer with a copy to the Judicial Purchasing Committee within two (2) calendar weeks after the interested person knows or should have known of the facts giving rise to the protest. A statement of intent to file a protest is not a protest.

Protests must include the protestor’s name, address and telephone number, fax number and email address, the solicitation or procurement number, the identity of the contracting activity, and a detailed statement of all legal and factual grounds for the protest including a description of the alleged prejudice to the protestor, copies of all relevant documents, a request of relief and the protestor’s suggested form of relief, all information establishing that the protestor is an interested party, and proof of timeliness.

##### 3. Protest Decision

The Chief Purchasing Officer shall forward the protest to the Judicial Purchasing Committee along with his explanation and recommendation. The Judicial Purchasing Committee or its designee shall issue a written decision on the protest within ten (10) business days after the filing of the protest that provides sufficient explanation for the basis of the decision.



4. Protest Filed Before Award

When a timely protest has been filed with the Chief Purchasing Officer before award, award may not be made until the matter has been resolved, unless the Chief Purchasing Officer with the concurrence of the Judicial Purchasing Committee determines in writing that urgent and compelling circumstances which significantly affect the interests of the Judiciary will not permit delay of the award until the protest has been resolved, and that the award must be made without awaiting the decision. When authorized to make an award before a protest is resolved, the Chief Purchasing Officer must inform the protestor in writing of the Judiciary's determination to proceed with the award.

5. Protest Filed After Award

When a protest is filed within two (2) calendar weeks after an award, the Chief Purchasing Officer shall immediately suspend performance pending resolution of the protest by the Judicial Purchasing Committee or its designee. Performance need not be suspended in those circumstances where the Chief Purchasing Officer determines in writing, that urgent and compelling circumstances exist or it is otherwise in the best interests of the Judiciary to allow the contractor to proceed. Prior to making such a determination, the Chief Purchasing Officer must consult with and obtain the approval of the Judicial Purchasing Committee.

### **Section 10.03 Competitive Negotiations**

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

A contract may be awarded by competitive negotiation when the Judicial Purchasing Agent determines in writing that the use of competitive sealed bidding is not practicable where:

- Lowest price is not the sole or primary consideration to be used in determining an award; or
- Performance is neither specific nor objective, and open to the offeror's interpretation; or
- It is otherwise anticipated that offers may be substantially different and that there is insufficient common ground for objective comparison; or
- It is anticipated that changes will be made after proposals are opened and that the nature of the proposals and/or prices offered will be negotiated prior to award.

Requests for Proposal (RFP) shall be utilized to solicit competitive offers.

A. Content of Request for Proposal

1. Wherever possible, the Request for Proposal shall define the performance or benefit required and shall set forth specific criteria to be utilized in evaluation of offers.
2. The request for proposals shall indicate the relative importance of price and other evaluation factors.

## B. Procedure for Competitive Negotiations

Adequate public notice of the request for proposals to be negotiated shall be given in the same manner as Competitive Sealed Bidding as provided in Section 10.02(B)(3) (“Notification and Advertising”).

Written or oral discussions may be conducted with all responsible offerors who submit proposals determined in writing to be reasonably susceptible of being selected for award. Discussions shall not disclose any information derived from proposals submitted by competing offerors. Award shall be made by the Judicial Purchasing Committee or its designee(s) to the responsible offeror whose proposal is determined in writing to be the most advantageous to the Judiciary, taking into consideration price and the evaluation factors set forth in the request for proposals. Discussions need not be conducted:

- (1) With respect to prices, where the prices are fixed by law or regulation, except that consideration shall be given to competitive terms and conditions;
- (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, 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 an award may be made on the basis of the initial offers.

### **Section 10.04 Non Competitive Negotiations**

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

### **Section 10.05 Exceptions**

The following exceptions to competitive bidding are permitted; however, the Judicial Purchasing Agent and/or Judicial Purchasing Committee may require competitive bidding in any circumstance where it is determined that competition may enhance the Judiciary’s ability to attain cost savings:

- Contractual services where no competition exists, such as telephone service, electrical energy, and other public utility services;
- Instructional materials available from only one source;
- Where rates are fixed by law or ordinance;
- Library books, research or reference materials, services or software;
- Professional, technical, or artistic services
- Goods or services obtained by one state agency from another (such as printing or services from Prison Industries or use of Central Service Accounts)

Competition should be sought for any open market purchase unless:

- Exigencies require the immediate delivery of the products or performance of the services due to unusual and compelling urgency (**emergency**);
- Only one responsible source of supply is available and no other products or services will satisfy Judiciary requirements (**sole source**);
- The services are required to be performed by a contractor or consultant in person and are of a professional, technical or consulting nature (**professional, technical and consulting assistance**); or
- The purchase is an open market fixed price purchase for a product or service up to \$5,000 (**small purchase**).

#### A. Emergency

The Judicial Purchasing Committee shall be permitted to react quickly to critical or urgent situations when the cost for a remedy or repair and there is not sufficient time to undertake a public, formal, or informal bidding process.

Notwithstanding any other provision of this chapter, the Judicial Purchasing Committee may make or authorize others to make emergency procurements when there exists an unusual and compelling urgency, including but not limited to failures of critical equipment, a threat to public health, welfare, or safety under emergency conditions; provided, that the 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.

#### B. Sole source

The Judiciary shall take all reasonable steps to avoid contracting without providing for full and open competition, however, there are valid circumstances when it is both necessary and in the best interest of the Judiciary to award a sole source procurement.

Sole source is a term used to designate that only one responsible supplier exists that is capable of providing a particular product or service. Sole source purchases are an exception to the judicial competitive bidding policy, and must always be in writing. The Judicial Purchasing Committee will approve sole source purchases on a case-by-case basis. In the case of an emergency, the Chief Purchasing Officer or his designee may serve as the authority for sole source purchasing.

##### 1. *Sole source categories may include:*

- (a) items of a unique nature which are unavailable from other sources due to patents or proprietary processes;
- (b) books, maps, periodicals, and technical pamphlets, films, video and audio cassettes obtained from publishers;
- (c) certain computer software;
- (d) licenses - computer software, electronic transmittal;
- (e) specialized replacement/repair parts or expansion parts necessary to maintain the integrity of system or function, e.g. scientific research;

- (f) works of art for museum or public display;
- (g) specialized services for which there is only one documented accepted source, such as transactions involving unique professional services and/or educational institutions, e.g., visiting speakers or professors, and performing artists; repair/maintenance agreements with manufacturers;
- (h) advertisements, public notices in magazines, trade journals, newspapers, television, public relations and advertising campaign services;
- (i) maintenance contracts based upon sole source determination shall be subject to the following:
  - (a) Annual maintenance contracts not covered by a master price agreement (MPA) in excess of \$50,000 shall require approval by the Judicial Purchasing Committee.
  - (b) All multi-year contracts shall require approval by the Judicial Purchasing Committee.
- (j) services provided by certain non profit agencies
- (k) Guest speakers, honoraria, subscriptions, dues, memberships and other similar items will be treated as sole source, and do not require sole source justification documentation.

C. Professional, Technical and Consulting Assistance

The Judiciary shall be permitted to retain such professional, technical and consulting services as it deems necessary, including but not limited to legal, medical, dental, architectural, or engineering services, and to set the amounts and terms of such service contracts, subject to the approval of the Judicial Purchasing Committee.

D. Small Purchases

Small purchase procedures are for use in making open market fixed price purchases for products or services up to \$5,000, with competition via competitive sealed bidding, competitive negotiation or informal competitive bids, or without competition, provided that the Judicial Purchasing Agent determines the price to be reasonable.

E. Informal Competitive Bids

Oral quotations (including telephone) may be solicited for small purchase orders. If the Judicial Purchasing Agent is unable to verify prices using published lists/catalogs or by market analysis, the lowest quotation obtained by telephone solicitation for procurements shall be confirmed in writing.

An informal bid shall be distinguished by:

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

Informal bids shall be solicited from a minimum of three suppliers. All informal bid invitations shall be conducted in such fashion as to maximize the opportunity for participation of all responsible suppliers.

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

**F. Direct Billing**

Direct invoicing, the means of paying a bill without having to create a purchase order, should be done for the following instances:

- a. Utilities;
- b. Food;
- c. Telephone bills;
- d. Registration fees; and
- e. In-state travel reimbursement.

Bills that meet these criteria should be forwarded to the Judiciary's Accounts Payable Department for payment.

**Article XI. Contractor Prequalification, Qualification and Solicitation**

The Judiciary shall procure from responsible contractors only. Therefore, the Judicial Purchasing Committee must not solicit offers from, award procurements to, or consent to subcontracts with debarred, suspended, or ineligible contractors or affiliates thereof, unless the Judicial Purchasing Committee determines that there is a compelling reason for such action in the interest of the Judiciary.

- A reasonable inquiry to determine the financial strength and responsibility of a business which is a bidder or offeror shall be conducted and a written determination of responsibility shall be made. Said financial analysis may include the review of the business by a nationally recognized commercial credit reporting bureau. Credit bureau reports may be required by the Chief Purchasing Officer in conjunction with a financial analysis.
- Except as otherwise provided by law, information furnished by a bidder or offeror pursuant to this section may not be disclosed outside of Judiciary without prior written consent of the bidder or offeror.

**Section 11.01 Definitions**

A. Registered Suppliers- the names of interested suppliers who have submitted completed Judiciary Bidder Registration Forms to the Judicial Purchasing Office that have been reviewed and approved by the Judicial Purchasing Agent.

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

### **Section 11.02 Responsibilities of Bidders and Offerors**

A written determination of responsibility of a bidder or offeror shall be made by the Judicial Purchasing Agent. The Judicial Purchasing Agent may utilize factors such as financial capability, reputation, management, etc., to evaluate the responsibility and qualifications of potential suppliers in order to develop a list of prospective bidders qualified to be sent invitations to bid. The failure of a bidder or offeror to supply information promptly (within 5 business days or unless otherwise specified) in connection with an inquiry related to responsibility may be grounds for a determination of nonresponsibility.

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

- Lack of a properly prepared and submitted Bidder Registration Form;
- Refusal to submit a Bidder Registration Form;
- Falsification of information on Bidder Registration or Certification Forms;
- Suspension or debarment by the federal government or the Rhode Island Department of Administration;
- Conviction of fraud or perjury;
- Lack of competence, financial responsibility, or other limitations related to the ability of a supplier to provide the goods and services indicated on its Bidder Registration Form;
- Failure of a bidder or offeror to promptly supply information in connection with an inquiry, including but not limited to financial statements and business references, shall be grounds for a determination of nonresponsibility with respect to such a bidder or offeror; or
- Any reason stipulated in Section 11.08 entitled "Vendor Disqualification" of these regulations.

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

- limiting the kinds of goods and services for which the supplier may be solicited to a portion of those indicated on a Bidder Registration Form.
- limiting the scope/amount of goods and services for which the supplier may be solicited (e.g., categorizing a contractor by the size of construction projects it is deemed capable of undertaking).

### **Section 11.03 Bidder Registration Form**

The Judicial Purchasing Agent may require interested suppliers to submit completed Bidder Registration Forms to the Judicial Purchasing Office for consideration by the Judicial Purchasing Agent. If required bidder certifications are determined to be invalid, the Purchasing Agent may declare the purchase order void.

A copy of the Judiciary's General Terms and Conditions of Purchase shall be made available with the Bidder Registration Form.

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

- any and all information on the Registration Form is true and accurate;
- the existence of relationship (blood, spousal, adoptive, financial, etc.) between a principal of the firm and any State/Judiciary employee where a conflict of interest may exist has been disclosed; and
- that falsification of information contained on a signed Registration Form may be grounds for criminal charges of perjury and that conviction of such charges may be grounds for debarment.

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

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

### **Section 11.04 Bidder Registration Fee**

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

### **Section 11.05 Vendor Information Files**

The Judicial Purchasing Office shall maintain Vendor Information Files for the following documentation purposes:

- A. General
  - Bidder Registration Forms

- Results of investigations for prequalification, responsibility, suspension, debarment, restriction, and nonperformance
- Certifications
- Correspondence

B. Bidding History

C. Performance History

- Solicited and unsolicited reports regarding contract performance (e.g., quality, responsiveness) shall be recorded in the Vendor Information File.
- Complaints shall be investigated by Judicial Purchasing Office staff, the results submitted to the Judicial Purchasing Agent for adjudication, and the results documented and maintained in the Vendor Information File.

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

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

### **Section 11.06 Prequalification of Contractors**

The Chief Purchasing Officer may provide for prequalification of suppliers as responsible prospective contractors for particular types of supplies, services, and construction. Solicitation mailing lists of potential contractors of such supplies, services, and construction shall include but need not be limited to such prequalified contractors.

Prequalification shall not foreclose a written determination:

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

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

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

- requirement for additional certification(s);
- requirement for demonstration of additional licensure;
- requirement for recent financial information;
- submission of an affirmative action employment plan;
- submission of the names of proposed small disadvantaged business; and/or



- subcontractors and the value of such subcontracts.

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

### **Section 11.07 Construction Management**

A person who bids on a construction management contract shall provide the following information, which information shall constitute the prequalifications for a construction management contract:

#### **A. Firm history**

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

#### **B. Personnel**

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

#### **C. Experience**

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

#### **D. Project Staffing**

1. The firm's proposed management staff for the project, including an organizational chart identifying the firm's key staff members and showing how each staff member interacts with other staff members assigned to the project, and
2. A detailed resume for each key staff member which summarizes education, professional registration, professional society membership, construction experience, and construction management project experience.

#### **E. Services**

1. Scope of preconstruction phase services, including how such services are provided, with specific attention to the first budget estimate, methods of cost control, scheduling, value engineering and the method of reporting project status and schedule position;
2. Scope of construction phase services and how such services are to be provided;
3. The firm's method of working with the project architects, engineers, consultants and other planning team members; and
4. The firm's method of coordinating the efforts of various trade contractors.

### **Section 11.08 Vendor Disqualification**

The Judicial Purchasing Agent, with the approval of the Judicial Purchasing Committee, may disqualify a supplier, contractor, or subcontractor from participating in Judiciary procurements. Disqualification may result in any of the following actions being taken:

1. Debarment - permanent removal from Judiciary Bidders Lists and exclusion from all subsequent procurements, and termination of all outstanding Judiciary contracts; or
2. Suspension - temporary removal from Judiciary Bidders Lists and exclusion from subsequent procurements, and termination of outstanding contracts (at the discretion of the Judicial Purchasing Agent) for a specified period of time; or
3. Removal - deletion from Judiciary Bidders Lists, without interruption of outstanding contracts or the ability to participate in subsequent procurements; or
4. Rejection - lack of inclusion on Judiciary Bidders Lists or non-consideration of an offer submitted for a particular procurement, based on lack of demonstrated responsibility or competency.

A. Rejection and Removal

A vendor's offer for a specific procurement may be rejected for any of the causes described for suspension, or where, in the judgment of the Judicial Purchasing Agent, with the approval of the Judicial Purchasing Committee, the vendor does not possess the capacity, capability, or integrity requisite for the procurement.

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

B. Debarment and Suspension from Bidders List

1. Applicability

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

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

2. Just Cause for Debarment

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

- a. Conviction or final adjudication by a court or administrative agency of competent jurisdiction of any of the following offenses:
    - Criminal offense incident to obtaining or attempting to obtain a public contract or subcontract, or the performance of such contract or subcontract, in any jurisdiction, or
    - Criminal offense involving embezzlement, theft, fraud, perjury, forgery, bribery, falsification or destruction of records, receiving stolen property (or any other offense indicating a lack of business integrity or honesty which seriously and directly affects the contractor's present responsibility as a public contractor), or
    - Violation of state or federal antitrust laws relative to the submission of bids or proposals (including those proscribing price fixing between competitors, allocation of customers between competitors, and bid rigging), or
    - Violation of state or federal laws regulating campaign contributions;
    - Violation of state or federal laws regulating equal employment opportunity or handicapped access.
  - b. Violation of the terms of a public agreement or transaction so serious as to affect the integrity of any agency program;
  - c. Falsification of information on a bid submission or Bidder Registration form, subcontracting plan, or affirmative action plan;
  - d. Substantial nonperformance on two or more contracts;
  - e. Debarment by the federal government or the Rhode Island Department of Administration; or
  - f. Withdrawal, without written permission of the Judicial Purchasing Agent, of two or more bids after an award has been announced.
3. Just cause for Suspension
- Just cause for suspension may include, but shall not be limited to:
- a. Any cause for debarment, depending on the severity of the violation;
  - b. An indictment or any information filed by a public agency charging a criminal offense as described above for debarment;
  - c. Substantial evidence of willfully supplying materially false information incident to obtaining or attempting to obtain or performing any public contract or subcontract, or willful failure to comply with requirements imposed upon contractors or subcontractors by law or regulation;
  - d. Suspension by the federal government or the Rhode Island Department of Administration;

- e. Substantial nonperformance on at least one contract;
- f. Lack of responsibility evidenced by:
  - Withdrawal of two or more bids within a two-year period, even with the consent of the Judicial Purchasing Agent, or
  - Correction following public or formal opening of two or more bids within a two-year period, even with the consent of the Judicial Purchasing Agent, or
  - Rejection for non-responsiveness of two or more bids within a two-year period.
- g. A vendor or contractor who knowingly engages as a subcontractor, for a contract awarded by the Judiciary, a vendor or contractor then under a ruling of suspension or debarment by the Judiciary shall be subject to disallowance of cost, annulment or termination of award, issuance of a stop work order, debarment or suspension, as may be judged to be appropriate by the Judicial Purchasing Agent.

4. Duration of Suspension

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

5. Pest Control Services

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

## **Section 11.09 Notification, Protest and Reconsideration**

A. Notice

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

- state the nature of and, in the case of suspension, the duration of the sanction;
- provide the vendor with the rationale for the decision; and
- establish a specific time for reconsideration not less than two weeks nor more than three weeks within which the vendor may provide justification for why such action should not be implemented.

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

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

**B. Protests**

Protests of decisions rendered by the Judicial Purchasing Agent shall be administered in accordance with the requirements of section 10.02(H) (“Protest Procedures”).

**C. Reconsideration**

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

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

**Section 11.10 Public Works Contracts**

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

**Article XII. General Terms and Conditions of Purchase**

**Section 12.01 General Terms and Conditions**

The Judicial Purchasing Office shall develop and make available to potential suppliers and Judiciary officials a document stating the general terms and conditions applicable to all quotations and judicial purchasing contracts. These terms and conditions are contained in *Appendix A*.

The General Terms and Conditions shall (1) be referenced and made a part of all solicitations for proposals and quotations; all judicial purchase orders, contracts, and letters of authorization; and bidder registration documentation and (2) provide notice to bidders that contract award may be subject to the bidder signing an affirmation (certification) regarding certain legal requirements or restrictions relating to foreign corporations, disadvantaged business enterprises, labor rates, local product preference, etc., as required by the Judicial Purchasing Agent.

When a contract has been entered into between the Judiciary and another party, neither party shall have the legal right to add new terms or conditions without the consent of the other, unless the contract so specifies. Changes in scope, price, and length of contract period shall require contract amendments which are specified in writing. Unanticipated changes may be considered with the express consent of both parties. The issuance of a Purchase Change Order in

accordance with the provisions of the contract and other requirements specified herein shall be considered a binding contract. All contract pricing shall be firm and fixed unless contract language provides for reconsideration, and the length of contract period shall be specified.

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

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

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

## **Section 12.02 Purchase Order Contracts**

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

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

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

1. The Judiciary's General Terms and Conditions of Purchase;
2. The Judiciary's request for quotations or proposals, including specifications;
3. The contractor's offer which is responsive to the solicitation; and/or
4. As appropriate, additional contract provisions.

## **Article XIII. Multi-Year Contracts**

A. Unless otherwise provided, multi-year contracts for supplies and services may be entered into for periods extending beyond the end of the fiscal year in which the contract was made, if funds for the first fiscal year of the contemplated contract are available at the time of contracting and the contract states that payment and performance obligations for succeeding fiscal years shall be subject to the availability of funds therefor.

B. Prior to the utilization of a contract as described in subsection (a) of this section, it shall be determined, in writing, by the Chief Purchasing Officer:

1. That estimated requirements cover the period of the contract, are reasonably firm, and continuing; and
2. That the contract will serve the best interests of the Judiciary by encouraging effective competition or otherwise promoting economics in Judiciary procurement.

C. When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent year of a contract as described in subsection (A) of this section, the contract for the subsequent year may be cancelled and the contractor shall be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the supplies or services delivered under the contract. The cost of cancellation may be paid from:

1. Appropriations currently available for performance of the contract;
2. Appropriations currently available for procurement of similar supplies or services and not otherwise obligated; or
3. Appropriations made specifically for the payment of cancellation costs.

#### **Article XIV. Letter of Authorization**

When the Judicial Purchasing Agent determines in writing that it is absolutely essential that the vendor be given a binding commitment so that work can be commenced immediately and that negotiation of a definitive contract cannot be accomplished in sufficient time, the Judicial Purchasing Agent may issue a Letter of Authorization (“LA”).

##### **Section 14.01 Definition and Purpose**

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

- Represent a preliminary authorization subject to the subsequent issuance of a Purchase Order.
- Be superseded by a definitive contract at the earliest practicable date not later than the expiration of 180 days from the date of the LA or delivery of 40% of the contract.
- Be specifically negotiated and shall address the following contractual requirements that:
  - the vendor will proceed immediately with performance of the contract, including procurement of necessary materials;

- the extent and method of payments in the event of termination for the convenience of the Judiciary or for default;
- the vendor is not authorized to expend monies or incur obligations in excess of the maximum liability of the Judiciary as set forth in the letter contract;
- the type of definitive contract contemplated;
- as many definitive contract provisions as possible;
- the vendor shall provide such price and cost information as may reasonably be required by the Judiciary; and
- the vendor and the Judiciary shall enter into negotiations promptly and in good faith to each agreement and execute a definitive contract.

## **Section 14.02 Changes to Purchase Orders**

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

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

Judiciary personnel shall not commit the Judiciary to technical/contractual changes to purchase orders without first securing all necessary approvals.

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

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

## **Section 14.03 Suspension or Termination of Contract**

### **A. Suspension of a Contract by the Judiciary**

The Judiciary reserves the right at any time and for any reason to suspend all or part of this contract, for a reasonable period, not to exceed sixty days, unless the parties agree to a longer period. The Judiciary shall provide the contractor with written notice of the suspension order signed by the Purchasing Agent or his or her designee, which shall set forth the date upon which the suspension shall take effect, the date of its expiration, and all applicable instructions. Upon receipt of said order, the contractor shall immediately comply with the order and suspend all work under this contract as specified in the order. The contractor shall take all reasonable steps to mitigate costs and adverse impact to the work specified in the contract during the suspension period. Before the order expires, the Judiciary shall either:

- (a) cancel the suspension order;
- (b) extend the suspension order for a specified time period not to exceed thirty (30) days; or
- (c) terminate the contract as provided herein.



The contractor shall resume performance once a suspension order issued under this section is canceled or expires. If as a result of the suspension of performance, there is a financial or schedule impact upon the contract, an appropriate adjustment may be made by, or with the approval of, the Judicial Purchasing Agent. Any adjustment shall be set forth in writing. After a suspension order has been canceled or expires, the contractor shall provide any request for adjustment to the Judicial Purchasing Agent within thirty (30) days after resuming work performance.

**B. Termination of a Contract by the Judiciary**

**1. Termination for Default or Nonperformance**

If, for any reason, the contractor breaches the contract by failing to satisfactorily fulfill or perform any obligations, promises, terms, or conditions, and having been given reasonable notice of and opportunity to cure such default, fails to take satisfactory corrective action within the time specified by the Judiciary, the Judiciary may terminate the contract, in whole or in part, the termination of all outstanding contracts or sub-contracts held by the contractor, and the suspension or debarment of the contractor from future procurements by giving written notice to the contractor specifying the date for termination. The Judiciary shall endeavor to provide such notice at least seven (7) calendar days before the effective date of the termination.

In the event of a termination for default or nonperformance, in whole or in part, the Judiciary may procure similar goods or services in a manner and upon terms it deems appropriate, and the contractor shall be liable for the excess costs incurred by the Judiciary as a result of the contractor's default. The contractor, or its surety, agrees to promptly reimburse the Judiciary for the excess costs, but shall have no claim to the difference should the replacement cost be less.

**2. Termination Without Cause**

The Judiciary may terminate the contract in whole or in part without cause at any time by giving written notice to the contractor of such termination at least thirty (30) days before the effective date of such termination. The notice shall specify the part(s) of the contract being terminated and the effective termination date.

Within thirty (30) days of the effective date of the termination of the contract the contractor shall compile and submit to the Judiciary an accounting of the work performed up to the date of termination. The Judiciary may consider the following claims in determining reasonable compensation owed to the contractor for work performed up to the date of termination:

- (a) contract prices for goods or services accepted under the contract;
- (b) costs incurred in preparing to perform and performing the terminated portion of the contract; or
- (c) any other reasonable costs incurred by the contractor as a result of the termination.

The total sum to be paid to the contractor shall not exceed the total contract price, less any payments previously made to the contractor, the proceeds from any sales of goods or manufacturing materials, and the contract price for work not terminated.

### 3. Contractor's Obligations in the Event of Termination

If the contract is terminated for any reason, or expires pursuant to its terms, the contractor shall transfer and deliver to the Judiciary in the manner and to the extent directed by the Judiciary:

- (a) all finished or unfinished material prepared by the contractor; and
- (b) all material, if any, provided to the contractor by the Judiciary.

For the purposes of the contract, "material" shall include, but is not limited to, goods, supplies, parts, tools, machinery, equipment, furniture, fixtures, information, data, reports, summaries, tables, maps, charts, photographs, studies, recommendations, files, audiotapes, videotapes, records, keys, security badges, and documents.

If the contract is terminated for cause, the contractor shall not be relieved of liability to the Judiciary for damages sustained because of any breach by the contractor. In such event, the Judiciary may retain any amounts which may be due and owing to the contractor until such time as the exact amount of damages due the Judiciary from the contractor has been determined by the Judicial Purchasing Agent. The Judiciary may also set off any damages so determined against the amounts retained.

Upon termination of the contract, the contractor shall stop performance on the date specified, terminate any outstanding orders and subcontracts applicable to the terminated portion of the contract, and shall incur no further commitments or obligations in connection with the terminated performance. The contractor shall settle all liabilities and claims arising out of the termination of subcontracts and order generating from the terminated performance. The Judiciary may direct the contractor to assign the contractor's right, title and interest under terminated orders or subcontracts to the Judiciary or a third party.

Terminations of Purchase Order Contracts or Master Pricing Agreements shall require the signature of the Judicial Purchasing Agent or his designee. Notice of termination by either party shall be submitted in writing to the other party in accordance with the termination clause of the contract, or where no specific termination clause is included, written notice shall be provided no later than thirty (30) days before the expiration of the contract.

## **Article XV. Presumption of Correctness and Finality of Determinations**

### **Section 15.01 Decision Presumed To Be Correct**

The decision of the Judicial Purchasing Committee or any official, agent, or other person designated by the Judiciary concerning any controversy arising under, or in connection with, the solicitation or award of a contract, shall be entitled to a presumption of correctness. The decision

shall not be disturbed unless it was: procured by fraud; in violation of constitutional or statutory provisions; in excess of the statutory authority of the agency; made upon unlawful procedure; affected by other error or law; clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; arbitrary; capricious; characterized by an abuse of discretion; or clearly unwarranted exercise of discretion.

### **Section 15.02 Finality of Determinations**

The determinations required by Section 10.02(G) (Negotiations After Unsuccessful Competitive Sealed Bidding); Section 10.02(H)(3)(Protest Decision); Section 10.03 (Competitive Negotiations); Section 10.05 (Exceptions); and Article XI (Contractor Prequalification, Qualification and Solicitation) shall be final and conclusive unless they are clearly erroneous, arbitrary, capricious, or contrary to law.

### **Article XVI. Authority to Resolve Contract and Breach of Contract Controversies**

Prior to the institution of arbitration or litigation concerning any contract, claim, or controversy, the Chief Purchasing Officer is authorized, subject to approval of the Judicial Purchasing Committee, to settle, compromise, pay, or otherwise adjust the claim by or against or controversy with, a contractor relating to a contract entered into by the Judiciary, including a claim or controversy based on contract, mistake, misrepresentation, or other cause for contract modification or rescission, but excluding any claim or controversy involving penalties or forfeitures prescribed by statute or regulation where an official other than the Chief Purchasing Officer is specifically authorized to settle or determine such controversy.

### **Article XVII. Dispute and Appeals Procedure**

- Any person, firm, or corporation having a lawfully authorized written contract with the Judiciary may bring an action against the Judiciary on the contract, including, but not limited to actions either for breach of contract, enforcement of contract or for both.
- Any such claim shall be commenced in superior court within three (3) years from the date of completion specified in the contract and shall be tried by the court sitting without a jury. The case shall receive a priority position on the calendar. All defenses in law or equity, except the defense of governmental immunity, shall be preserved to the Judiciary.
- The court shall enter its findings as a judgment of the court and such judgment shall have the same effect and be enforceable as any other judgment of the court in civil cases, subject to the provisions of this chapter.
- Appeals may be taken to the supreme court under the same conditions and under the same practice as appeals are taken from judgments in civil cases rendered by the superior court.
- If damages awarded on any contract claim under this section exceed the original amount of the contract, the excess shall be limited to an amount which is equal to the amount of the original contract.
- No person, firm, or corporation shall be permitted more than one money recovery upon a claim for the enforcement of or for breach of contract with the Judiciary.

The Judiciary shall be immune from any liability that might be incurred as a result of exercising judicial purchasing power, and immune from liability for any and all damages sustained by any person, firm, corporation or entity as a result of good faith determinations made by any member of the Judicial Purchasing Office and/or its designee, in the course of its duties under these rules and regulations.

## **Article XVIII. Records**

The Judiciary shall maintain records of all purchases and sales made under its authority and shall make periodic summary reports of all transactions to the State Court Administrator.

### **Section 18.01 Report of Noncompetitive Negotiations and Small Purchases**

A summary shall be compiled annually by the Judicial Purchasing Agent, within ninety (90) days following the close of the fiscal year, of contracts made under Section 10.05 (Exceptions) during that preceding fiscal year. The summary shall name each contractor; shall state the amount and type of each contract, and shall be retained for a period of five (5) years and available for public inspection.

## **Article XIX. Grants**

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

The Judiciary may obtain services or provide programs on behalf of clients through grants to nonprofit or other entities; however, when the payment of "grant" funds is subject to the provision of services or programs, determination of contract award shall be obtained by a request for proposal procedure to obtain the advantages of competition.

Nonprofit status shall not automatically exempt organizations from being subject to competitive purchasing principles.

The Judiciary may utilize the Department of Administration's Office of Purchases to undertake Request for Proposal procedures; however, Judiciary representatives shall be responsible for assisting in the establishment of evaluation criteria and shall participate in the review and evaluation of responses to the Request for Proposal.

All grant contracts entered into by the Judiciary shall be subject to an audit of competitive practices.

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

### **Section 19.01 Grants Not Considered Procurements**

The following grants shall not be considered procurements:

- Grants, subsidies, entitlements or benefits purchased.
- Grants in the form of subsidies or general assistance shall be administered by the Judiciary in accordance with legal mandates restricting or defining the use of such funds.
- Grants, subsidies, entitlements or benefits purchased on behalf of, or paid directly to, individuals. Examples include but shall not be limited to:
  - (a) transportation services - public bus, taxicab, ferry;
  - (b) education and recreation benefits;
  - (c) fees - tuition costs, registration; and
  - (d) medical, dental, food stamps, etc.

## **Section 19.02 Special Provisions and Requirements for Grants**

### **A. Contracting Authority.**

Judicial grantor directors may delegate contracting authority to enter into agreements for the purpose of distributing grants. Delegated contracting authority does not require the issuance of a purchase order.

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

- specify the purpose for the grant;
- specify method and terms of payment;
- define service or product, if required;
- outline any legal limitations on the funding;
- set a time limit for distribution of funds;
- require maintenance of records for a specified period of time;
- provide for auditing; and
- provide for termination of the agreement/contract.

## **Article XX. Fixed Asset Management**

The Judiciary will provide SFA12 (Report of Fixed Assets) information and follow the fixed asset thresholds for all assets as set forth by the Department of Administration, to be recorded in the State's central fixed asset database. The Judiciary will use inventory tags supplied by the Department of Administration Office of Accounts and Control so as to effectuate the expedient processing of invoices relating to capital purchases.

## **Article XXI. Effective Date**

The rules and regulations contained herein shall become effective when filed with the Secretary of State. They are to be considered a public record and available for public inspection.

## **Article XXII. Amendment and Suspension of Rules and Regulations**

These rules and regulations, or any portion thereof, may be amended or rescinded by the State Court Administrator, with the approval of the Chief Justice, provided notice of the

substance of the proposed amendment is submitted in writing. The amendments, rescissions or suspension of rules shall become effective immediately upon filing with the Secretary of State in the same manner as the original rules.

Submitted by:

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J. Joseph Baxter  
State Court Administrator

With the approval of :

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Frank J. Williams  
Chief Justice

Dated:

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## APPENDIX A

<p style="text-align: center;"><b>RHODE ISLAND JUDICIARY</b> <b>GENERAL TERMS AND CONDITIONS OF PURCHASE</b></p>
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### *Preamble*

The Judicial Purchasing Office may, from time to time, make amendments to the General Terms and Conditions when the Judicial Purchasing Agent determines that such amendments are in the best interest of the Judiciary. Amendments shall be made available for public inspection at the Office of the Secretary of State but shall not require formal public notice and hearing. Copies of the Terms and Conditions shall be provided to any individual or firm requesting to become a registered bidder. Applicants shall be required, as part of the application process, to certify that they have read the General Terms and Conditions and understand that they apply to all judicial purchases.

### **JUDICIAL PURCHASING OFFICE GENERAL CONDITIONS OF PURCHASE**

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All Judicial purchase orders, contracts, solicitations, delivery orders and service requests shall incorporate and be subject to the provisions of Rhode Island General Laws 8-15-4 and the judicial purchasing rules and regulations adopted pursuant thereto, all other applicable provisions of the Rhode Island General Laws, specific requirements described in the Request or Contract, and the following General Conditions of Purchase:

#### 1. GENERAL

All purchase orders, contracts, solicitations, delivery orders, and service requests are for specified goods and services, in accordance with express terms and conditions of purchase, as defined herein. For the purposes of this document, the terms "bidder" and "contractor" refer to any individual, firm, corporation, or other entity presenting a proposal indicating a desire to enter into contracts with the Judiciary, or with whom a contract is executed by the Judicial Purchasing Agent, and the term "contractor" shall have the same meaning as "vendor".

#### 2. ENTIRE AGREEMENT

The Judiciary's Purchase Order, or other Judiciary contract endorsed by the Judicial Purchasing Office, shall constitute the entire and exclusive agreement between the Judiciary and any contractor receiving an award. In the event any conflict between the bidder's standard terms of sale, these conditions or more specific provisions contained in the solicitation shall govern.

All communication between the Judiciary and any contractor pertaining to any award or contract shall be accomplished in writing.

a. Each proposal will be received with the understanding that the acceptance, in writing, by contract or Purchase Order by the Judicial Purchasing Agent of the offer to do work or to furnish any or all the materials, equipment, supplies or services described therein shall constitute a contract between the bidder and the Judiciary. This shall bind the bidder on his part to furnish and deliver at the prices and in accordance with the conditions of said accepted proposal and detailed specifications and the Judiciary on its part to order from such contractor (except in case of emergency) and to pay for at the agreed prices, all materials, equipment, supplies or services specified and delivered. A contract shall be deemed executory only to the

extent of funds available for payment of the amounts shown on Purchase Orders issued by the Judiciary to the contractors.

b. No alterations or variations of the terms of the contract shall be valid or binding upon the Judiciary unless submitted in writing and accepted by the Judicial Purchasing Agent. All orders and changes thereof must emanate from the Judicial Purchasing Office: no oral agreement or arrangement made by a contractor with an agency or employee will be considered to be binding on the Judicial Purchasing Agent, and may be disregarded.

c. Contracts will remain in force for the contract period specified or until all articles or services ordered before date of termination shall have been satisfactorily delivered or rendered and accepted and thereafter until all terms and conditions have been met, unless:

1. terminated prior to expiration date by satisfactory delivery against orders of entire quantities, or
2. extended upon written authorization of the Judicial Purchasing Agent and accepted by the contractor, to permit ordering of the unordered balances or additional quantities at the contract price and in accordance with the contract terms, or
3. canceled by the Judiciary in accordance with other provisions stated herein.

d. It is mutually understood and agreed that the contractor shall not assign, transfer, convey, sublet or otherwise dispose of this contract or his right, title or interest therein, or his power to execute such contract, to any other person, company or corporation, without the previous consent, in writing, of the Judicial Purchasing Agent.

e. If, subsequent to the submission of an offer or issuance of a purchase order or execution of a contract, the bidder or contractor shall merge with or be acquired by another entity, the contract may be terminated, except as a corporate resolution prepared by the contractor and the new entity ratifying acceptance of the original bid or contract terms, condition, and pricing is submitted to the Judicial Purchasing Office, and expressly accepted.

f. The contractor or bidder further warrants by submission of an offer or acceptance of a purchase order or other contract that he has no knowledge at the time of such action of any outstanding and delinquent or otherwise unsettled debt owed by him to the Judiciary, and agrees that later discovery by the Judicial Purchasing Agent that this warranty was given in spite of such knowledge, except where the matter is pending in hearing or from any appeal therefrom, shall form reasonable grounds for termination of the contract.

### 3. SUBCONTRACTS

No subcontracts or collateral agreements shall be permitted, except with the Judiciary's express written consent. Upon request, contractors must submit to the Judicial Purchasing Office a list of all subcontractors to be employed in the performance of any Purchase Order or other contract arising from this Request.

### 4. RELATIONSHIP OF PARTIES

The contractor or bidder warrants, by submission of an offer or acceptance of a purchase order or other contract, that he is not an employee, agent, or servant of the Judiciary, and that he is fully qualified and capable in all material regards to provide the specified goods and services. Nothing herein shall be construed as creating any contractual relationship or obligation between



the Judiciary and any sub-bidder, subcontractor, supplier, or employee of the contractor or offeror.

5. COSTS OF PREPARATION

All costs associated with the preparation, development, or submission of bids or other offers will be borne by the offeror. The Judiciary will not reimburse any offeror for such costs.

6. SPECIFIED QUANTITY REQUIREMENT

Except where expressly specified to the contrary, all solicitations and contracts are predicated on a specified quantity of goods or services, or for a specified level of funding.

a. The Judiciary reserves the right to modify the quantity, scope of service, date of delivery or completion, or funding of any contract, with no penalty or charge, by written notice to the contractor, except where alternate terms have been expressly made a part of the contract.

b. The Judiciary shall not accept quantities in excess of the specified quantity except where the item is normally sold by weight (where sold by weight, the Judiciary will not accept quantities greater than ten per cent [10%] of the specified quantity), or where the Request or Contract provides for awards for other than exact quantities.

c. Purchase Orders or other contracts may be increased in quantity or extended in term without subsequent solicit with the mutual consent of the contractor and the Judiciary, where determined by the Judicial Purchasing Agent to be in the Judiciary's best interest.

7. TERM AND RENEWAL

Where offers have been requested or contracts awarded for terms exceeding periods of twelve (12) months, it is mutually understood and agreed that the Judiciary's commitment is limited to a base term not to exceed twelve (12) months, subject to renewal annually at the Judiciary's sole option for successive terms as otherwise described, except where expressly specified to the contrary. Purchase orders appearing to commit to obligations of funding or terms of performance may be executed for administrative convenience, but are otherwise subject to this provision, and in such cases the Judiciary's renewal shall be deemed to be automatic, conditional on the continued availability of appropriated funds for the purpose, except as written notice of the Judiciary's intent not to renew is served.

8. DELIVERY/COMPLETION

Delivery must be made as ordered and/or projects completed in accordance with the proposal. If delivery qualifications do not appear on the bidder's proposal, it will be interpreted to mean that goods are in stock and that shipment will be made within seven (7) calendar days. If the project completion date is not specified in the proposal, the date shall be determined by the Judicial Purchasing Agent. The decision of the Judicial Purchasing Agent, as to reasonable compliance with the delivery terms, and date of completion shall be final. Burden of proof of delay in receipt of order shall rest with the contractor. No delivery charges shall be added to invoices except when authorized on the Purchase Order.

9. FOREIGN CORPORATIONS

In accordance with Title 7 Chapter 1.1 (“Business Corporations”) of the General Laws of Rhode Island, no foreign corporation shall have the right to transact business in this state until it shall have procured a certificate of authority so to do from the Secretary of State.

**10. PRICING**

All pricing offered or extended to the Judiciary is considered to be firm and fixed unless expressly provided for to the contrary. All prices shall be quoted F.O.B. Destination with freight costs included in the unit cost to be paid by the Judiciary, except, where the Request or Contract permits, offers reflecting F.O.B. Shipping Point will be considered, and freight costs may then be prepaid and added to the invoice.

**11. COLLUSION**

Bidder or contractor warrants that he has not, directly or indirectly, entered into any agree participated in any collusion or otherwise taken any action in restraint of full competitive bidding. In special circumstances, an executed affidavit will be required as a part of the bid.

**12. PROHIBITION AGAINST CONTINGENT FEES AND GRATUITIES**

Bidder or contractor warrants that he has not paid, and agrees not to pay, any bonus, commission, fee, or gratuity to any employee or official of the Judiciary for the purpose of obtaining any contract or award issued by the Judiciary. Bidder or contractor further warrants that no commission or other payment has been or will be received from or paid to any third party contingent on the award of any contract by the Judiciary, except as shall have been expressly communicated to the Judicial Purchasing Agent in writing prior to acceptance of the contract or award in question. Subsequent discovery by the Judiciary of non-compliance with these provisions shall constitute sufficient cause for immediate termination of all outstanding contracts and suspension or debarment of the bidder(s) or contractor(s) involved.

**13. AWARDS**

Awards will be made with reasonable promptness and by written notice to the successful bidder (only); bids are considered to be irrevocable for a period of sixty (60) days following the bid opening unless expressly provided for to the contrary in the Request, and may not be withdrawn during this period without the express permission of the Judicial Purchasing Agent.

a. Awards shall be made to the bidder(s) whose offer(s) constitutes the lowest responsive price offer (or lowest responsive price offer on an evaluated basis) for the item(s) in question or for the Request as a whole, at the option of the Judiciary. The Judiciary reserves the right to determine those offers which are responsive to the Request, or which otherwise serve its best interests.

b. The Judiciary reserves the right, before making award, to initiate investigations as to whether or not the materials, equipment, supplies, qualifications or facilities offered by the bidder meet the requirements set forth in the proposal and specification, and are ample and sufficient to insure the proper performance of the contract in the event of award. If upon such examination it is found that the conditions of the proposal are not complied with or that articles or equipment proposed to be furnished do not meet the requirements called for, or that the qualifications or facilities are not satisfactory, the Judiciary may reject such a bid. It is distinctly understood, however, that nothing in the foregoing shall mean or imply that it is obligatory upon

the Judiciary to make any examinations before awarding a contract; and it is further understood that if such examination is made, it in no way relieves the contractor from fulfilling all requirements and conditions of the contract.

c. Qualified or conditional offers which impose limitations of the bidder's liability or modify the requirements of the bid, offers for alternate specifications, or which are made subject to different terms and conditions than those specified by the Judiciary may, at the option of the Judiciary, be

1. rejected as being non-responsive, or
2. set aside in favor of the Judiciary's terms and conditions (with the consent of the bidder), or
3. accepted, where the Judicial Purchasing Agent determines that such acceptance best serves the interests of the Judiciary.

Acceptance or rejection of alternate or counter-offers by the Judiciary shall not constitute a precedent which shall be considered to be binding on successive solicitations or procurements.

d. Bids submitted in pencil, or which do not bear an original signature, in ink, by an owner or authorized agent thereof, will not be accepted.

e. Bids must be extended in the unit of measure specified in the Request. In the event of any discrepancy between unit prices and their extensions, the unit price will govern.

f. The Judicial Purchasing Agent reserves the right to determine the responsibility of any bidder for a particular procurement.

g. The Judicial Purchasing Agent reserves the right to reject any and all bids in whole or in part, to waive technical defects, irregularities, and omissions, and to give consideration to past performance of the offerors where, in his judgment the best interests of the Judiciary will be served by so doing.

h. The Judicial Purchasing Agent reserves the right to make awards by items, group of items or on the total low bid for all the items specified as indicated in the detailed specification, unless the bidder specifically indicates otherwise in his bid.

i. Preference may be given to bids on products raised or manufactured in the State of Rhode Island, other things being equal.

j. The impact of discounted payment terms shall not be considered in evaluating responses to any Request.

k. The Judicial Purchasing Agent reserves the right to act in the Judiciary's best interests regarding awards caused by clerical errors by the Judicial Purchasing Office.

#### 14. SUSPENSION AND DEBARMENT

The Judicial Purchasing Agent may suspend or debar any vendor or potential bidder, for good cause shown:

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

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

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

## 15. PUBLIC RECORDS

Contractors and bidders are advised that certain documents, correspondence, and other submissions to the Judicial Purchasing Office may be voluntarily made public by the Judiciary absent specific notice that portions of such submittals may contain confidential or proprietary information, such that public access to those items should be withheld.

## 16. PRODUCT EVALUATION

In all specifications, the words "or equal" are understood after each article when manufacturer's name or catalog are referenced. If bidding on items other than those specified, the bidder must, in every instance, give the trade designation of the article, manufacturer's name and detailed specifications of the item the bidder proposes to furnish; otherwise, the bid will be construed as submitted on the identical commodity described in the detailed specifications. The Judicial Purchasing Agent reserves the right to determine whether or not the item submitted is the approved equal the detailed specifications.

a. Any objections to specifications must be filed by a bidder, in writing, with the Judicial Purchasing Agent at least 96 hours before the time of bid opening to enable the Judicial Purchasing Office to properly investigate the objections.

b. All standards are minimum standards except as otherwise provided for in the Request or Contract.

c. Samples must be submitted to the Judicial Purchasing Office in accordance with the terms of the proposals and detailed specifications. Samples must be furnished free of charge and must be accompanied by descriptive memorandum invoices indicating whether or not the bidder desires their return and specifying the address to which they are to be returned (at the bidder's risk and expense), provided they have not been used or made useless by tests; and absent instructions, the samples shall be considered to be abandoned. Award samples may be held for comparison with deliveries.

d. All samples submitted are subject to test by any laboratory the Judicial Purchasing Agent may designate.

## 17. PRODUCT ACCEPTANCE

All merchandise offered or otherwise provided shall be new, of prime manufacture, and of first quality unless otherwise specified by the Judiciary. The Judiciary reserves the right to reject all nonconforming goods, and to cause their return for credit or replacement, at the

Judiciary's option. Contract deliverables specified for procurements of services shall be construed to be work products, and subject to the provisions of this section.

a. Failure by the Judiciary to discover latent defect(s) or concealed damage or non-conformance shall not foreclose the Judiciary's right to subsequently reject the goods in question.

b. Formal or informal acceptance by the Judiciary of non-conforming goods shall not constitute a precedent for successive receipts or procurements.

c. Where the contractor fails to promptly cure the defect or replace the goods, the Judiciary reserves the right to cancel the Purchase Order, contract with a different contractor, and to invoice the original contractor for any differential in price over the original contract price.

d. When materials, equipment or supplies are rejected, the same must be removed by the contractor from the premises of the Judiciary within forty-eight (48) hours of notification. Rejected items left longer than two days will be regarded as abandoned and the Judiciary shall have the right to dispose of them as its own property.

#### 18. PRODUCT WARRANTIES

All product or service warranties normally offered by the contractor or bidder shall accrue to the Judiciary's benefit, in addition to any special requirements which may be imposed by the Judiciary. Every unit delivered must be guaranteed against faulty material and workmanship for a period of one year unless otherwise specified, and the Judiciary may, in the event of failure, order its replacement, repair, or return for full credit, at its sole option.

#### 19. PAYMENT

Unless otherwise provided for by the Request or Contract, payment shall not be made until delivery has been made, or services performed, in full, and accepted. Payment shall not be due prior to thirty (30) working days following the latest of completion, acceptance, or the rendering of a properly submitted invoice.

a. Payment terms other than the foregoing may be rejected as being nonresponsive.

b. No partial shipments, or partial completion will be accepted, unless provided for by the Request or Contract.

c. Where a question of quality is involved, or failure to complete a project by the specified due date, payment in whole or part against which to charge back any adjustment required, shall be withheld at the direction of the Judicial Purchasing Agent. In the event a cash discount is stipulated, the withholding of payments, as herein described, will not deprive the Judiciary from taking such discount.

d. Payments for used portion of inferior delivery or late delivery will be made by the Judiciary on an adjusted price basis.

e. Payments on contracts under architectural or engineering supervision must be accompanied by a Certificate of Payment and Statement of Account signed by the architect or engineer and submitted to the Judicial Purchasing Office for approval.

#### 20. THIRD PARTY PAYMENTS

The Judiciary recognizes no assigned or collateral rights to any purchase agreement except as may be expressly provided for in the bid or contract documents, and will not accede to any request for third party or joint payment(s), except as provided for in specific orders by a court of competent jurisdiction, or by express written permission of the Judicial Purchasing

Agent. Where an offer is contingent upon such payment(s), the offeror is obligated to serve affirmative notice in his bid submission.

**21. SET-OFF AGAINST PAYMENTS**

Payments due the contractor may be subject to reduction equal to the amount of unpaid and delinquent state taxes (or other just debt owed to the State), except where notice of delinquency has not been served or while the matter is pending in hearing or from any appeal therefrom.

**22. CLAIMS**

Any claim against a contractor may be deducted by the Judiciary from any money due him in the same or other transactions. If no deduction is made in such fashion, the contractor shall pay the Judiciary the amount of such claim on demand. Submission of a voucher and payment, thereof, by the Judiciary shall not preclude the Judicial Purchasing Agent from demanding a price adjustment in any case when the commodity delivered is later found to deviate from the specifications and proposal.

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

**23. CERTIFICATION OF FUNDING**

The Chief Purchasing Officer shall provide certification as to the availability of funds to support the procurement for the current fiscal year ending June 30th only. Where delivery or service requirements extend beyond the end of the current fiscal year, such extensions are subject to both the availability of appropriated funds and a determination of continued need.

**24. UNUSED BALANCES**

Unless otherwise specified, all unused Blanket Order quantities and/or unexpended funds shall be automatically canceled on the expiration of the specified term. Similarly, for orders encompassing more than one fiscal year, unexpended balances of funding allotted for an individual fiscal year may be liquidated at the close of that fiscal year, at the Judiciary's sole option.

**25. MINORITY BUSINESS ENTERPRISES**

Pursuant to the provisions of Title 37 Chapter 14.1 of the General Laws, the Judiciary reserves the right to apply additional consideration to offers, and to direct awards to bidders other than the responsive bid representing the lowest price where:

- a. the offer is fully responsive to the terms and conditions of the Request, and
- b. the price offer is determined to be within a competitive range (not to exceed 5% higher than the lowest responsive price offer) for the product or service, and
- c. the firm making the offer has been certified by the R.I. Department of Economic Development to be a small business concern meeting the criteria established to be considered a Minority Business Enterprise. Ten per cent [10%] of the dollar value of the work performed

against contracts for construction exceeding \$5,000 shall be performed by Minority Business Enterprises where it has been determined that subcontract opportunities exist, and where certified Minority Business Enterprises are available. A contractor may count towards its MBE, DBE, or WBE goals 60% of its expenditures for materials and supplies required under a contract and obtained from an MBE, DBE, or WBE regular dealer, and 100% of such expenditures when obtained from an MBE, DBE, or WBE manufacturer. Awards of this type shall be subject to approval, by the Chief Purchasing Officer, of a Subcontracting Plan submitted by the bidder receiving the award.

**26. PREVAILING WAGE REQUIREMENT**

In accordance with Title 37 Chapter 13 of the General Laws of Rhode Island, payment of the general prevailing rate of per diem wages and the general prevailing rate for regular, overtime and other working conditions existing in the locality for each craft, mechanic, teamster, or type of workman needed to execute this work is a requirement for both contractors and subcontractors for all public works.

**27. EQUAL OPPORTUNITY COMPLIANCE, HANDICAPPED ACCESS AND AFFIRMATIVE ACTION**

Contractors of the Judiciary are required to demonstrate the same commitment to equal opportunity as prevails under federal contracts controlled by Federal Executive Orders 11246, 11625, 11375 and 11830, and Title 28 Chapter 5.1 of the General Laws of Rhode Island.

Affirmative action plans shall be submitted by the contractor for review by the State Equal Opportunity Office. A contractor's failure to abide by the rules, regulations, contract terms and compliance reporting provisions as established shall be grounds for forfeiture and penalties as shall be established, including but not limited to suspension.

**28. DRUG-FREE WORKPLACE REQUIREMENT**

Contractors who do business with the Judiciary and their employees shall abide by the State's drug-free workplace policy and the contractor shall so attest by signing a certificate of compliance.

**29. TAXES**

The Judiciary is exempt from payment of excise, transportation and sales tax imposed by the Federal or State Government. These taxes should not be included in the proposal price. Exemption Certificates will be furnished upon request.

**30. INSURANCE**

All construction contractors, independent tradesmen, or firms providing any type of maintenance, repair, or other type of service to be performed on judicial premises, buildings, or grounds are required to purchase and maintain coverage with a company or companies licensed to do business in the state as follows:

**a. Comprehensive General Liability Insurance**

- 1) Bodily Injury \$1,000,000 each occurrence/ \$1,000,000 annual aggregate
  - 2) Property Damage \$500,000 each occurrence /\$500,000 annual aggregate
- Independent Contractors

- Contractual - including construction hold harmless and other types of contracts or agreements in effect for insured operations
- Completed Operations
- Personal Injury (with employee exclusion deleted)
- b. Automobile Liability Insurance
  - Combined Single Limit \$1,000,000 each occurrence
  - Bodily Injury
  - Property Damage, and in addition non-owned and/or hired vehicles and equipment
- c. Workers' Compensation Insurance
  - Coverage B \$100,000

The Judicial Purchasing Agent reserves the right to consider and accept alternate forms and plans of insurance or to require additional or more extensive coverage for any individual requirement. Successful bidders shall provide certificates of coverage, reflecting the Rhode Island Judiciary as an additional insured, to the Judicial Purchasing Office, forty-eight (48) hours prior to the commencement of work, as a condition of award. Failure to comply with this provision shall result in rejection of the offeror's bid.

### 31. BID SURETY

When requested, a bidder must furnish a Bid Bond or Certified Check for 5% of his bid, or for the stated amount shown in the solicitation. Bid Bonds must be executed by a reliable Surety Company authorized to do business in the State of Rhode Island. Failure to provide Bid Surety with bid may be cause for rejection of bid. The Bid Surety of any three bidders in contention will be held until an award has been made according to the specifications of each proposal. All others will be returned by mail within 48 hours following the bid opening. Upon award of a contract, the remaining sureties will be returned by mail unless instructed to do otherwise.

### 32. PERFORMANCE AND LABOR AND PAYMENT BONDS

A performance bond and labor and payment bond of up to 100% of an award may be required by the Judicial Purchasing Agent. Bonds must meet the following requirements:

- a. Corporation: The Bond must be signed by an official of the corporation above his/her official title and the corporate seal must be affixed over his/her signature.
- b. Firm or Partnership: The Bond must be signed by all of the partners and must indicate that they are "Doing Business As (name of firm)."
- c. Individual: The Bond must be signed by the individual owning the business and indicate "Owner."
- d. The Surety Company executing the Bond must be licensed to do business in the State of Rhode Island or Bond must be countersigned by a company so licensed.
- e. The Bond must be signed by an official of the Surety Company and the corporate seal must be affixed over his signature.
- f. Signatures of two witnesses for both the principal and the Surety must appear on the Bond.
- g. A Power of Attorney for the official signing of the Bond for the Surety Company must be submitted with the Bond.



### 33. SUSPENSION, DEFAULT AND TERMINATION

#### a. Suspension of a Contract by the Judiciary

The Judiciary reserves the right at any time and for any reason to suspend all or part of this contract, for a reasonable period, not to exceed sixty days, unless the parties agree to a longer period. The Judiciary shall provide the contractor with written notice of the suspension order signed by the Purchasing Agent or his or her designee, which shall set forth the date upon which the suspension shall take effect, the date of its expiration, and all applicable instructions. Upon receipt of said order, the contractor shall immediately comply with the order and suspend all work under this contract as specified in the order. The contractor shall take all reasonable steps to mitigate costs and adverse impact to the work specified in the contract during the suspension period. Before the order expires, the Judiciary shall either:

1. cancel the suspension order;
2. extend the suspension order for a specified time period not to exceed thirty (30) days; or
3. terminate the contract as provided herein.

The contractor shall resume performance once a suspension order issued under this section is canceled or expires. If as a result of the suspension of performance, there is a financial or schedule impact upon the contract, an appropriate adjustment may be made by, or with the approval of, the Judicial Purchasing Agent. Any adjustment shall be set forth in writing. After a suspension order has been canceled or expires, the contractor shall provide any request for adjustment to the Judicial Purchasing Agent within thirty (30) days after resuming work performance.

#### b. Termination of a Contract by the Judiciary

##### 1. Termination for Default or Nonperformance

If, for any reason, the contractor breaches the contract by failing to satisfactorily fulfill or perform any obligations, promises, terms, or conditions, and having been given reasonable notice of and opportunity to cure such default, fails to take satisfactory corrective action within the time specified by the Judiciary, the Judiciary may terminate the contract, in whole or in part, the termination of all outstanding contracts or sub-contracts held by the contractor, and the suspension or debarment of the contractor from future procurements by giving written notice to the contractor specifying the date for termination. The Judiciary shall endeavor to provide such notice at least seven (7) calendar days before the effective date of the termination.

A contractor who fails to commence within the time specified or complete an award made for repairs, alterations, construction, or any other service will be considered in default of contract. If contractor consistently fails to deliver quantities or otherwise perform as specified, the Judicial Purchasing Agent reserves the right to terminate the contract and contract for completion of the work with another contractor and seek recourse from the defaulting contractor or his surety. In the event of a termination for default or nonperformance, in whole or in part, the Judiciary may procure similar goods or services in a manner and upon terms it deems appropriate, and the contractor shall be liable for the excess costs incurred by the Judiciary as a result of the contractor's default. The contractor, or its surety, agrees to promptly reimburse the

Judiciary for the excess costs, but shall have no claim to the difference should the replacement cost be less.

## 2. Termination Without Cause

The Judiciary may terminate the contract in whole or in part without cause at any time by giving written notice to the contractor of such termination at least thirty (30) days before the effective date of such termination. The notice shall specify the part(s) of the contract being terminated and the effective termination date.

Within thirty (30) days of the effective date of the termination of the contract the contractor shall compile and submit to the Judiciary an accounting of the work performed up to the date of termination. The Judiciary may consider the following claims in determining reasonable compensation owed to the contractor for work performed up to the date of termination:

- (a) contract prices for goods or services accepted under the contract;
- (b) costs incurred in preparing to perform and performing the terminated portion of the contract; or
- (c) any other reasonable costs incurred by the contractor as a result of the termination.

The total sum to be paid to the contractor shall not exceed the total contract price, less any payments previously made to the contractor, the proceeds from any sales of goods or manufacturing materials, and the contract price for work not terminated.

## 3. Contractor's Obligations in the Event of Termination

If the contract is terminated for any reason, or expires pursuant to its terms, the contractor shall transfer and deliver to the Judiciary in the manner and to the extent directed by the Judiciary:

- all finished or unfinished material prepared by the contractor; and
- all material, if any, provided to the contractor by the Judiciary.

For the purposes of the contract, "material" shall include, but is not limited to, goods, supplies, parts, tools, machinery, equipment, furniture, fixtures, information, data, reports, summaries, tables, maps, charts, photographs, studies, recommendations, files, audiotapes, videotapes, records, keys, security badges, and documents.

If the contract is terminated for cause, the contractor shall not be relieved of liability to the Judiciary for damages sustained because of any breach by the contractor. In such event, the Judiciary may retain any amounts which may be due and owing to the contractor until such time as the exact amount of damages due the Judiciary from the contractor has been determined by the Judicial Purchasing Agent. The Judiciary may also set off any damages so determined against the amounts retained.

Upon termination of the contract, the contractor shall stop performance on the date specified, terminate any outstanding orders and subcontracts applicable to the terminated portion of the contract, and shall incur no further commitments or obligations in connection with the terminated performance. The contractor shall settle all liabilities and claims arising out of the termination of subcontracts and order generating from the terminated performance. The Judiciary may direct the contractor to assign the contractor's right, title and interest under terminated orders or subcontracts to the Judiciary or a third party.

Terminations of Purchase Order Contracts or Master Pricing Agreements shall require the signature of the Judicial Purchasing Agent or his designee. Notice of termination by either party shall be submitted in writing to the other party in accordance with the termination clause of the contract, or where no specific termination clause is included, written notice shall be provided no later than thirty (30) days before the expiration of the contract.

#### 34. INDEMNITY

The contractor guarantees:

a. To save the Judiciary, its agents and employees, harmless from any liability imposed upon the Judiciary arising from the negligence, either active or passive, of the contractor, as well as for the use of any copyrighted or uncopyrighted composition, secret process, patented or unpatented invention, article or appliance furnished or used in the performance of the contract of which the contractor is not the patentee, assignee or licensee.

b. To pay for all permits, licenses and fees and give all notices and comply with all laws, ordinances, rules and regulations of the city or town in which the installation is to be made and of the State of Rhode Island.

c. That the equipment offered is standard new equipment, latest model of regular stock product with all parts regularly used with the type of equipment offered; also, that no attachment or part has been substituted or applied contrary to manufacturer's recommendations and standard practice.

#### 35. CONTRACTOR'S OBLIGATIONS

In addition to the specific requirements of the contract, construction and building repair contractors bear the following standard responsibilities:

a. To furnish adequate protection from damage for all work and to repair damages of any kind, for which he or his workmen are responsible, to the building or equipment, to his own work, or to the work of other contractors;

b. The contractor, its subcontractor(s) and their employees and/or agents, shall protect and preserve property in the contractor or subcontractor's possessions in which the Judiciary has an interest, and any and all materials provided to the contractor or subcontractor by the Judiciary;

c. To clear and remove all debris and rubbish resulting from his work from time to time, as directed or required, a completion of the work leave the premises in a neat unobstructed condition, broom clean, and in satisfactory order and repair;

d. To store equipment, supplies, and material at the site only upon approval by the Judiciary, and at his own risk;

e. To perform all work so as to cause the least inconvenience to the Judiciary, and with proper consideration for the rights of other contractors and workmen;

f. To acquaint themselves with conditions to be found at the site, and to assume responsibility for the appropriate dispatching of equipment and supervision of his employees during the conduct of the work;

g. To ensure that his employees are instructed with respect to special regulations, policies, and procedures in effect for any judicial facility or site, and that they comply with such rules, including but not limited to security policies or practices and/or criminal background checks for any employees and/or subcontractors;

h. The contractor shall ensure that its employees or agents are experienced and fully qualified to engage in the activities and services required under the contract;

i. The contractor shall ensure that at all times while services are being performed under this contract at least one of its employees or agents on the premises has a good command of the English language and can effectively communicate with the Judiciary and its staff;

j. The contractor and contractor's employees or agents shall comply with all applicable licensing and operating requirements required by federal or state law and shall meet accreditation and other generally accepted standards of quality in the applicable field of activity;

k. The contractor shall secure and retain all employee-related insurance coverage for its employees and agents as required by law; and

l. The contractor, subcontractor, and his or her employees and agents shall not disclose any confidential information of the Judiciary to a third party. Confidential information means:

- (1) any information of a sensitive or proprietary nature, whether or not specially identified as confidential or proprietary; or
- (2) any information about the Judiciary gained during the performance of a contract that is not already lawfully in the public domain.

### 36. FORCE MAJEURE

All orders shall be filled by the contractor with reasonable promptness, but the contractor shall not be held responsible for any losses resulting if the fulfillment of the terms of the contract shall be delayed or prevented by wars, acts of public enemies, strikes, fires, floods, acts of God, or for any other acts not within the control of the contractor and which by the exercise of reasonable diligence, the contractor is unable to prevent.