

PUBLIC NOTICE OF PROPOSED RULEMAKING

AGENCY: Rhode Island Public Transit Authority

DIVISION: None

RULE IDENTIFIER: ERLID 8516

REGULATION TITLE: Rhode Island Public Transit Authority Procurement Policy Statement

RULEMAKING ACTION: Direct Final

DIRECT FINAL: If no formal objection is received on or before April 17, 2017, Agency will file the repeal without further opportunity for public comment.

TYPE OF FILING: Repeal

DATES: Public Notice Date: March 16, 2017; End of Comment Period Date: April 17, 2017; Hearing Date, if any: TBD

SUMMARY OF PROPOSED RULE:

The current policy has been determined not to be a regulation within the meaning of the Administrative Procedures Act.

COMMENTS INVITED:

All interested parties are invited to submit written or oral comments concerning the proposed repeal by April 17, 2017 to the address listed below.

ADDRESS FOR PUBLIC COMMENT SUBMISSIONS:

Benjamin Salzillo, Chief Legal Counsel
Rhode Island Public Transit Authority
705 Elmwood Ave,
Providence, Rhode Island 02907
bsalzillo@ripta.com

PUBLIC HEARING:

In accordance with RIGL § 42-35-2.8, an oral hearing will be granted if requested by twenty-five (25) persons, by an agency or by an association having at least twenty-five (25) members. A request for an oral hearing must be made within thirty (30) days of this notice.

FOR FURTHER INFORMATION, CONTACT:

Benjamin Salzillo, Chief Legal Counsel
Rhode Island Public Transit Authority
705 Elmwood Ave
Providence, Rhode Island 02907
(401) 784-9500 ext. 139
bsalzillo@ripta.com

SUPPLEMENTARY INFORMATION:

Regulatory Analysis Summary and Supporting Documentation:

No economic impact was identified in connection with this repeal.

Authority for This Rulemaking: R.I. General Laws § 39-18-4

Regulatory Findings:

In the development of the proposed repeal consideration was given to: (1) alternative approaches; (2) overlap or duplication with other statutory and regulatory provisions; and (3) significant economic impact on small business. No alternative approach, duplication, or overlap was identified based upon available information.

The Proposed Action:

Rhode Island Public Transit Authority proposes to repeal ERLID 1309 in its entirety:

~~RHODE ISLAND PUBLIC TRANSIT AUTHORITY~~

~~PROCUREMENT POLICY STATEMENT~~

Introduction

~~The purpose of this Procurement policy Statement is to set forth the general procurement policy that will govern the conduct of the procurement activities of **The Rhode Island Public Transit Authority** ("RIPTA") and of RIPTA personnel engaged in those activities. This Procurement Policy Statement applies to all contracts for services, construction, and supplies, including leases. The RIPTA Board's policy on "Financial Authority," adopted on November 22, 1993 is incorporated as **Appendix A** to this procurement Policy Statement.~~

General Policy

~~All procurement transactions, regardless of whether by sealed bid or by negotiation, and without regard to dollar value, shall be conducted in a manner that provides maximum open and free competition, consistent with applicable regulations of the Federal Transit Administration ("FTA"), including but not limited to "Third Party Contracting Guidelines," regulations of the Department of Transportation at 49 CFR Part 18, the state employees' Code of Ethics and Professional Behavior, Section 3 of the State of Rhode Island Procurement Regulations, incorporated herein as Appendix B to this Procurement Policy Statement, The Rhode Island Public Transit Authority's Procurement Standards Manual, dated October 19, 1999, applicable state, including the State of Rhode Island Procurement Regulations, and federal law, and RIPTA's Board of Directors' policies and procedures.~~

Competition

~~It is RIPTA's procurement policy to ensure open and free competition wherever possible, to maximize competitive opportunities, and to encourage a competitive environment for contractors and vendors competing for RIPTA contracts. As part of this Procurement Policy Statement, placing unreasonable requirements on contractors and vendors in order for them to qualify to do business with RIPTA shall not be advanced as a way to restrict fair and open competition.~~

~~It shall be the policy of the Rhode Island Public Transit Authority to utilize the State's Master Pricing Agreement List to the fullest extent, if available. In addition, RIPTA will utilize the State of Rhode Island's "Rhode Island Vendor Information Program" (RIVIP) for the purpose of making contracting opportunities known to vendors.~~

Preferences

RIPTA will not implement any procurement practices that give in-state or local geographical preferences in the evaluation of bids or proposals.

Contracting Methods

RIPTA recognizes the following four basic contracting methods in procuring supplies, services, equipment, and construction, both locally funded and federally assisted projects and programs:

- (i) — competitive sealed bid;
- (ii) — competitive negotiation;
- (iii) — small purchases; and
- (iv) — noncompetitive purchases.

A. — Competitive Sealed Bids

Contracts that exceed \$5,000 (\$10,000 for construction) must be awarded by competitive sealed bidding whenever this method is practicable under the circumstances. Public notice of the invitation to bid will be given.

B. — Competitive Negotiation

Competitive negotiation is utilized when the Director of Procurement determines that the use of competitive sealed bidding is not practicable, i.e., when it is not possible to detail fully the scope or quantity of the services or goods sought by RIPTA. Contracts may also be competitively negotiated when the Director of Procurement determines that the bid prices received by competitive sealed bidding either are unreasonable, or were not independently reached in open competition. Proposals or requests for qualifications leading to a negotiated procurement shall be publicly advertised and solicited in order to obtain the greatest possible competition. Any professional contract under \$20,000 requires the contractor to acknowledge that the entire value of any contract will not exceed \$20,000 in total, including change orders.

C. — Small Purchases

Purchases not exceeding \$5,000 (\$10,000 for construction) are considered "Small Purchases" and must be made in accordance

~~with the procedures set forth in the "Delegated Small Purchase Authority Procedures" incorporated herein as Appendix C to this Procurement Policy Statement. Procurements which do not exceed \$250.00 may be accomplished without securing competitive quotations if the prices are considered by the Director of Procurement to be fair and reasonable. Small purchases in excess of \$250 require obtaining written, oral, or faxed quotations from a minimum of three (3) qualified vendors who are willing and able to compete effectively. Oral quotations may be utilized if they are documented in memo form and state the name of the supplier, the date contacted and the quoted price. This memo must be submitted with the purchase order requisition.~~

~~D. Noncompetitive Negotiation~~

~~When it is determined that there is only one source for the required supply, service, or construction (sole source procurement), or when there exists a threat to public health, welfare, or safety under emergency conditions (emergency conditions), contracts may be awarded by noncompetitive negotiation.~~

Sole Source Procurements

~~Contracts may be awarded for a supply, service, or construction by noncompetitive negotiation when it is determined that there is only one source. Sole source procurement shall be allowed only on an extreme exception basis and must be documented and approved in writing by the Director of Procurement (for contracts up to \$5,000) and the RIPTA General Manager based on a written recommendation by the Director of Procurement (for contracts in excess of \$5,000). A monthly report will be prepared by the Procurement Department which identifies all such actions and included in the Board Report.~~

~~Examples of sole source exceptions include circumstances in which:~~

- ~~(i) there is only one responsible source and no other supplier for example, a utility company;~~
- ~~(ii) the source demonstrates a unique and innovative concept not otherwise available to RIPTA;~~
- ~~(iii) unacceptable delays in fulfilling RIPTA's requirements dealing with an unusual and compelling urgency~~

~~would have devastating effects on RIPTA operations, i.e., operational safety or security.~~

~~Each noncompetitive procurement over \$5,000 must be supported by documentation that justifies the selection of the specified vendor, including a statement of the relevant circumstances and detailed information to support that statement. A general conclusion that a certain source is uniquely qualified, has personal know-how or experience, or is the only source that can meet certain delivery requirements will not be sufficient justification.~~

~~Additionally, the following information must be provided if the procurement is greater than \$5,000:~~

- ~~(i) cost and price analysis;~~
- ~~(ii) legal opinion that the purchase will comply with federal, state and local laws, if deemed necessary;~~
- ~~(iii) summary of the negotiations with contractor, including subjects discussed and agreements reached; and~~
- ~~(iv) basis for determining that the price was fair and reasonable.~~

~~Categories of sole source procurements may include:~~

- ~~• items of a unique nature which are unavailable from other sources due to patents or proprietary processes~~
- ~~• books, maps, periodicals, and technical pamphlets, films, video and audio cassettes obtained from publishers~~
- ~~• certain computer software~~
- ~~• licensed computer software~~
- ~~• specialized replacement/repair parts or expansion parts necessary to maintain the integrity of system or function, e.g., scientific research~~
- ~~• works of art for museum or public display~~
- ~~• 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, or~~

~~warranty, _____ repair/maintenance
_____ agreements _____ with _____ original
equipment manufacturers~~

- ~~• _____ Advertisements, public notices in magazines, trade journals,
newspapers, television~~

~~The availability of the sole source procurement exception from
competitive bidding shall not be interpreted to diminish the
responsibility of the Procurement Department and/or RIPTA employees
to evaluate the market continuously to research product alternatives and
develop additional sources (i.e., vendors):~~

~~In attempting to achieve the goal of maximizing competition to
the greatest extent possible, alternative vendors shall be pursued for
sole source items by using compatible replacement parts as long as
warranties and operational cost effectiveness are not affected by
substitution:~~

Emergency Conditions Procurement

~~Notwithstanding any other provision in the RIPTA Procurement
Standards Manual, the General Manager or the Director of
Procurement (in his/her absence) may make, or authorize others to make,
emergency procurements when there exists a threat to public health,
welfare or safety under emergency conditions (as defined in
regulations issued by the Rhode Island Director of Administration);
provided, that such emergency procurements shall be made with such
competition as is practicable under the circumstances. A written
determination of the basis for emergency and for the selection of the
contractor shall be included in the contract file.~~

~~In accordance with procedures established by the RIPTA
Procurement Standards Manual, the General Manager or the Director
of Procurement (in his/her absence) shall be permitted to react quickly
to critical situations when the cost for the remedy or repair is in excess
of \$250, and there is not sufficient time to undertake a public, formal or
informal, bidding process:~~

~~An emergency shall mean a situation to which an urgent response
is required because of **immediate** danger to health and safety,
threats to property and necessary functions, or failures of critical
equipment.~~

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

~~Commitments which extend beyond the immediate response to the emergency conditions shall be prohibited, i.e. prevention of future problems by corrective measures other than the immediate restoration of function must be pursued through the Procurement Department's other contracting methods as delineated in this Procurement Policy Statement.~~

~~The Procurement Department shall establish, through competitive bidding, a list of emergency response vendors and shall make such list available to RIPTA Department Directors. When possible, the required services, supplies, or construction will be obtained from a list of vendors selected by competitive process to provide specialized trade in emergencies. If an emergency cannot be addressed by a designated vendor, the Procurement Department shall assist in obtaining names and telephone numbers of responsible vendors. Upon determination of the existence of an emergency, the Department Director shall consult with the Procurement Department **before** committing to a particular vendor.~~

~~If the emergency occurs outside of the Procurement Department's business hours, the Department Director shall be authorized to proceed in accordance with the principles and policies of sound procurement practices as outlined in the Procurement Standards Manual. In such cases, a written report must be prepared and submitted to the Director of Procurement on the next business day, fully describing the nature of the emergency, cost and the action(s) taken in compliance with the requirements of the Procurement Standards Manual. All emergency documentation shall be signed by either the Department Director, or his/her designee.~~

Bonding

~~Bidders' security is required for contracts of \$50,000 or more. If appropriate, security may also be required under the dollar threshold of \$50,000.~~

Codification

~~The Rhode Island Public Transit Authority procurement policies and procedures were developed pursuant to the provisions of applicable state and federal law, including the Federal Transit Authority guidelines on procurement.~~

Contract Amendments and Change Orders for Construction Contracts

All amendments or change orders to contracts affecting time or money must comply with the following levels of approval authority:

Time Extension _____ **Approval**

0-30 days _____ Director of Procurement

Over 30 days _____ General Manager

Contract Amendment Procedure

Contract amendments shall be made pursuant to the Procurement Standards Manual in the basic contract when it becomes necessary to change the contract cost and/or fee, statement of work, period of performance, or any other mutually agreeable change to the contract. All contract amendments must be executed in writing by the authorized representative of the contractor and the General Manager, or his/her designee.

Additions and/or increases in the scope of work constitute a new procurement and, as such, will be processed in the same manner. The additional requirements will be formalized by contract amendments.

The project manager shall coordinate the requirements for a contract amendment as soon as the need is known and shall provide the necessary documentation to permit the proposed contract amendment to be processed in the most expeditious manner to prevent delays in the project schedule.

The minimum documentation required to formalize a contract amendment is as follows:

- Properly executed requisition (for changes to contract price)
- Revised statement of work, if appropriate
- Technical evaluation of contractor's proposals
- Procurement summary with cost and/or price analysis

Contracting with Disadvantaged/Minority Business Enterprises

RIPTA will take all steps to ensure that Disadvantaged/Minority and Women Owned Business Enterprise (D/M/WBEs) are used wherever possible. Affirmative steps shall include:

- ~~(i) — placing qualified D/M/WBEs on solicitations lists;~~
- ~~(ii) — ensuring that D/M/WBEs are solicited whenever they are potential sources;~~
- ~~(iii) — when economically feasible, dividing requirements into smaller tasks or quantities to permit maximum participation by D/M/WBEs; and~~
- ~~(iv) — establishing contract delivery schedules, where the requirement permits, that encourages participation by D/M/WBEs.~~

Gratuities, Vendor Relations and the RIPTA Code of Ethics

A. General

~~The importance of demonstrating constant and attentive sensitivity to ethics cannot be overemphasized. All RIPTA employees must avoid any conduct that may give a reasonable basis for the impression that any person improperly can influence official acts or actions. RIPTA requires not only that employees avoid compromising or culpable acts. They are also prohibited from giving the appearance of improper influence or conflict of interest.~~

B. Ethics

~~All RIPTA employees will comply with the "RIPTA Employees' Code of Ethics," which incorporates the provisions of Title 36, Chapter 14, of the General Laws of Rhode Island, all regulations promulgated by the Rhode Island Ethics Commission, and applicable federal provisions.~~

The RIPTA Employees' Code of Ethics

~~All RIPTA employees shall be subject to the provisions of Title 36, Chapter 14, of the General Laws of Rhode Island, incorporated herein as Appendix B to this Procurement Policy Statement, and all regulations promulgated by the Rhode Island Ethics Commission, and any special provisions of this section.~~

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

Prohibited Activities under the Rhode Island Conflict of Interest Statutes.

No RIPTA employee shall have any interest, financial or otherwise, direct or indirect, or engage in any business, employment, transaction or professional activity, or incur any obligation of any nature, which is in substantial conflict with the proper discharge of his/her duties or employment in the public interest and of his/her responsibilities as prescribed in the laws of this state.

No RIPTA employee shall accept other employment that will either impair his/her independence of judgment as to his/her official duties or employment or require him/her public office or confidential information acquired by him/her in the course of and by reason of his/her official duties or employment or use any such information for purpose of pecuniary gain.

No RIPTA employee shall use in any way his/her public office or confidential information received through his/her holding any public office to obtain financial gain, other than that provided by law, for himself/herself or spouse or any dependent child or business associate or any business by which such person is employed or which such person represents.

No RIPTA employee or spouse or dependent child or business associate of such person or any business by which such person is employed or which such person represents, shall solicit or accept any gift, loan, political contribution, reward, or promise of future employment based on any understanding that the vote, official action or judgement of such person would be influenced thereby.

Gifts, Entertainment and Favors

No RIPTA employee may solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, food lodging, loan, or anything of value from any vendor or potential vendors doing business with RIPTA.

Implementation

The policies herein set forth shall be implemented by the General Manager. Procedural guidance shall be provided by the Procurement Standards Manual, State of Rhode Island Procurement Regulations, and Federal Transit Administration regulations. Copies of Procurement Manuals/Policies/Federal State Regulations and Employee Code of Ethics shall be distributed to all pertinent RIPTA employees. Copies of the RIPTA Code of Ethics shall be distributed to all RIPTA employees.

Deviation

Deviation from the policies stated herein shall be approved by the Board of Directors unless the change is required by applicable federal law or regulations,

~~in which case the policies will be deemed changed without the necessity for any affirmative action.~~

Violation of Procurement Policy, Laws and Regulations

~~The General Manager may revoke, at his/her discretion, the purchasing authority from any Department Director or RIPTA employee who has been found in violation of any of the provisions of this procurement Policy Statement or is found to have violated any of RIPTA's purchasing policies and procedures. In addition, depending upon the severity of the infraction, RIPTA employees who have violated any of the RIPTA's purchasing policies and procedures, including without limitation, the RIPTA Employees' Code of Ethics, will be subject to disciplinary action, up to and including termination. Vendors conducting business with RIPTA who have been found in violation of any of the provisions of this Procurement Policy Statement, or applicable state or federal law, will be subject to suspension and debarment.~~

~~Suspected violations of state conflict of interest laws and regulations regarding procurement or the state employees' code of ethics set forth herein shall be reported in confidence to the General Manager or the Director of Procurement in accordance with the rules and regulations established by the Rhode Island Ethics Commission.~~

~~Violations of the provisions of this Procurement Policy Statement, or any of RIPTA's procurement policies and procedures, or any applicable state or federal laws or regulations shall be immediately reported to the General Manager, the Director of Procurement or Contract Manager. The General Manager shall have the authority to apply sanctions.~~

~~RHODE ISLAND PUBLIC TRANSIT AUTHORITY~~
~~Minutes of Meeting~~
~~November 22, 1993~~

~~INCORPORATED BY REFERENCE ONLY~~

~~MAY BE OBTAINED FROM:~~

~~RHODE ISLAND PUBLIC TRANSIT AUTHORITY~~
~~265 Melrose Street~~
~~Providence RI 02907~~

Financial Authority

Pursuant to a unanimous vote of the directors of the Rhode Island Public Transit Authority at a meeting held on Monday, November 22, 1993, the following monetary parameters regarding purchasing and claims procedures were adopted:

Parenthetically, it is understood there are two major categories of procurement based upon capital and operating fund requirements. The capital procurement is outlined in the Transportation Improvement Program and is funded by the Federal Transit Administration (FTA) under the Capital Development Process within Sections 3, 9, and 18 of the FTA Act. These grants require matching funds, normally 15 to 20 percent of the total purchasing price, and are made available through a state transportation bond or as part of RIPTA's normal operating budget. Operating expenses are those purchases that are required in order to maintain the daily operation of the system.

I. Procurement

- A.** With respect to Procurement, the General Manager shall have the authority to approve any purchase (or purchases) of goods or services up to the amount of \$25,000 per said purchase. Any purchase of goods or services that exceeds this amount shall be transmitted to the RIPTA Board of Directors for its approval.

- B.** Each department head is granted the authority to expend funds for normal operations within his/her department up to the sum of \$10,000. Any expenditure in excess of \$10,000 must be approved by the General Manager; if it exceeds the sum of \$25,000, approval must be obtained by the RIPTA Board of Directors.

II. — Claims Management

- A.** ~~With respect to **Claims Management**, the Claims Adjuster shall have the authority to settle any claim up to the amount of \$2,000. Any such claim in excess of \$2,000, up to the sum of \$25,000, must receive approval from the General Manager. Any claim in excess of \$25,000 must be approved by the RIPTA Board of Directors.~~

III. — Reporting

- A.** ~~A monthly report of all activities pertaining to these policies shall be reported to the Board of Directors. Such report, prepared by the General Manager, shall include all activity, the amount of the purchase (or purchases), claim settlement, and the funding source.~~

Code of Ethics and Professional Behavior

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

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

Prohibited Activities under the Rhode Island Conflict of Interest Statutes:

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

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

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

No person subject to the code of ethics shall use in any way his public office or confidential information received through his holding any public office to obtain financial gain, other than that provided by law, for himself or spouse or any dependent child or business associate or any business by which said person is employed or which said person represents.

No person subject to this code of ethics or spouse or dependent child or business associate of such person or any business by which said person is employed or which such person represents, shall solicit or accept any gift, loan, political contribution, reward, or promise of future employment based on any understanding that the vote, official action or judgement of said person would be influenced thereby.

No person shall give or offer to any person covered by this code of ethics, or to any candidate for public office, or to any spouse or dependent child or business

~~associate of such person, or any business by which said person is employed or which such person represents, any gift, loan, political contribution, reward, or promise of future employment based on any understanding that the vote, official action or judgement of said person would be influenced thereby.~~

~~In accordance with the provisions of Chapter 37-2-9(2)(o), RIGL, the following supplemental State Code of Procurement Ethics shall be adopted:~~

~~Universal Code of Ethics applicable to all state employees involved in the procurement process:~~

~~To consider, first, the interests of the state in all transactions; To support and carry out state policies;~~

~~To buy without prejudice;~~

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

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

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

~~To respect obligations and to require that obligations to the state be respected, consistent with good business practice.~~

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

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

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

~~State officials shall observe a commitment to maintain the confidentiality of information submitted by suppliers and potential suppliers.~~

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

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

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

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

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

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

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

Social interaction between personnel involved in the procurement process and any present or prospective contractors, subcontractors or suppliers and their representatives creating the impression of favoritism shall be avoided.

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

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

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

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

- ~~• Receives personal enrichment as a result of an award, or~~
- ~~• Holds a secured financial interest in a firm offering such goods or services, or,~~
- ~~• Receives indirect or subsequent income, by way of employment, retainer, consultancy, or other remuneration from a firm offering such goods or services, or,~~
- ~~• Has an immediate family member or blood relative holding an equity interest, or a management or directorial position in a firm offering such goods or services;~~

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

~~Under any circumstances described in Chapter 36-14 of the General Laws of Rhode Island:~~

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

~~Resolution of conflict may include, but shall not be limited to the following measures:~~

~~Reassignment of the procurement official or other state employee involved;~~

~~Termination of employment of the procurement official or other state employee involved; and~~

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

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

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

~~Samples provided by vendors shall be deemed to be the property of the state which the Chief Purchasing Officer may determine appropriate for donation to charitable organizations or needy individuals.~~

~~Promotional programs and campaigns available through airlines, rental companies, hotels, motels, etc., which provide bonuses and rebates, and result from state paid travel, shall be applied toward state use or benefit and not personal use.~~

~~Purchasing personnel shall not make purchases for personal use in the name of the state or through the use of any state procurement forms.~~

DELEGATED SMALL PURCHASE AUTHORITY PROCEDURES

(Adapted from R.I. General Laws)

~~[37-2-22] **Small Purchases.** Procurements not to exceed an aggregate amount of ten thousand dollars (\$10,000) for construction and five thousand dollars (\$5,000) for all other purchases may be made in accordance with small purchase regulations promulgated by the Director of Procurement. Requirements shall not be artificially divided so as to constitute a small purchase under this section.~~

~~[37-2-7(4)] “Construction” shall mean the process of building, altering, repairing, improving or demolishing any public structures or building, or other public improvements of any kind to any public real property. It does not include the routine maintenance or repair of existing structures, buildings, or real property performed by salaried employees of the state in the usual course of their job.~~

~~[37-2-38] **Issuance of specifications.** (1) The Director of Procurement shall have the responsibility for issuing and maintaining all standard specifications for supplies, services, and construction required by the state. Among its duties, it shall, to the greatest extent practicable: (a) prepare and issue standard specifications for supplies, services and construction commonly required by the state; (b) revise all standard specifications to conform to all technical and scientific advances pertaining to the supplies, services, and construction described in those specifications, and to reflect changes in the state’s requirements and user agencies; and (c) establish guidelines for drafting specifications. (2) All specifications shall be drafted so as to maximize, to the extent practicable competition in fulfillment of the state’s requirements.~~

~~[13-7-8] **Requisition of goods by public agencies [Correctional Industries].** When the state purchasing agent or agent of any state office department or institution shall have had occasion to purchase any articles, services, or materials similar to those produced in the adult correctional institution and notification of that production had been given him or her, he or she shall make requisition, therefore, from the director of corrections, the provisions of any statute, resolution, rule or regulation to the contrary notwithstanding. The requisition shall conform to specifications and descriptions previously submitted by the director unless it appears that special style, design, or quality is needed, and shall be on forms provided by the director. If the articles or materials are needed immediately and are not on hand or the articles, services, or materials can be purchased at a price less than the quote received by the requisitioner by the adult correctional institution, the director shall forthwith notify the requisitioner and he/she may purchase elsewhere.~~

Master Price Agreement (MPAs) vs. Delegated Small Purchase Authority. Note that this new authority does not replace the requirement to utilize Master Price Agreements when one is available covering the area of purchase.

~~Although hard copies of MPAs are mailed to agency business offices throughout the State, they can also be downloaded from the Division of Purchases Website at www.purchasing.state.ri.us. Help can be obtained by calling 222-2142 ext. 104.~~

~~**Correctional Industries Products and Services.** Note that this new authority does not replace the requirement to utilize Correctional Industries products and services when they are available. Copies of a catalog and help in using Correctional Industries can be obtained by dialing 462-2134.~~

~~**Three Quotes Required.** For procurements above \$250 at least three quotes must be obtained. As always, Departments and Agencies are cautioned not to artificially divide orders for similar purchases which would result in exceeding the \$5,000 limit.~~

- ~~• Telephone quotes. For procurements between \$251 and \$1000 at least three telephone quotes, documented in writing by an agency official must be obtained. Even where a telephone quote is permitted, whenever a Division of Purchases Standard or Specification is required, each potential vendor must be provided a written copy either by regular mail, e-mail, or fax. Remember that although it may seem faster to obtain telephone quotes, sometimes written solicitations are better because they are clearer so the vendors will improve your chances of obtaining what you want.~~
- ~~• Written quotes may be obtained through normal mail, personal delivery or fax. For procurements above \$1000 written confirmation of all offers must be obtained from vendors.~~
- ~~• It is important that the person obtaining the quotes set a deadline by which all written quotes must be received or the process may not have closure. This also ensures that the vendors have an equal opportunity to participate.~~
- ~~• An official record of all quotes received must be retained with a copy of the appropriate documents (voucher), quote attached to purchase order requisitions.~~
- ~~• Departments and Agencies are required to solicit from valid suppliers. Although they are encouraged to solicit bid quotations from vendors who have registered to do business with the State of Rhode Island, if no vendors have indicated an interest in supplying what the agency requires, other sources may be considered. Agencies will have on-line access to the State's vendor lists when the EPS is fully implemented. Meanwhile these lists may be viewed at the Division of Purchases Internet Website under the Rhode Island Vendor Information Program DataBase and a User Password assigned. Requests for participation should addressed in~~

writing to the Chief of Purchasing Management Support Services. Assistance in using the Website may be obtained by calling the Help Desk at 222-2142 ext. 134.

- Local Vendors. It is the State's policy to solicit small purchases from local vendors whenever possible. Lists of vendors obtained from the RIVIP indicate which ones are Rhode Island firms.
- D/M/WBEs Participation. Whenever possible one of the three quotes must be obtained from a certified Disadvantaged/Minority or Woman-Owned Business Enterprise (D/M/WBEs). State Purchasing Regulations require that one of the three quotes must be solicited from a certified minority or woman-owned business supplier - if one is available. Lists of certified Enterprises are available at the Department of Administration MBE Office. Lists of vendors obtained from the RIVIP indicate which ones are certified. Both MBE and WBE firms are identified with the code "M" under the column entitled Minority Type. DBE refers to the US Department of Transportation's Disadvantaged Business Enterprise program and regulations promulgated in 49 CFR Part 23.
- Responsive and Responsible. State Purchasing law requires that contracts be awarded based on the lowest price offered by a responsive and responsible supplier. A responsive supplier is one which offers a price for exactly what was requested or an acceptable alternative. A responsible supplier is harder to define. Generally this term refers to financial stability, dependability, honesty and integrity. For example, the State would not order supplies from a company suspended for indictment on bribery charges or someone without a valid business address, e.g., doing business out of the trunk of a car.

Contract Award and Cancellation

- Contract. A solicitation combined with an offer which results in an order being placed is deemed to be a contract between the State and the Supplier. All State contracts including small purchases are governed by State Law 37-2. State Purchasing Rules and Regulations and the General Terms and Conditions for Contracts. (The latter two documents are available on the RIVIP.)
- Notification. An agency official will notify the responsible vendor offering the lowest responsive price. Although a telephone order may suffice in many instances, a written order is often preferable so that there is a record in case of a dispute if the vendor does not deliver what was requested or does not deliver within a reasonable time. (Note: the solicitation should indicate what timeframe is desired by the user.)

- ~~Award to Other than Low Bidder. When awarding to other than the low bidder, the record shall include a statement explaining the basis for the decision. Any such rationale must contain objective criteria, e.g., item offered did not meet specifications or brand and model requirements, item offered was not equivalent of what was requested or vendor has been suspended.~~
- ~~Cancellation. The User must cancel a contract in writing, explaining the reason for the cancellation. A copy of this document must be part of the official record of the purchase. An example of a basis for cancellation is a vendor's failure to provide what was agreed to, referred to as "non-responsive."~~