

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

AGENCY: Rhode Island Resource Recovery Corporation
RULE IDENTIFIER: ERLID 4487
REGULATION TITLE: The Rules for the Selection of Architects, Engineers and Consultants
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 “Rules for the Selection of Architects, Engineers and Consultants” identified by ERLID 4487. The purpose of these repeals 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 Architects, Engineers and Consultants" as follows:

~~RULES OF THE RHODE ISLAND SOLID WASTE MANAGEMENT CORPORATION FOR THE SELECTION OF ARCHITECTS, ENGINEERS AND CONSULTANTS~~

~~Article I - General Provisions~~

~~Section 1.1 - Introduction. - Rhode Island General Laws~~

~~§23-19-10(7) gives the Rhode Island Solid Waste Management Corporation ("the Corporation") the power "to engage the services of consultants for rendering professional and technical assistance and advice, and employ architects, engineers ... and such other advisors, consultants and agents as may be necessary in its judgment ...", (emphasis added).~~

~~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) in connection with the procurement of architectural, engineering and consulting services 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.~~

~~"Architectural and engineering services" means those professional services within the scope of practice of architecture, professional engineering, or registered land surveying, or pertaining to construction.~~

~~"Consultant" means any person engaged to give direction or information as regards a particular area of knowledge in which the person is a specialist and/or has expertise.~~

~~Section 1.3 Application of Rules.~~

~~(a) These Rules shall apply to all the expenditures of funds by the Corporation under a contract for architectural, engineering and consultant services, except contracts between the Corporation and the State and contracts between the corporation and political subdivisions of the State or between the corporation and 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 they apply.~~

~~Section 1.4 Procurement Responsibilities Of The corporation. For purposes of these Rules the Executive Director of the corporation shall have all of the authority of the "chief purchasing officer" of the Corporation under Chapter 2 of Title 37 of the General Laws of Rhode Island.~~

~~Section 1.5 Public Access to Procurement Records. Except as otherwise provided for herein all procurement records of the Corporation shall be public record to the extent provided by law.~~

~~Section 1.6 Procurement Decisions of the Corporation. Every determination required by these Rules shall be in writing and based upon written findings of fact by the Corporation. These determinations and written findings shall be retained in an official contract file in the Offices of the Corporation.~~

~~Article II Selection of Architects, Engineers and Consultants~~

~~Section 2.1 General Policy. It shall be the policy of the corporation to publicly announce its requirements for architectural, engineering and consulting services, which are reasonably estimated to exceed twenty thousand dollars (\$20,000), and to negotiate contracts for such professional services on the basis of demonstrated competence and qualifications and at fair and reasonable prices.~~

~~Section 2.2 Annual statement of Qualifications And Performance Data. Architects, engineers and consultants shall be encouraged by the Executive Director to submit to the corporation annually a statement of qualifications and performance data which shall include, but not be limited to the following:~~

~~1 The name of the firm and the location of all of its offices, specifically indicating the principal place of business;⇒~~

~~2 The age of the firm and its average number of employees over the past five years;~~

- 3—— The education, training, and qualifications of members of the firm and key employees;
- 4—— The experience of the firm, reflecting technical capabilities and project experience; and
- 5—— Such other pertinent information as requested by the Executive Director.

~~Section 2.3 Public Announcement Of Needed Architectural Engineering Or Consultant Services.—The Corporation shall give public notice of the need for architectural, engineering or consultant services which are reasonably estimated to exceed twenty thousand dollars (\$20,000). Such public notice shall be published sufficiently in advance of the date when responses must be received in order that interested parties have an adequate opportunity to submit a statement of qualifications and performance data. The notice shall contain a brief statement of the services required, describe the project and specify how a solicitation containing specific information on the project may be obtained. The notice shall be published in a newspaper of general circulation in the State and in such other publications as in the judgment of the Corporation shall be desirable.~~

~~Section 2.4 Solicitation.~~

- ~~(a) A solicitation shall be prepared which describes the corporation's requirements and sets forth the evaluation criteria. It shall be distributed to interested persons.~~
- ~~(b) The solicitation shall describe the criteria to be used in evaluating the statement of qualification and performance data and in the selection of firms. criteria shall include, but are not limited to:
 - ~~(1) competence to perform the services as reflected by technical training and education; general experience; experience in providing the required services; and the qualifications and competence of persons who would be assigned to perform the services;~~
 - ~~(2) ability to perform the services as reflected by workload and the availability of adequate personnel, equipment, and facilities to perform the services expeditiously; and~~
 - ~~(3) past performance as reflected by the evaluation of private persons and officials of other governmental entities that have retained the services of the firm with respect to such factors as control of costs, quality of work, and an ability to meet deadlines.~~~~

~~C.—— For services reasonably estimated to exceed twenty thousand dollars (\$20,000), a bidder's conference shall be held which describes the criteria to be used in evaluating the statement of qualification and performance data and in the selection of firms. The scope of work shall be discussed and further defined at such conference, including on-site visits, if appropriate.~~

~~Section 2.5—— Evaluating of statements of Qualifications and Performance Data~~

The Corporation shall evaluate:

(a) statements that may be submitted in response to the solicitation of, architectural, engineering services or consultant services; and

(b) statements of qualifications and performance data, if their submission is required.

All statements and statements of qualifications and performance data shall be evaluated in light of the criteria set forth in the solicitation for architectural, engineering services or consultant services. The corporation may waive informalities in any statements and statements of qualification and performance data.

~~Section 2.6 Final Selection of Contractors.~~

~~The corporation shall select no more than three (3) firms [or two (2) if only two (2) apply] evaluated as being professionally and technically qualified. The firms selected, if still interested in providing the services, shall make a representative available to the Corporation at such time and place as it shall determine, to provide such further information as it may require.~~

~~The corporation shall negotiate with the highest qualified firm for a contract for architectural, engineering or consultant services for the corporation at compensation which the Corporation determines to be fair and reasonable to the Corporation. In making such determination, the Corporation shall take into account the professional competence of the offerors, the technical merits of the offerors, and the price for which the services are to be rendered. The corporation shall be responsible for the final selection of the providers of architectural, engineering or consultant services.~~

~~Section 2.7 — Contracts Not Exceeding \$20,000. For every contract for architectural, engineering, and consulting services, the fees for which are not reasonably expected to exceed twenty thousand dollars (\$20,000), the Corporation shall be responsible for the final selection of the architectural, engineering and consultant firm. The Corporation shall, however, notify the Department of Administration, the Division of Purchases and the Division of Budget of the State of its selection. The Corporation shall use the criteria set forth in Section 2.4(b) in making such determinations. Each determination shall be justified in writing~~

Article III — Remedies

Section 3.1 — Protest of Solicitation And Award.

(a) Any actual or prospective service provider contractor who is aggrieved in connection with the solicitation or award of any contract under these rules may file a protest with 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 3.2 — 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 contracts contemplated by these Rules. The debarment shall not be for a period of more than three years. The Corporation may suspend a person from consideration for award of contracts if there is probable cause for debarment. The suspension shall not be for a period exceeding three 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 subcontract, or in the performance of such contract or subcontract;

(ii) conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly

~~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:~~

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

~~(b) 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;~~

~~(v) any other cause the Corporation determines to be so serious and compelling as to affect responsibility as a contractor, 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 (c) of this section shall be mailed or otherwise furnished immediately to the debarred or suspended person and any other party intervening.~~

~~Section 3.3 'Resolution of Contract Disputes. _____ If any claim or controversy arising under contracts to which these Rules apply 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 contractor. 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 contractor may proceed as if an adverse decision had been received from the Corporation.~~

~~Article IV _____ Financial Advisor~~

~~Section 4.1 Selection of Financial Advisor. _____ The corporation finds that it is appropriate for it to select a financial advisor to assist it in determining the manner of sale, denominations, maturities, interest rates, redemption dates, premiums and other terms and conditions of its proposed bond or note issues, and to help it maximize its investment earnings, if any.~~

~~Because the Corporation is a small public agency in terms of its volume, the corporation has determined that its appointed financial advisor may be permitted, at the Corporation's option, to act as its underwriter or as part of its underwriting team. Thus, the financial expert selected as financial advisor may be~~

~~expected to perform two functions competently. Below are described the services expected of the corporation's financial advisor.~~

~~A. Expertise~~

~~The financial advisor selected by the Corporation must provide assistance in determining the manner of sale, denominations, maturities, interest rates, redemption dates, redemption premiums and other terms and conditions of a proposed bond or note issue. The financial advisor should be able to suggest credit enhancements, such as letters of credit, bond insurance and guarantees and to assist the Corporation in obtaining these. The financial advisor should be able to assist the corporation in maximizing its investment earnings and should exhibit familiarity with other tax questions. The financial advisor should be able to coordinate the presentation of information to bond rating agencies.~~

~~The Corporation shall review the size and expertise of those organizations seeking the position of financial advisor in order to insure that the service provided will be of the highest quality. Organizations should present evidence of their operating history for the corporation's consideration.~~

~~registrar, paying agent, and financial printers. The financial advisor selected should be able to demonstrate that it can exercise independent judgment in helping to make these selections.~~

~~The Corporation shall allow its financial advisor to participate in its transactions in more than one capacity. For example, its financial advisor can also serve as paying agent if it can be shown that this is beneficial to the Corporation. The Corporation reserves full right to make the appointment of underwriter or underwriters, bond trustee, bond registrar, paying agent and financial printer.~~

~~C. Periodic Review~~

~~The financial advisor will be selected for a term of one (1) year. Each year the Corporation will review the work done by its financial advisor.~~

~~Because the corporation expects its financial advisor to advise it of new programs and new financing techniques and to analyze its existing debt to determine whether savings could be obtained through restructuring, the Corporation shall require its financial advisor to make an annual presentation to its members. At the same time, the corporation will review the work done and the fees charged by the financial advisor following these guidelines. If the authority is satisfied with the work of the financial advisor it shall appoint the existing financial advisor for another one (1) year term.~~

~~Article V - Additional Matters~~

~~Section 5.1 — Small and Disadvantaged 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 Authority for the services to which these Rules apply and (:2) to encourage small businesses to bid for such contracts. Special efforts shall be made to solicit bids and offers from small disadvantaged businesses with the necessary qualifications.~~

~~Section 5.2 — Goods Produced 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 purchasing to companies not doing business in, or with, the Republic of South Africa.~~

~~Section 5.3 — Equal Employment opportunity. — For all contracts for architectural, engineering and consultant services exceeding Ten Thousand Dollars (\$10,000), contractors must comply with the requirements of federal executive order 11246, as amended, and Section 28-5.1-10 of the General Laws. Failure to comply will be considered a substantial breach of the contract subject to penalties prescribed in regulations administered by the Department of Administration of the State.~~

~~Section 5.4 — 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 VI — Repeal of Prior Rule~~

~~Section 6.1 — Repeal of Prior Rule. — Any prior Rules of the Corporation pertaining to the Selection of Architectural, Engineering and Construction Management Services are hereby repealed.~~

~~Article VII — Effective Date~~

~~Section 7.1 — Effective Date. These Rules shall become effective twenty (20) days after the date these Rules are filed with the Secretary of State of the State.~~

~~Section 7.2 — Contracts in Effect on Effective Date. These Rules shall not change in any way a contract commitment by the Corporation or of a contractor to the Corporation which was in existence on the effective date of these Rules.~~