

2010 -- S 2442

LC00147

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2010

A N A C T

RELATING TO PUBLIC PROPERTY AND WORKS -- STATE PURCHASES

Introduced By: Senators Ciccone, Lenihan, Sheehan, Pinga, and Blais

Date Introduced: February 11, 2010

Referred To: Senate Government Oversight

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 37-2-18 of the General Laws in Chapter 37-2 entitled "State
2 Purchases" is hereby amended to read as follows:

3 **37-2-18. Competitive sealed bidding.** -- (a) Contracts exceeding the amount provided by
4 section 37-2-22 shall be awarded by competitive sealed bidding unless it is determined in writing
5 that this method is not practicable or that the best value for the state may be obtained by using an
6 electronic reverse auction as set forth in section 37-2-18.1. Factors to be considered in
7 determining whether competitive sealed bidding is practicable shall include whether:

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

10 (2) The available sources, the time and place of performance, and other relevant
11 circumstances as are appropriate for the use of competitive sealed bidding.

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

15 The invitation for bids shall state that each bidder must submit a copy of their bid proposal to be
16 available for public inspection upon the opening of the bids. The burden to identify and withhold
17 trade secrets, commercial or financial information, or other information not subject to public
18 disclosure pursuant to chapter 38-2, the Access to Public Records Act, from the public copy shall
19 rest with the bidder submitting the bid proposal.

1 (c) Unless the invitations for bid are accessible under the provisions as provided in
2 section 37-2-17.1, public notice of the invitation for bids shall be given a sufficient time prior to
3 the date set forth therein for the opening of bids. Public notice may include publication in a
4 newspaper of general circulation in the state as determined by the purchasing agent not less than
5 seven (7) days nor more than twenty-eight (28) days before the date set for the opening of the
6 bids. The purchasing agent may make a written determination that the twenty-eight (28) day
7 limitation needs to be waived. The written determination shall state the reason why the twenty-
8 eight (28) day limitation is being waived and shall state the number of days, giving a minimum
9 and maximum, before the date set for the opening of bids when public notice is to be given.

10 (d) Bids shall be opened and read aloud publicly at the time and place designated in the
11 invitation for bids. Each bid, together with the name of the bidder, shall be recorded and an
12 abstract made available for public inspection.

13 (e) Immediately subsequent to the opening of the bids, the copies of bid documents
14 submitted pursuant to subsection 27-2-18(b) shall be made available for inspection by the public.
15 Any objection to any bid on the grounds that it is nonresponsive to the invitation for bids must be
16 filed with the purchasing agent within five (5) business days of the opening of the bids. The
17 purchasing agent shall issue a written determination as to whether the subject bid is
18 nonresponsive addressing each assertion in the objection and shall provide a copy of the
19 determination to the objector and all those who submitted bids at least seven (7) business days
20 prior to the award of the contract. The requirements set forth in an invitation to bid are
21 mandatory. If a bid is nonresponsive to the requirements in the invitation to bid, the bid is invalid
22 and the purchasing agent shall reject the bid. The purchasing agent shall have no discretion to
23 waive any requirements in the invitation to bid. Nothing in this section shall be construed to
24 interfere with or invalidate the results of the due diligence conducted by the division of
25 purchasing to determine whether bids are responsive and responsible.

26 (f) Subsequent to the awarding of the bid, all documents pertinent to the awarding of the
27 bid that were not made public pursuant to subsection 37-2-18(e) shall be made available and open
28 to public inspection, pursuant to chapter 38-2, the Access to Public Records Act, and retained in
29 the bid file.

30 ~~(e)~~ (g) The contract shall be awarded with reasonable promptness by written notice to the
31 responsive and responsible bidder whose bid is either the lowest bid price, lowest evaluated, or
32 responsive bid price.

33 ~~(f)~~ (h) Correction or withdrawal of bids may be allowed only to the extent permitted by
34 regulations issued by the chief purchasing officer.

1 SECTION 2. This act shall take effect on January 1, 2011 for all contracts greater than
2 one million dollars (\$1,000,000); on January 1, 2012 for all contracts greater than five hundred
3 thousand dollars (\$500,000); and on January 1, 2013 for all contracts awarded pursuant to this
4 section.

=====
LC00147
=====

EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T
RELATING TO PUBLIC PROPERTY AND WORKS -- STATE PURCHASES

1 This act would amend certain provisions relative to the competitive sealed bidding
2 process.

3 This act would take effect on January 1, 2011 for all contracts greater than one million
4 dollars (\$1,000,000); on January 1, 2012 for all contracts greater than five hundred thousand
5 dollars (\$500,000); and on January 1, 2013 for all contracts awarded pursuant to this section.

=====
LC00147
=====