

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

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**AGENCY:** Rhode Island Resource Recovery Corporation

**RULE IDENTIFIER:** ERLID 4488

**REGULATION TITLE:** The Rules for the Procurement of Supplies, Services, Construction, Bond Counsel and Legal Counsel.

**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 4488. 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](mailto: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 Procurement of Supplies, Services, Construction, Bond Counsel and Legal Counsel” as follows:

~~RULES OF THE RHODE ISLAND SOLID WASTE MANAGEMENT CORPORATION FOR THE  
PROCUREMENT OF SUPPLIES, SERVICES, CONSTRUCTION BOND COUNSEL AND LEGAL  
COUNSEL~~

~~SERVICES AND CONSTRUCTION~~

~~Article I – General Provisions~~

~~Section 1.1. Introduction. The Rhode Island Solid Waste Management Corporation (the "Corporation") is authorized and empowered, among other things, for the planning, design, construction, financing, management, ownership, operation, and maintenance of transfer stations, 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 requirements of Chapter 2 of Title 37 of the Rhode Island General Laws (State Purchases), by setting out procedures to insure fair and equitable treatment of all~~

~~persons who deal with the Corporation's procurement system, increase economy, effective competition and provide and maintain the quality, integrity and high ethical standards of 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) "Change order" shall mean a written order of the Corporation or a vendor directing or allowing the vendor to make changes which the changes clause of the contract authorizes the Corporation or vendor to order without the consent of the vendor or the Corporation.~~

~~(4) "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 in the usual course of their job.~~

~~(5) "Contract" shall mean all types of agreements, including orders, for the purchase or disposal of supplies, services, construction or any other items. It shall include awards; contracts of a fixed price, cost, cost-plus-a-fixed fee, or incentive type contract; contracts providing for the issuance of job or task orders. "Contract" shall include supplemental agreements with respect to any of the foregoing. "Contract" does not include any labor contract with employees of the Corporation or employees of any state agency.~~

~~(6) "Contract modification" shall mean any written alteration in the specifications, delivery point, rate of delivery<sup>1</sup> contract period, price, quantity, or other contract provisions of any existing contract, whether accomplished by unilateral action in accordance with a contract provision, or by mutual action of the parties to the contract. It shall include bilateral actions, such as supplemental agreements, and unilateral actions, such as change orders, administrative changes, notices of termination, and notices of the exercise of a contract option.~~

~~(7) "Established catalog price" shall mean the price included in the most current catalog, price list, schedule, or other form that:~~

~~(i) Is regularly maintained by the manufacturer or vendor of an item; and~~

~~(ii) Is either published or otherwise available for inspection by customers; and~~

~~(iii) states prices at which sales are currently or were last made to a significant number of buyers constituting the general buying public for that item; and~~

~~(iv) states prices which are obtained from the most recent industry wide publications and informational journals if any.~~

~~(8) "Evaluated bid price" shall mean the dollar amount of a bid after bid price adjustments are made pursuant to objective measurable criteria, set forth in the invitation for bids, which affect the economy and effectiveness in the operation or use of the product, such as reliability, maintainability, useful life and residual value.~~

~~(9) "Invitation for bids" shall mean all documents, whether attached or incorporated by reference, utilized for soliciting bids in accordance with the procedures set forth in Section 2.1.2 of these Rules.~~

~~(10) "May" shall mean permissive.~~

~~(11) "Negotiation" shall mean contracting by either the method set forth in sections 2.1.3, 2.1.4, and 2.1.5.~~

~~(12) "Person" shall mean any business, individual f organization or group of individuals.~~

~~(13) "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.~~

~~(14) "Public Agency" shall mean the Rhode Island Solid Waste Management Corporation.~~

~~(15) "Request for proposals" shall mean all documents, whether attached or incorporated by reference, utilized for soliciting proposals in accordance with the procedure set forth in sections 2. 1. 3, 2.1.4 , and 2.1.5 of these Rules.~~

~~(16) "Responsible bidder or offeror" shall mean a qualified bidder who has the capability in all respects including financial responsibility to perform fully the contract requirements, and the integrity and reliability which will assure good faith performance.~~

~~(17) "Responsive bidder" shall mean a person who has submitted a bid or proposal which conforms in all material respects to the invitation for bids, so that all bidders may stand on equal footing with respect to the method and timeliness of submission and as the substance of any resulting contract. A bidder who submits a bid based on alternative specifications to those contained in the invitation to bid will be responsive only if, in the judgment of~~

~~the corporation, the alternative specifications meet the performance objectives of the Corporation with respect to the item or service to be purchased and the invitation to bid states that alternative specifications will be considered.~~

~~(18) "Services" shall mean the rendering, by a vendor, of its time and effort rather than the furnishing of a specific end product, other than reports which are merely incidental to the required performance of services. "Services" does not include labor contracts with employees of state agencies.~~

~~(19) "Shall" shall mean imperative.~~

~~(20) "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 principal place of business in the State.~~

~~(21) "State" shall mean the State of Rhode Island and any of its departments or agencies and public agencies.~~

~~(22) "Supplemental agreement" shall mean any contract modification which is accomplished by the mutual action of the parties.~~

~~(23) "Supplies" shall mean all property, including but not limited to leases of real property (other than leases of real property by or to the State), printing and insurance, except land or permanent interest in land.'~~

~~(24) "Vendor" shall mean any person who provides supplies, services, or construction under a contract.~~

#### ~~Section 1.3. Application of Rules.~~

~~(a) These Rules shall apply to all the expenditures of funds by the Corporation under a contract, except contracts 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.~~

~~(e) Notwithstanding anything contained in this Section~~

~~1.3, the "Rules" of the Rhode Island Solid waste Management corporation for the Selection of Architects, Engineers and Consultants" shall govern the selection of architects, engineers and consultants by the corporation and the "Rules of the Rhode Island Solid Waste Management Corporation for the Selection of Construction Managers" shall apply to the selection of construction managers by the Corporation.~~

~~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. . 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 the Office of the Corporation.~~

## ~~Article II Source Selection and Contract Formation~~

### ~~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 as are appropriate for the use of competitive sealed bidding.~~

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

~~(c) Adequate public notice of the invitation for bids shall be given a sufficient time prior to the date set forth therein for the opening of bids. Such notice may include publication in a newspaper of general circulation in the state as determined by the Corporation not less than seven (7) days nor more than twenty one (21) days before the date set for the opening of the bids. The Corporation may make a written determination that the twenty one (21) day limitation needs to be waived. The written determination shall state the reason why 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 in 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 Negotiation.

~~(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.~~

~~(e) 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 an initial offer without discussion would result in fair and reasonable prices, and the request for proposals notifies all offerors of the possibility that award may be made on the basis of the initial offers.~~

#### ~~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 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 corporation determines in writing;~~

~~(i) — That there are no additional funds available from any source so as to permit an award to the lowest responsive and responsible bidder" and~~

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

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

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

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

~~(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.~~

#### ~~2.1.5. Sole Source Procurement and Emergency Procurements.~~

~~(a) A contract may be awarded for a supply, service/ or construction item without competition when the Corporation determined, in writing, that there is only one source for the required supply service, or construction item.~~

~~(b) Notwithstanding any other provision of these Rules, the corporation may make emergency procurements when there exists a threat to public health, welfare or safety under emergency conditions, provided that such emergency procurements shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular vendor shall be included in the contract file.~~

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~~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 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 Corporation shall procure items in any manner it believes reasonable. Where practicable the Corporation shall make inquiries from at least three sources to determine what is a reasonable price. The inquiries 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.~~

~~2.1.7. Waiver of Informalities in Bids and Offers. The Corporation may waive informalities in any bid or offer.~~

#### ~~Section 2.2. Cancellation of Invitation for Bids and Requests for Proposals~~

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

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

~~2.3.1. Determination of Responsibility. (a) A written determination of responsibility of a bidder or offeror shall be made by the Corporation in connection with the award of any contract.~~

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

~~(b) Except as otherwise provided by law<sup>1</sup> information furnished by any bidder or offeror pursuant to this Section 2.3.1 may not be disclosed by the Corporation to any other person without the prior written consent of such person.~~

### ~~2.3.2.—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.~~

### ~~2.3.3. Cost of Pricing Data.~~

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

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

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

~~(b) The Corporation may require vendors to certify cost, or pricing data in connection with any bid, 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, change or modification thereto, the price to the Corporation, including profit or fee, shall be adjusted to exclude any significant sums by which the Corporation finds that such price was increased because the vendor furnished cost or pricing data, 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, established catalog or market prices of commercial items sold in~~

~~substantial quantities to the general public, prices set by law or regulation, or in exceptional cases where the corporation determines that the requirements of this section may be waived by the Corporation, and the reasons for such waiver are stated in writing.~~

#### ~~Section 2.4. Contracts.~~

~~2.4.1. Types of Contracts. The Corporation may enter into any type of contract which will promote the best interests of the corporation subject to the following rules:~~

~~(1) cost plus percentage of cost type contracts shall not be awarded to any person.~~

~~(2) No contract providing for the reimbursement of the vendor's cost plus a fixed fee (herein referred to as a cost reimbursement type contract) shall be awarded to any person unless the Corporation determines that this type of contract is likely to be less costly to the corporation than any other type of contract or that it is impracticable to obtain supplies or services of the kind or quality required except under such a contract.~~

~~(3) Each vendor under a cost reimbursement type contract shall obtain the consent of the Corporation, as provided for in the contract, before entering into:~~

~~(i) A cost reimbursement type sub-contract; or~~

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

~~(4) All cost reimbursement type contracts shall all permit reimbursement only of allowable costs as determined in accordance with cost principles set forth in Article V of these Rules.~~

~~2.4.2.—Approval of Accounting System. Except with respect to firm fixed price type contracts, no contract type shall be used by the corporation unless the Corporation has determined that the proposed vendor's accounting system will permit timely development of all necessary cost data in the form required by the specific contract type contemplated and that the vendor's accounting system is adequate to allocate costs in accordance with generally accepted accounting principles.~~

~~2.4.3. Partial, Progressive and Multiple Awards.~~

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

~~(c) The Corporation may reserve the right to split a contract between two or more responsive and responsible bidders and to make an award for all or only part of the items, services or construction specified in the solicitation if so stated in the invitation to bid or the request for proposal.~~

#### ~~Section 2.5. Inspection of Facilities and Audits of Records.~~

~~(a) The Corporation may inspect the plant or place of business of a vendor or any sub-contract under any contract awarded or to be awarded by the Corporation.~~

~~(b) The Corporation shall be entitled to audit the books and records of a vendor or any sub-vendor under any negotiated contract other than a firm fixed-price type contract, at any time until the period of retention provided for herein expires. Such books and records shall be maintained by the vendor for a period of three (3) years from the date of final payment under the prime contract and by the sub-contractor for a period of three (3) years from the date of final payment under the sub-contract. Section 2.6. Reporting of Anti-Competitive Practices.~~

#### ~~Section 2.6 — Reporting of Anti-Competitive Practices.~~

~~(a) If for any reason the Corporation suspects collusion among bidders or 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 or her designee upon request, notwithstanding any other provision of this Rule.~~

### ~~Article III – Specifications~~

#### ~~Section 3.1. Specifications.~~

~~(a) The Corporation shall establish and maintain, to the extent practicable, standards and specifications approved by the Department of Administration of the State, the U. S. Government, and industry and professional associations, relating to the development and use of purchasing specifications and for the inspection, testing and acceptance of supplies, services<sup>1</sup> and construction not inconsistent with the Rules of the Corporation.~~

~~(b) The Corporation shall develop to the extent practicable "General Conditions" to be used in various types of contracts entered into by the Corporation.~~

~~(c) The Corporation shall from time to time, review those standards and specifications and "General Conditions" which it utilizes with view to conforming such standards, specifications and "General Conditions" to all technical and scientific advances and to reflect changes in the Corporation's requirements and to the extent practicable to maximize competition in the fulfillment of the Corporation's requirements.~~

#### ~~Article IV – Modification and Termination of Contracts~~

~~Section 4.1. Modification Contract. The corporation may require clauses in its contracts to which it is a party permitting changes or modifications by the Corporation.~~

~~Section 4.2. Termination of Contract – Default of Vendor. The Corporation may provide that a contract may be terminated for default of the vendor and may provide for liquidated damages.~~

~~Section 4.3. Termination of Contract – Convenience. The Corporation may provide that contract may be termination for the convenience of the Corporation or the vendor and in such cases shall provide for appropriate adjustments in price including, where applicable, reimbursement for the reasonable value of any non-recurring costs incurred but not amortized in the price of any item, service, or construction delivered under the contract.~~

#### ~~Article V – Cost and Pricing Principles~~

~~Section 5.1. Cost and Pricing principle. Except as otherwise provided by contract the Corporation shall use generally accepted accounting principles:~~

~~(1) As guidelines in the negotiation of:~~

~~(i) Estimated costs for contracts when the absence of open market competition precludes the use of competitive sealed binding;~~

~~(ii) Adjustments for changes or modifications in contract performance requested by the corporation and~~

~~(iii) Settlements of contracts which have been terminated.~~

~~(2) To determine the allow ability of incurred costs for the purposes of reimbursing costs under contract provisions which provide for the reimbursement of costs; and~~

~~(3) As appropriate in any other situation where determinations of the estimated or incurred costs of performing a contract may be required.~~

## ~~Article VI – Dispute Resolution and Debarment~~

### ~~Section 6.1. — Resolution of Protested Solicitation and Award.~~

~~(a) Any actual or prospective bidder, offeror, or vendor who is aggrieved in connection with the solicitation or award of any contract 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 regarding such protest. A copy of that decision shall be mailed or otherwise furnished to the aggrieved party and shall state the reasons for the action taken.~~

~~(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 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 contracts if there is probable cause for debarment. The suspension shall not be for a period exceeding three months.~~

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

~~(1) 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:~~

~~(2) 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 vendor with the Corporation:~~



~~(3) Conviction under state or federal antitrust statutes arising out of the submission of bids or proposals;~~

~~(4) 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:~~

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

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

~~(5) Any other cause the corporation determines to be so serious and compelling as to affect responsibility as a vendor, 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.~~

#### ~~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. Resolution of Contract Disputes.~~

~~(a) Prior to the institution of arbitration or litigation concerning any contract claim or controversy, the Corporation will endeavor to settle or compromise such claim.~~

~~(b) If any claim or controversy 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 vendor. 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 vendor may proceed as if an adverse decision had been received from the Corporation.~~

#### ~~Article VII - Construction contracts~~

~~Section 7.1. Application of Article. This Article XII applies to all construction contracts of the corporation except construction management contracts. (See "Rules of the Rhode Island Solid Waste Management Corporation for the Selection of Construction Managers").~~

~~Section 7.2. Selection of Methods of Management of Construction contracting.~~

~~(a) The Corporation may use any method of management of construction contracting in connection with a Project which it determines to be feasible, including without limitation a construction manager. (See "Rules of the Rhode Island Solid waste Management Corporation for the Selection of Construction Managers").~~

~~(b) The corporation shall include in the central file a written statement setting forth the facts which led to the Corporation to select a particular method of management of construction contracting for each Project.~~

~~Section 7.3. Competitive Sealed Bidding - Bid Security.~~

~~(a) Bidder security shall be required for all competitive sealed bidding for construction contracts when the price is estimated by the Corporation to exceed Twenty-Five Thousand Dollars (\$25,000). Bidder's security shall be a bond provided by a surety company authorized to do business in this state, or the equivalent in cash, in a form satisfactory to the Corporation. Nothing herein prevents the requirement of such bonds on construction contracts under Twenty-Five Thousand Dollars (\$25, 000) when the circumstances warrant.~~

~~(b) Bidder's security shall be in an amount equal to at least five percent (5%) of the amount of the bid.~~

~~(c) When the invitation for bids requires that bidder security be provided, a bid will be rejected for failure to provide such security except where there has been substantial compliance and the bidder takes immediate steps to comply fully.~~

~~(d) After the bids are opened, they shall be irrevocable for the period specified in the invitation for bids, provided, that, if a bidder is permitted to withdraw his, her or its bid before award because of a mistake in the bid as allowed by law or regulation no action shall be had against the bidder or the bidders surety.~~

~~Section 7.4 Contractors bonds. The provisions of 37-12 of the general laws of Rhode Island (Contractors Bonds) shall apply to all construction under these Rules.~~

~~Section 7.5. Contract Clauses and their Administration.~~

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

~~(i) A unilaterally ordered change by the Corporation; or~~

~~(ii) A site condition differing from that indicated in the contract except for turnkey contracts or negotiated contracts when appropriate written findings of fact have been made; or~~

~~(iii) — variation in the estimated quantities in a contract providing for estimated quantities; or~~

~~(iv) — A unilateral suspension of work by the Corporation.~~

~~(b) — All construction contracts expected to exceed Fifty Thousand Dollars (\$50,000) in a price shall also provide that a 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 in other construction contracts.~~

~~(d) In addition, all 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 VIII -Additional Matters~~

~~Section 8.1. 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 8.2. 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 8.3. 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 Laws 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 8.4. 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.~~

~~Section 8.5. Legal Counsel.~~

~~8.5.1. Use of Counsel.~~

~~(a) Before the Corporation arranges for the services of an attorney, it shall determine the following:~~

~~(1) The need for the services required including the scope of the services to be performed;~~

~~(2) That no legal personnel employed by the state on a full-time basis are available to perform such services;~~

~~(3) That funding is available, and the sources from which such funding is to be provided;~~

~~(4) That attorneys to be engaged meet the following minimum requirements:~~

~~(i) Appropriate professional licensing;~~

~~(ii) Competence to perform such services as reflected by formal training and education, general experience and experience in providing the required services and the qualifications and competence of persons who would be assigned to perform the services;~~

~~(iii) Ability to perform the services as reflected by workload and availability of adequate personnel, equipment and facilities to perform the services expeditiously.~~

(b) The attorney shall enter into a letter of engagement with the corporation. The letter of engagement shall state the rate of compensation, the scope of the services to be performed for the compensation and provision for the payment of expenses incurred in connection with legal services. The letter of engagement shall certify that the rate of compensation does not exceed the rate of compensation charged by counsel to his or her preferred public or private clients. A letter of engagement shall not be for more than one (1) year.

8.5.2. ~~Criteria for Selection of Bond Counsel.~~ Historically, it has been necessary for a public body like the corporation to obtain an "approving opinion" of nationally recognized bond counsel regarding the validity of its bonds or notes before it could borrow money on reasonable terms. The following guidelines have been adopted by the Corporation in connection with its selection of bond counsel.

(i) ~~The Corporation shall review the number of attorneys, support staff, and areas of expertise in a law firm in order to assure itself that the firms selected as bond counsel are prepared to perform a wide of work for the Corporation without delay.~~

(ii) ~~In order to assure bond counsel's independence and objectivity, bond counsel shall not represent anyone party to the transaction but shall be hired as an expert to review the entire transaction without bias toward one position or the other. In addition, under no circumstances may bond counsel represent the financial advisor or any underwriter who is a party to the bond issue in the transaction.~~

(iii) ~~The corporation shall review the fee structure of a firm which wishes to become bond counsel. It shall consider whether fees will be charged on an hourly or a fixed basis, whether additional fees will be charge if questions concerning the bond or note issue come up after the closing, and whether a minimum fee will be charge for work done toward transactions which do not close.~~

(iv) ~~The corporation shall consider a firm 's reputation in the financial market as it relates to the interest rate charged for the bonds or notes question.~~

(v) ~~The Corporation shall engage firms whose bond opinions can be issued without the need to associate co-counsel whenever possible. If the Corporation should find it appropriate to hire a firm that is not able to deliver its approving bond opinions alone, the corporation shall require such firm to . demonstrate that the fees charged will not be increased and that no time delays will develop~~

(vi) ~~The Corporation shall consider the proximity of the firms it is considering for bond counsel as it relates to the firm's ability to respond to the requirements of the Corporation.~~

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(vii) ~~Bond Counsel will serve as bond counsel for all note and bond issues relating to a Project until the final closing of the long-term bonds. This appointment will terminate if at any time 1 the Corporation becomes aware of negligence carelessness, recklessness or other wrongdoing on the part of bond counsel. If at any time, the corporation chooses to combine amounts which will go to two or more projects which have different firms acting as bond counsel, the Corporation reserves the right to appoint one firm as bond counsel (either from among the firms which presently are serving as bond counselor a third firm) or to have the two firms serve as co-counsel provided that they can demonstrate that the fees charged will not be increased and that no time delays will develop because of the involvement of two firms.~~

~~(viii) At the completion of each bond or note issuer the Corporation shall review the performance of and fees charged by bond counsel.~~

#### ~~Article IX – Repeal of Rule~~

~~Section 9.1. Renewal of any Prior Rule. Any prior rules of the Corporation for the Procurement of Supplies, Services, Bond Counsel and Legal Counsel are repealed.~~

#### ~~Article X – Effective Date~~

~~Section 10.1. Effective Date. These Rules shall become effective twenty days — following the date it is filed with the Secretary of State of the State.~~

~~Section 10.2. — 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.~~