

2011 -- S 0624

LC02023

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2011

A N A C T

RELATING TO PUBLIC PROPERTY AND WORKS - STATE PURCHASES

Introduced By: Senators Bates, and P Fogarty

Date Introduced: March 10, 2011

Referred To: Senate Finance

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 37-2-2, 37-2-15, 37-2-24 and 37-2-26 of the General Laws in
2 Chapter 37-2 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 responsible** bidder or offeror
27 who has the capability in all respects, including financial responsibility, to perform fully the
28 contract 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 on time and on budget; and

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

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 non-responsible,

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 evidence of non-responsibility. The
4 need for costly and burdensome agency assistance or intervention is evidence of non-
5 responsibility. Failure to meet the quality requirements of the contract is a significant factor to
6 consider in determining satisfactory performance. The agency shall consider the number of
7 contracts involved and the extent of deficient performance in each contract when evaluating a
8 contractor's performance record; and

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

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

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 other 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 chapters 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, audited financial statements for projects
3 costing five hundred thousand dollars (\$500,000) or more, financial statements for projects
4 costing less than five hundred thousand dollars (\$500,000) and reliable business references, shall
5 be grounds for a determination of ~~nonresponsibility~~ non-responsibility with respect to that bidder
6 or offeror. A prospective contractor must affirmatively demonstrate its responsibility; in the
7 absence of information clearly indicating that the prospective contractor is responsible, the
8 agency shall make a determination of non-responsibility.

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

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

16 **37-2-26. Prequalification of contractors -- Roads -- Department of transportation. --**

17 Prequalification for a contractor who bids on ~~road-work~~ transportation projects for the department
18 of transportation shall be as follows:

19 (1) Determined to be a responsible bidder or offeror as defined in subdivision 37-2-15(6).

20 ~~(4)~~(2) A list of equipment in his or her possession and which he or she proposes to use
21 on the contract if awarded to him or her.

22 ~~(2)~~(3) The name and qualifications of his or her superintendent or supervisory personnel
23 to be assigned to the major features of the work.

24 ~~(3)~~(4) His or her financial references and an original copy of his or her current financial
25 statement.

26 ~~(4)~~(5) (i) The successful contractor is required to submit to the Rhode Island department
27 of transportation for approval, executed contract agreement(s) between the contractor and the
28 qualified DBE to be utilized during the performance of the work.

29 (ii) Prior to submitting the above, any subcontractor and/or supplier must first receive
30 subcontract approval by the Rhode Island department of transportation.

31 ~~(5)~~(6) (i) Provide the number of proposed trainees to be trained in each classification and
32 training programs as stated in the required contract provisions for federal aid projects (training
33 special provisions page 15 par. 3).

34 (ii) The above requirement will be submitted to the Rhode Island department of

1 transportation external equal employment opportunity office for approval.

2 ~~(6)~~ (7) The name of the individual who will act as the equal employment opportunity
3 officer for this company.

4 ~~(7)~~ (8) Four (4) copies on the company's letterhead of certification of nondiscrimination
5 in equal employment opportunity.

6 ~~(8)~~ (9) The successful contractor shall provide the names of proposed subcontractors and
7 the phase and extent of the work which they will perform. If any have not performed similar work
8 for this state, supply experience records for similar types of work performed elsewhere.

9 ~~(9)~~ (10) Copies of letters directly from the contractor's bonding and insurance companies
10 indicating their willingness to furnish the required bonds and insurance.

11 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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