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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2011

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A N A C T

RELATING TO PUBLIC PROPERTY AND WORKS -- PURCHASING

Introduced By: Senators Bates, Hodgson, P Fogarty, Walaska, and DiPalma

Date Introduced: January 27, 2011

Referred To: Senate Finance

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 37-2-2, 37-2-15 and 37-2-24 of the General Laws in Chapter 37-2  
2 entitled "State Purchases" are hereby amended to read as follows:

3 **37-2-2. General provisions.** -- (a) This chapter shall be liberally construed and applied to  
4 promote its underlying purposes and policies.

5 (b) The underlying purposes and policies of this chapter are to:

6 (1) Simplify, clarify, and modernize the law governing purchasing by the state of Rhode  
7 Island and its local public agencies;

8 (2) Permit the continued development of purchasing policies and practices;

9 (3) Make as consistent as possible the purchasing laws among the various states and  
10 federal funding sources;

11 (4) Provide for increased public confidence in the procedures followed in public  
12 procurement;

13 (5) Insure the fair and equitable treatment of all persons who deal with the procurement  
14 system of the state;

15 (6) Provide increased economy in state and public agency procurement activities by  
16 fostering effective competition;

17 (7) Provide safeguards for the maintenance of a procurement system of quality, integrity  
18 and highest ethical standards; and

19 (8) Ensure that a public agency, acting through its existing internal purchasing function,

1 adheres to the general principles, policies and practices enumerated herein.

2 **37-2-15. Source selection and contract formation -- Statutory provisions.** -- As used  
3 in this chapter unless the context in which they are used clearly requires a different meaning:

4 (1) "Cost-reimbursement contract" shall mean a contract under which the state  
5 reimburses the contractor for those contract costs, within a stated ceiling, which are allowable and  
6 allocable in accordance with cost principles (as provided in section 37-2-43), and a fixed fee, if  
7 any.

8 (2) "Established catalogue price" shall mean the price included in the most current  
9 catalogue, price list, schedule, or other form that:

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

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

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

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

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

20 (4) "Invitation for bids" shall mean all documents, whether attached or incorporated by  
21 reference, utilized for soliciting bids in accordance with the procedures set forth in sections 37-2-  
22 18 and 37-2-18.1.

23 (5) "Request for proposals" shall mean all documents, whether attached or incorporated  
24 by reference, utilized for soliciting proposals in accordance with the procedures set forth in this  
25 chapter.

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

29 To be determined responsible, a prospective contractor must:

30 (i) Have adequate financial resources to perform the contract;

31 (ii) Be able to comply with the required performance schedule, taking into consideration  
32 all existing commercial and governmental business commitments;

33 (iii) Have a satisfactory performance record; a prospective contractor that is or recently  
34 has been seriously deficient in contract performance shall be presumed to be nonresponsible,

1 unless the agency determines that the circumstances were properly beyond the contractor's  
2 control, or that the contractor has taken appropriate corrective action. Past failure to apply  
3 sufficient tenacity and perseverance to perform acceptably is strong evidence of  
4 nonresponsibility. Persistent patterns of the need for costly and burdensome agency assistance or  
5 intervention is strong evidence of nonresponsibility. Failure to meet the quality requirements of  
6 the contract is a significant factor to consider in determining satisfactory performance. The  
7 agency shall consider the number of contracts involved and the extent of deficient performance in  
8 each contract when making this determination;

9 (iv) Have a satisfactory record of integrity and business ethics;

10 (v) Have the necessary organization, experience, accounting and operational controls, and  
11 technical skills;

12 (vi) Have the necessary production, construction, and technical equipment and facilities;

13 and

14 (vii) Be otherwise qualified and eligible to receive an award under applicable laws and  
15 regulations.

16 (7) "Responsive bidder or offeror" shall mean a person who has submitted a bid or offer  
17 which conforms in all material respects to the invitation for bids or proposals, so that all bidders  
18 or offerors may stand on equal footing with respect to the method and timeliness of submission  
19 and as to the substance of any resulting contract.

20 (8) "Request for qualifications" shall mean all documents, whether attached or  
21 incorporated by reference, utilized for soliciting qualifications of offerors prior to or during the  
22 solicitation of bids or proposals.

23 (9) "Reverse Auction" shall mean a bid competition where the lowest responsive and  
24 responsible bidder wins the auction.

25 (10) "Auctioneer" shall mean a business or organization that conducts an electronic  
26 reverse auction.

27 **37-2-24. Responsibilities of bidders and offerors.** -- (a) A written determination of  
28 responsibility of a bidder or offeror shall be made and it shall be made in accordance with  
29 subdivision 37-2-15(6) and with regulations issued by the chief purchasing officer.

30 (b) A reasonable inquiry to determine the financial strength and responsibility of a  
31 business which is a bidder or offeror shall be conducted. Ability to meet performance and labor  
32 and material bond requirements set forth in sections 37-12 and 37-13 shall not be the sole criteria  
33 for determination of financial responsibility; reasonable inquiry shall include any information  
34 sufficient to establish whether the prospective contractor meets the applicable standards in

1 [subdivision 37-2-15\(6\)](#). The failure of a bidder or offeror to promptly supply information in  
2 connection with the inquiry, including, but not limited to, financial statements and business  
3 references, shall be grounds for a determination of nonresponsibility with respect to that bidder or  
4 offeror. [A prospective contractor must affirmatively demonstrate its responsibility; in the absence  
5 of information clearly indicating that the prospective contractor is responsible, the agency shall  
6 make a determination of nonresponsibility.](#)

7 (c) Said financial analysis may include the review of the business by a nationally  
8 recognized commercial credit reporting bureau. A consistent policy for ordering credit bureau  
9 reports shall be developed and approved by the chief purchasing officer.

10 (d) Except as otherwise provided by law, information furnished by a bidder or offeror  
11 pursuant to this section may not be disclosed outside of the division of state purchasing or the  
12 purchasing agency administering the contract without prior written consent of the bidder or  
13 offeror.

14 SECTION 2. This act shall take effect upon passage.

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EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF  
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1           This act would require that state purchasing laws become consistent with the  
2 requirements of federal funding sources and that the state contracts would be awarded on the  
3 basis of specific standards of responsibility.

4           This act would take effect upon passage.

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