

**RHODE ISLAND GOVERNMENT REGISTER
PUBLIC NOTICE OF PROPOSED RULEMAKING**

AGENCY: Rhode Island Resource Recovery Corporation
RULE IDENTIFIER: ERLID 4486
REGULATION TITLE: The Rules for the Selection of Construction Managers
RULEMAKING ACTION: Direct Final

If no formal objection is received on or before **October 13, 2017** Resource Recovery Corporation will file the repeal without opportunity for public comment.

TYPE OF FILING Repeal

TIMETABLE FOR ACTION ON THE PROPOSED RULE:

*Public notice date: **September 13, 2017***

*End of comment period: **October 13, 2017***

SUMMARY OF PROPOSED RULE: The purpose of this rulemaking action is to repeal the regulation “The Rules for the Selection of Construction Managers” identified by ERLID 4486. The purpose of this repeal is to remove rules and regulations that are no longer relevant to the daily operation of the Rhode Island Resource Recovery Corporation.

COMMENTS INVITED:

All interested parties are invited to submit written or oral comments concerning the proposed regulations by October 13, 2017 to the addresses listed below.

ADDRESSES FOR PUBLIC COMMENT SUBMISSIONS:

Mailing Address:

Administrative Records
Rhode Island Resource Recovery Corporation
65 Shun Pike, Johnston RI 02919

Email Address: JReposa@rirrc.org

WHERE COMMENTS MAY BE INSPECTED:

Mailing Address:

65 Shun Pike
Johnston, RI 02919

FOR FUTHER INFORMATION CONTACT :

ATTN: Joseph Reposa, Executive Director
65 Shun Pike
Johnston, RI 02919

SUPPLEMENTARY INFORMATION:

Regulatory Analysis Summary and Supporting Documentation:

This proposed repeal will result in little to no small business economic impact.

Authority for This Rulemaking: R.I Gen Law 37-2-9 and 45-35-2

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 Amendment:

Rhode Island Resource Recovery proposes to amend "The Rules for the Selection of Construction Managers" as follows:

RULES OF THE RHODE ISLAND SOLID WASTE MANAGEMENT CORPORATION FOR THE SELECTION OF CONSTRUCTION MANAGERS

Article I – General Provisions

~~Section 1.1. Introduction. The Rhode Island Solid Waste Management Corporation (the "corporation") is authorized and empowered, among other things 1 for the planning, design,1 construction, financing, management, ownership 1 operation, and maintenance of transfer stations1 waste processing facilities, resource recovery facilities, and all other solid waste management facilities, and for those purposes to enter into contracts necessary or incidental to the execution of its powers, including contracts for the procurement of supplies, services and construction.~~

~~The purpose of these rules is to comply with the requirements of Chapter 2 of Title 37 of the Rhode Island General Laws (State Purchases), by setting out procedures for the selection of construction managers by the Corporation.~~

~~Section 1.2. Definitions.~~

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

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

(2) "Chief Purchasing Officer" shall mean the executive director or the chief operational officer of the Corporation.

(3) "Construction" shall mean the process of building, altering, repairing, improving or demolishing any Project. It does not include the routine maintenance or repair of existing structures, buildings, or real property performed by salaried employees of the State of Rhode Island in the usual course of their job.

(4) "Construction management contract" shall mean a contract for construction management services which provides a Guaranteed Maximum Price" and which anticipates that a substantial portion of the construction which is the subject of the contract will be performed by trade contractors pursuant to trade contracts between the construction manager and trade contractors.

(5) "Construction management fee" shall mean the fee payable to the construction manager for the performance of construction management services. The Construction Management Fee may be fixed at a percentage of the Guaranteed Maximum Price with adjustments as appropriate for changes in the Guaranteed Maximum Price, or a reduction in the Cost of the Work.

(6) "Construction management services" shall mean business administration and superintendence of the Construction of a Project, including but not limited to consultation with the architect and consultants for the Project, preparing a Project Budget, and selection and control of Trade Contractors.

(7) "Construction Manager" is a person experienced in construction that has the ability to evaluate and to implement plans and specifications as they affect time, cost, and quality of construction and the ability to coordinate the design and construction of the project, including the administration of change orders. The Corporation contracts with a qualified construction manager to act for the Corporation in the construction project as specified in the construction management contract. At times, the construction manager may become the single prime contractor, or may guarantee that the project will be completed on time and will not exceed a specified maximum price. At such times, the construction manager will become responsible, just as any single prime contractor, to complete the project at or below the specified price.

(8) "Contract" shall mean all types of agreements for the purchase or disposal of supplies, services or construction, including construction management contracts.

(9) "Contract modifications" shall mean any written alteration in the provisions of any existing construction management contract, whether accomplished by unilateral action in accordance with a Contract provision, or by mutual action of the parties to the Contract.

(10) "Contractor" means any person having a contract with the Corporation.

(11) "Cost of the work" shall mean costs necessarily incurred by the Construction Manager during either the design or construction phase of a project.

(12) "Design development documents" shall include drawings, outline specifications, renderings, models and other documents which fix the size and character of an entire project as to architectural, structural, mechanical and electrical systems, materials and such other elements as may be appropriate. —

(13) "Guaranteed maximum price" shall mean the Cost of a Project to the corporation under a Construction Management Contract. The Guaranteed Maximum Price shall include the Construction Management Fee and shall be fixed at a reasonable time following receipt by the Authority of completed Design Development

(14) "May" shall mean permissive

(15) "Offeror" shall mean any person who submits an offer in response to a request for proposal.

(16) "Person" shall mean any business, individual, organization or group of individuals.

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

(18) "Public Agency" shall mean the Rhode Island Solid Waste Management Corporation.

(19) "Request for proposals" shall mean all documents, whether attached or incorporated by reference, utilized for soliciting proposals in accordance with the procedures set forth in Sections 2.1.3, 2.1.4, and 2.1.5 of these Rules.

(20) "Responsible offeror" shall mean a qualified offeror who has the capability in all respects including financial responsibility to perform fully the requirements of a construction management contract, and the integrity and reliability which will assure good faith performance.

(21) "Responsive offeror" shall mean an offeror who has submitted a proposal which conforms in all material respects to the request for proposal. An offeror who submits a bid based on alternative specifications to those contained in the invitation to bid will be responsible only if, in the judgment of the Corporation, the alternative specifications meet the performance objectives of the Corporation with respect to the project to be purchased and the invitation to bid states that alternative specifications will be considered.

(22) "Shall" shall mean imperative.

(23) "Small business" shall mean a person, partnership, corporation or other form of business entity independently owned and operated, not dominant in its field and which employs 500 or fewer employees and has its principal place of business in the State.

~~(24) "Trade contract" shall mean a contract between a trade contractor and the construction manager to perform construction work on a Project.~~

~~(25) "Trade contractor" shall mean a person who has a~~

~~(26) "Vendor" shall mean any person who provides, supplies, services or construction under a contract.~~

~~Section 1.3 Application of Rules~~

~~(a) The provisions of these Rules shall apply to all the expenditures of funds by the Corporation under a contract, except contracts or like business arrangements between the Corporation and the State and contracts between the Corporation and political subdivisions of the State or other governments.~~

~~(b) Nothing in these Rules shall prevent the corporation from complying with the terms and conditions of any grant, gift, bequest or agreement.~~

~~(c) The provisions of these Rules shall be considered to be incorporated in all contracts of the Corporation to which it applies.~~

~~(d) Contracts entered into in violation of these Rules shall be void ab initio.~~

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~~Section 1.4. Public Access to Procurement Records.~~

~~Except as otherwise provided for herein, all procurement information shall be a matter of public record and shall be available to the public.~~

~~Section 1.5. Decisions of the Corporation. Every determination required by these Rules shall be in writing and based upon written findings of fact by the Corporation. These determinations shall be retained in an official contract file in the offices of the Corporation.~~

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~~Article II Selection of Construction Managers~~

~~Section 2.1. Source Selection.~~

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

~~(1) Competitive sealed bidding, pursuant to Section~~

2.1.2 of these Rules; or

(2) competitive negotiation, pursuant to sections 2.1.3 and 2.1.4 of these Rules; or

(3) Non-competitive negotiation, pursuant to Section

2.1.5 of these Rules; or

(4) Small purchase procedures, pursuant to section 2.1.6 of these Rules.

2.1.2. Competitive Sealed Bidding.

(a) Contracts exceeding the amount provided by Section

2.1.6 of these Rules shall be awarded by competitive sealed bidding unless it is determined in writing that this method is not practicable. Factors to be considered in determining whether competitive sealed bidding is practicable shall include whether:

(i) Specifications can be prepared that permit an award on the basis of either the lowest bid price or the lowest evaluated bid price; and

(ii) The available sources, the time and place of performance, and other relevant circumstances appropriate for the use of competitive sealed bidding.

(b) The invitation for bids shall state whether an award shall be made on the basis of the lowest bid price or the lowest evaluated or responsible 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.

(c) Adequate public notice of the invitation for bids shall be given a sufficient time prior to the date set forth therein for the opening of bids. Such notice may include publication in a newspaper of general circulation in the state as determined by the corporation not less than seven (7) days not more than twenty one (21) days before the date set for the opening of bids. The corporation may make a written determination that the twenty one (21) day limitation is being waived and shall state the number of days, giving a minimum and maximum, before the date set for the opening of bids when public notice is to be given.

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

~~(e) 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 bid price.~~

~~(f) Correction or withdrawal of bids will be allowed only in the following circumstances:~~

~~(i) A bidder will not be permitted to correct a bid mistake after bid opening that would cause such bidder to have the low bid unless the mistake is clearly evident from the bid document, for example, errors in addition.~~

~~(ii) An otherwise low bidder may be permitted to correct a material mistake of fact in its bid, including price, when the intended bid is obvious from the bid document or is otherwise supported by proof that has evidentiary value. A low bidder will not be permitted to correct a bid for mistakes or errors in judgment.~~

~~(iii) In lieu of bid correction, a low bidder alleging a material mistake of fact will be permitted to withdraw its bid when there is reasonable proof that a mistake was made and the intended bid cannot be ascertained with reasonable certainty.~~

~~(iv) After bid opening, an otherwise low bidder shall not be permitted to make exceptions to the bid conditions or specifications which affect price or substantive obligations; however, such bidder shall be permitted the opportunity to furnish other information called for by the invitation for bids and not supplied due to oversight, so long as it does not affect responsiveness.~~

~~2.1.3—Competitive Negotiations (a) If the Purchasing Agent determines in writing that the use of competitive sealed bidding is not practicable in light of the factors set forth in subsection~~

~~(a) of Section 2.1.2 of these Rules, and except as provided in Sections 2.1.5 and 2.1.6 of these Rules, a contract may be awarded by competitive negotiation.~~

~~(b) Adequate public notice of the request for proposals shall be given in the same manner as provided in section 2.1.2(c) of these Rules.~~

~~(c) The request for proposals shall indicate the relative importance of price and other evaluation factors.~~

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

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

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

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

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

~~2.1.4. _____ Negotiations After Unsuccessful Competitive Sealed Bidding.~~

~~(a) Contracts may be competitively negotiated when it is determined in writing by the corporation that the bid prices received by competitive sealed bidding under Section 2.1. 2 of these rules either are unreasonable as to all or part of the requirements, or were not independently reached in open competition, and for which~~

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

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

~~iii) The negotiated price is the lowest negotiated price offered by a competitive offeror.~~

~~(b) In the event that all bids submitted pursuant to competitive sealed bidding under section 2.1.2 of these Rules result in bid prices in excess of the funds available for the purchase, and the Corporation determines in writing:~~

~~(i) That there are not additional funds available from any source so as to permit an award to the lowest responsive and responsible bidder, and~~

~~(ii) The best interest of the Corporation will not permit the delay attendant to a re-solicitation under revised specifications, or for revised quantities, under competitive sealed bidding as provided in section 2.1.2 of these Rules, then a negotiated award may be made as set forth in Subsection (c) or (d) of this section 2.1.4.~~

~~(c) Where there is more than one bidder, competitive negotiations pursuant to section 2.1.2 of these Rules, shall be conducted with the three (or two if there are only two) bidders to the competitive sealed bid invitation. Such competitive negotiations shall be conducted under the following restrictions:~~

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

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

~~(d) When after competitive sealed bidding, it is determined in writing that there is only one responsive and responsible bidder, a non-competitive negotiated award may be made with such bidder in accordance with section 2.1.5 of these rules.~~

~~Section 2.1.5. Sole Source Procurement and Emergency contracts.~~

~~(a) A construction management contract may be awarded without competition when the Corporation determines, in writing, that there is only one responsible person ready to perform the contract.~~

~~(b) Notwithstanding any other provision of these Rules, if there exists a threat to public health, welfare or safety under emergency conditions, the Corporation may select a construction manager 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 construction manager shall be included in the contract file.~~

~~(c) A construction management contract may provide that in an emergency affecting the safety of persons or property, the construction manager, shall act, at his, her or its discretion to prevent threatened damage, injury or loss and may provide for adjustments in the Guaranteed Maximum Price or extension of time for performance under the construction management contract on account of such emergency.~~

~~Section 2.1.6. Small Purchases. Procurements, not to exceed an aggregate amount of five thousand dollars (\$5,000) for construction and two thousand five hundred dollars (\$2,500) for all other purchases may be made by the purchasing agent at the established catalogue or market price of commercial items sold in substantial quantities to the general public. In the case of all other small purchases, as defined in this section, the purchasing agent shall procure items in any manner it believes reasonable. Where practicable, the purchasing agent shall make inquiries from at least three sources to determine what is a reasonable price. The inquires may be made by telephone. No such inquiries are required when the price of the item or service is not expected to exceed one hundred dollars (\$100). Procurement requirements shall not be artificially divided by the Corporation so as to constitute a small purchase under this section.~~

~~Section 2.1.7. — Waivers of Informality in Offers. The Corporation may waive informalities in any offer.~~

~~Section 2.1.8. — Cancellation of Invitation for Bids and Requests for Proposals. The corporation may cancel any Invitation for Bids, Request for Proposals, or negotiations in connection with the selection of a construction manager, or may reject all proposals if the corporation determines that such action is in the best interests of the corporation. No such cancellation or rejection shall prevent the Corporation from re-soliciting proposals for the same Project on the same or different terms.~~

~~Section 2.1.9. — Responsibility of Offerors.~~

~~(a) A written determination of responsibility of an offeror shall be made by the Corporation in connection with the award of any contract.~~

~~(b) The Corporation may make reasonable inquiries to determine responsibility. The failure of any offeror to promptly supply information in connection with such inquiries may be grounds for determining that such person is not responsible.~~

~~(c) Except as otherwise provided by law, information furnished by any offeror pursuant to this section may not be disclosed by the Corporation to any other person without the prior written consent of such person.~~

~~section 2.1.10. Annual statement of Qualifications.~~

~~(a) Persons interested in contracting with the Corporation shall be encouraged to submit to the corporation annually a statement of qualifications.~~

~~(b) Solicitation mailing lists of potential contractors and vendors, shall include but need not be limited to persons who have submitted an annual statement of qualifications.~~

~~Section 2.1.11. Pre-Qualification Data. A person who bids on a construction management contract shall provide the following information, which information shall constitute the prequalification's for a construction management contract.~~

~~(1) Firm history.~~

(a) Name of firm.

(b) Location of principal and branch offices.

(c) Length of time in business.

(d) Firm ownership structure.

(e) Annual construction management volume for each of the past five (5) years, including number of projects and total construction volume.

(2) Personnel.

(a) Total number of firm's personnel, other than secretarial/clerical, by professional or skill group.

(b) outside firms which will be used to provide such services as estimating, value engineering analysis, scheduling or computer services.

(3) Experience.

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

(4) Project staffing.

(a) 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.

(b) Detailed resume for each key staff member which summarizes education, professional registration, professional society membership, construction experience and construction management position.

(5) Project Services

(a) Scope of pre-construction 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.

(b) Scope of construction phase services and how such services are to be provided.

(c) The firm's method of working with the project architects, engineers, consultants and other planning team members.

(d) The firm's method of coordinating the efforts of the various trade contractors.

~~Section 2.1.12.— Cost or Pricing Data.~~

~~(a) A construction manager shall submit to the Corporation cost or pricing data and shall certify that, to the best of his, her, or its knowledge and belief, any cost or pricing data required to be submitted was accurate, complete, and current as of a mutually determined specified date prior to the date of:~~

~~(1) The pricing of any construction management contract where the total contract price is expected to exceed fifty thousand dollars (\$50,000); or~~

~~(2) The pricing of any contract modification which is expected to exceed twenty five thousand dollars (\$25,000).~~

~~—(b) The Corporation may require construction managers to verify cost or pricing data in connection with any proposal or contract without regard to the price ceilings set forth above if the Corporation determines that such cost or price data is necessary to ensure a fair and reasonable contract price to the Corporation.~~

~~(c) Where certified cost or pricing data is required to be submitted in connection with any contract or modification thereto, the price of any such contract, including profit or fee, shall be adjusted to exclude any significant sums by which the Corporation finds that such price was increased because the construction manager furnished cost or pricing data, which, as of the date agreed upon between the parties, was inaccurate, incomplete, or not current.~~

~~—(d) The Corporation may elect not to require certified cost or pricing data where the price negotiated is based on adequate price competition or in exceptional cases where the corporation determines that the requirements of this section may be waived, and the reasons for such waiver are stated in writing.~~

~~Section 2.1.13.— Types of Contracts.— The corporation has determined that a construction management contract which provides for reimbursement of the Cost of the Work subject to a Guaranteed Maximum Price is the only practicable way to secure construction management services. Subject to the requirement of a Guaranteed Maximum Price, the Corporation may enter into any type of construction management contract which will promote the best interests of the Corporation subject to the following rules.~~

~~(a) — Cost plus percentage of cost type construction management contracts shall not be awarded to any person. A construction management contract which provides for a Guaranteed Maximum Price is not a cost plus percentage of cost type contract, notwithstanding the fact that the construction manager's fee may be fixed at a percentage of the Guaranteed Maximum Price.~~

~~(b) — Each construction manager under a construction management contract shall obtain the consent of the Corporation, as provided for in the contract, before entering into:~~

(i) A cost reimbursement type trade contract; or

(ii) Any other type of trade contract involving more than ten thousand dollars (\$10,000) or ten percent (10%) of the estimated cost of the prime contract.

(c) All construction management contracts shall all permit reimbursement only of allowable costs as determined in accordance with cost principles set forth in section 4.1 of these Rules.

Section 2.1.14. Approval of Accounting System. No construction management contract shall be entered into by the Corporation unless the corporation has determined that the proposed construction manager's accounting system will permit timely development of all necessary cost data in the form required by the specific contract and that the contractor's accounting system is adequate to allocate costs in accordance with generally accepted cost accounting principles.

Section 2.1.15. Partial and Progressive Awards.

(a) A construction management contract may provide for payments as work progresses under the contract, upon the basis of costs incurred, percentage of completion accomplished or of a particular stage of completion.

(b) A construction management contract may provide for payments upon submission of proper invoices or vouchers for supplies delivered and accepted or services rendered and accepted where such supplies and services are only part of total contract requirements.

Section 2.1.16. Inspection of Facilities and Audits of Records.

(a) — The Corporation may inspect the site of any project or place of business of any construction manager or trade contractor under any construction manager or trade contract awarded or to be awarded by the corporation or by any construction manager.

(b) — The corporation may audit the books and records of any person who has submitted cost or pricing data under Section 2.3.3 of this Rule at any time until the period of record retention as set forth

~~in subparagraph (c) of this section shall have expired. The right to audit hereunder shall only extend to those books and records reasonably connected with cost or pricing data submitted under section 2.3.3 of this Rule.~~

~~(c) All construction managers or trade contractors shall maintain all books and records in connection with such contract for a period of three (3) years from the date of final payment under the construction management contract or in the case of a trade contractor for a period of three (3) years from the date of final payment under the trade contract.~~

~~Section 2. 1. 17. Reporting of Anti-competitive Practices.~~

~~(a) If for any reason the Corporation suspects any collusion among offerors, the Corporation shall transmit a written notice of the facts giving rise to such suspicion to the Attorney General of the state (the "Attorney General").~~

~~(b) All documents involved in any procurement in which collusion is expected shall be retained by the Corporation until the Attorney General notifies the Corporation that they may be released. All such documents shall be made available to the Attorney General or his other designee upon request, notwithstanding any other provision of this Rule.~~

~~Article III—Contract Clauses and Their Administration~~

~~Section 3.1. Contract Clauses and their Administration.~~

~~(a) All construction management contracts expected to exceed Fifty Thousand Dollars (\$50,000) in price, shall provide for adjustments to contract terms and conditions where there has been:~~

~~(1) A unilaterally ordered change by the Corporation;~~

~~(2) A site condition differing from that indicated in the contract when appropriate written findings of fact have been made; or~~

~~(3) Variation in the estimated quantities in a contract providing for estimated quantities; or~~

~~(4) A unilateral suspension of work by the corporation.~~

~~(b) All construction management contracts expected to exceed Fifty Thousand dollars (\$50,000) in price shall also provide that a contract may be terminated for default, or upon written determination which~~

~~sets forth the excuses for non performance. Further, such contracts shall provide for liquidated damages when appropriate and as specified in the contract schedule, with excuses for non performance specifically provided for therein.~~

~~(c) The above specified conditions required for inclusion in all construction contracts expected to exceed Fifty Thousand Dollars (\$50,000) in price shall be available for optional use by the Corporation in other construction management contracts.~~

~~(d) In addition, all construction management contracts which are expected to exceed Fifty Thousand Dollars (\$50,000), shall provide for the termination of said contract because of unreasonable delay in the performance thereof and shall further provide for liquidated damages and for reimbursement for any monies expended by the corporation for the completion of work specified by the terms of such contract.~~

~~Article IV—Cost and Pricing Principles~~

~~Section 4.1. Cost and Pricing Principles.~~

~~(a) The Cost of the Work shall include only those costs necessarily incurred by the Construction Manager during the design and construction phases of a Project and paid or incurred by the Construction Manager. Such costs shall be at rates not higher than those amounts currently paid in Rhode Island except with the prior consent of the corporation and shall include those items set forth as allowable cost items in the construction management contract.~~

~~(b) The aggregate of the Cost of the Work and the Construction Manager's fee shall not exceed the Guaranteed Maximum Price.~~

~~Article V—Bonds~~

~~Section 5.1 . Contractor's Bonds. The provisions of chapter 37-12 of the General Laws (Contractor's Bonds) shall apply to all construction management contracts.~~

~~Article VI—Protest of Solicitation and Award~~

~~Section 6.1. Protest of Solicitation and Award.~~

~~(a) — Any actual or prospective offeror who is aggrieved in connection with the solicitation or award of any construction management contract may file a protest with the corporation. A protest or notice of other controversy must be filed promptly and in any event within two (2) calendar weeks after such aggrieved person knows or should have known of the facts giving rise thereto. All protests or notices of other controversies must be in writing.~~

~~(b) — The Corporation shall promptly issue a decision in writing on the protest. A copy of that decision shall be mailed or otherwise furnished to the aggrieved party and shall state the reasons for the action taken.~~

~~(c) — In the event a protest is filed in a timely manner under this Section, the corporation shall not proceed further with the solicitation or award which is the subject of the protest until it has issued a decision on the protest, or determined that continuation of the procurement is necessary to protect a substantial interest of the corporation.~~

~~Section 6.2. Debarment and Suspension.~~

~~(a) After reasonable notice to the person involved and reasonable opportunity for that person to be heard, the corporation may debar a person for cause from consideration for award of construction management contracts. The debarment shall not be for a period of more than three years. The Corporation may suspend a person from consideration for award of such contracts if there is probable cause for debarment. The suspension shall not be for a period exceeding three months.~~

~~(b) The causes for debarment or suspension include the following:~~

~~(i) conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or sub contract, or in the performance of such contract or sub contract;~~

~~(ii) Conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a construction manager for the Corporation;~~

~~(iii) Conviction under State or federal antitrust statutes arising out of the submission of bids or proposals;~~

~~(iv) Violation of contract provisions, as set forth below, of a character which is regarded by the Corporation to be so serious as to justify debarment action;~~

~~(v) Deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in a contract; or~~

~~(vi) A recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts; provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment;~~

~~(vii) Any other cause the Corporation determines to be so serious and compelling as to affect responsibility as a construction manager, including debarment by a governmental entity.~~

~~(c) The corporation shall issue a written decision to debar or suspend. The decision shall:~~

~~(i) state the reasons for the action taken; and~~

~~(ii) Inform the debarred or suspended person involved of its rights to judicial review.~~

~~(d) A copy of the decision under Subsection (3) of this Section shall be mailed or otherwise furnished immediately to the debarred or suspended person and any other party intervening.~~

~~Section 6.3. Prohibiting Business Due to conviction of Certain Acts.~~

~~(a) — Any person, firm, or corporation engaged in the business of collecting and/or disposing of solid waste, which has been convicted of violating any statute relating to bribery, fraud, or bid-rigging in this state or in any other state in this country, shall for a period of three (3) years from the date of conviction, be prohibited from doing business with the Corporation.~~

~~Section 6.4. Contract Disputes.~~

~~(a) Prior to the institution of arbitration concerning any claim or controversy between the Corporation and a construction manager, the Corporation will endeavor to settle or compromise such claim.~~

~~(b) If any claim or controversy under construction management contracts between the Corporation and its construction managers is not resolved by mutual agreement, the corporation shall promptly issue a decision in writing regarding the subject matter of such claim or controversy. A copy of that decision shall be mailed or otherwise furnished to the construction manager. If the Corporation does not issue a written decision within thirty (30) days after written request for a final decision, or within such longer period as might be established by the parties to the contract in writing, then the construction manager may proceed as if an adverse decision had been received from the Corporation.~~

~~Article VTI—Additional Matters~~

~~Section 7.1. Small and Disadvantageous Businesses. The Corporation shall work with the Permanent Joint Committee on Small Business of the General Assembly of the State and with the Small Business Advocacy Council of the State to (1) disseminate information to the small business community about opportunities to contract with the Corporation and (2) to encourage small businesses to bid for~~

~~contracts to be awarded by the Corporation. Special efforts shall be made to solicit interest from small disadvantaged businesses.~~

~~Section 7.2. Firms Doing Business in the Republic of South Africa. In conformity with the policy of divestment established in Section 35-10-12 of the General Laws of the state of Rhode Island, the Corporation shall give preference in its selection of construction managers to persons not doing business in, or with, the Republic of South Africa.~~

~~Section 7.3. Equal Employment opportunity. For all contracts for supplies and services exceeding Ten Thousand Dollars (\$10,000), vendors must comply with the requirements of federal executive order 11246, as amended, and section 28-5.1-10 of the General Levels of the State of Rhode Island. Failure to comply will be considered a Substantial breach of the contract subject to penalties prescribed on regulations administered by the Department of Administration of the State.~~

~~Section 7.4. Conflict of Interest. No member or employee of the corporation shall have any interest, financial or otherwise, direct or indirect, or engage in any activity which is in substantial conflict with the proper discharge of his or her duties as a member or employee of the Corporation.~~

~~Article VIII – Repeal of Rule~~

~~Section 8.1. Repeal of any Prior Rule. Any prior rules of the Corporation for Selecting Construction Managers are repealed.~~

~~Article IX – Effective Date~~

~~Section 9.1. Effective Date. These Rules shall become effective twenty days following the date it is filed with the Secretary of State of the State.~~

~~Section 9.2., Contracts in Effect on Effective Date. These Rules shall not change in any way a contract commitment by the Corporation nor of a vendor to the Corporation which was in existence on the effective date of these Rules.~~