

**RHODE ISLAND TURNPIKE AND  
BRIDGE AUTHORITY**

**Procurement Rules**

Adopted: December 13, 2000

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## SECTION 1 - DEFINITIONS

For the purposes of these Procurement Rules, the following words and terms shall have the following meanings:

"Architect" shall mean a person who, under the provisions of Section 5-1-2 of the General Laws of Rhode Island, by reason of his knowledge of the mathematical and physical sciences, and the principles of architecture and architectural design, acquired by professional education, practical experience, or both, is qualified to engage in the practice of architecture as attested by his licensing as an architect in this State. [37-2-7(26)]

"Benefits" shall mean monies or gifts provided by RITBA, to the extent permitted by law, to or on behalf of individuals or entities, the distribution of which may not be prescribed by statute, regulation, or program provisions.

"Bid" shall mean an executed document submitted by a bidder in response to an Invitation for Bids or a Request for Quotation.

(a) "firm bid" shall mean a bid that binds the bidder until a stipulated time of expiration.

(b) "sealed bid" shall mean a bid which has been submitted in a sealed envelope to prevent its contents from being revealed or known before the deadline for the submission of all bids to enhance fair competition.

"Bid Abstract" shall mean a summary of responsive bids to a solicitation.

"Bid Bond" shall mean an insurance agreement in which a third party agrees to be liable to pay a certain amount of money in the event that a specific bidder, if his bid is accepted, failed to accept the contract as bid.

"Bid Opening" shall mean the process through which bids are opened and the contents revealed for the first time to RITBA, other bidders and to the public.

"Bid Registration" shall mean the process by which respective bidders register with the RITBA Purchasing Agent.

"Bid Security" shall mean a sum of money or check deposited with and as instructed by the prospective purchaser to guarantee that the bidder (depositor) will, if selected, accept the contract in accordance with the bid.

"Bidder" shall mean any person submitting a competitive bid in response to a solicitation.

"Business" shall mean any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or other legal entity through which business is conducted. [37-2-7(1)]

"Change order" shall mean a written order signed by the RITBA Executive Director or the contractor directing or allowing the contractor to make changes which the changes clause of the contract authorizes the RITBA Executive Director or contractor to order without the consent of the contractor or RITBA Executive Director. [37-2-7(2)]

"Commodity" shall mean an article of trade, a movable article of value, something that is bought or sold; any movable or tangible thing that is produced or used as the subject of barter or sale.

"Competition" shall mean the process by which two or more vendors vie to secure the business of a purchaser by offering the most favorable terms as to price, quality, delivery and/or service.

"Competitive bidder/offeree" shall mean responsible and responsive bidder or offeror.

"Construction" shall mean the process of building, altering, repairing, improving or demolishing any public structures or building, or other public improvements of any kind to any public real property. It does not include the routine maintenance or repair of existing structures, buildings, or real property performed by salaried employees of the State or the RITBA in the usual course of their jobs. [37-2-7(4)]

"Consultant" shall mean any person with whom RITBA has a contract which contract provides for the person to give direction or information as regards a particular area of knowledge in which the person is a specialist and/or has expertise.

"Contract" shall mean all types of agreements, including grants and 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; contracts providing for the issuance of job or task orders, leases, letter contracts, purchase orders and construction management contracts. It also includes supplemental agreements with respect to any of the foregoing. With respect to the procurement regulations set forth herein, "contract" shall not apply to labor contracts with employees of RITBA. [37-2-7(5)]

"Contract Modification" shall mean any written alteration in the specifications, delivery point, rate of delivery, 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 change orders, administrative changes, notices of termination, and notices of the exercise of a contract option. [37-2-7(6)]

"Contractor" shall mean any person having a contract with RITBA. [37-2-7(7)]

"Data" shall mean recorded information, regardless of form or character. [37-2-7(8)]

"Designee" shall mean a duly authorized representative of a person holding a superior position. [37-2-7(9)]

"Employee" shall mean an individual drawing a salary from RITBA, whether elected or not, and any nonsalaried individual performing personal services for RITBA. [37-2-7(10)]

"Engineer" shall mean a person who, under the provisions of Section 5-8-2 of the General Laws of Rhode Island, by reason of his special knowledge and use of the mathematical, physical and engineering sciences and the principles and methods of engineering analysis and design, acquired by engineering education and engineering experience, is qualified to practice engineering, as hereinafter defined, and as attested by his registration as an engineer. [37-2-7(26)]

"Entitlements" shall mean monies or gifts provided by RITBA, to the extent permitted by law, as part of subsidy programs for which the distribution of funds is determined in accordance with specific eligibility criteria or by formula. Examples include but shall not be limited to: food stamps, general public assistance, medical assistance payments, and school aid formula funds.

"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. [37-2-15(3)]

"Governmental body" shall mean any department, commission, council, board, bureau, committee, institution, legislative body, agency, government corporation, including, without limitation, the Board of Governors for Higher Education and Board of Regents - Elementary and Secondary Education or other establishment of the executive, legislative, or judicial branch of the State. [37-2-7(11)]

"Grants" shall mean monies provided by RITBA, to the extent permitted by law, to or on behalf of individuals or entities to underwrite specific costs of services or programs. Although grants may be distributed for specific purposes, payment is not based upon supply of specific units of service or products.

"Independent contractor" shall mean a person (individual or firm) who, in various degrees and/or combinations:

- (i) is available to the general public on a regular and consistent basis;
- (ii) is free to work when and for whom he/she pleases;

- (iii) is employed by more than one person or company at a time;
- (iv) makes a significant investment in facilities not typically maintained by an employee; and
- (v) can realize a profit or loss as a result of providing services or products.

"Invitation for Bids" shall mean all documents, whether attached or incorporated by reference, utilized for soliciting proposals in accordance with the procedures set forth in Section 37-2-18 of the State Purchases Act. [37-2-15(4)]

"May" shall mean permissive. [37-2-7(12)]

"MBE" or "Minority Business Enterprise" shall mean a small business concern, owned and controlled by one or more minorities or women certified by the Rhode Island Department of Economic Development to meet the definition established by Chapter 37-14.1 of the General Laws of Rhode Island.

"Negotiation" shall mean contracting by the provisions set forth in sections 37-2-19, 37-2-20, and 37-2-21 of the State Purchases Act. These sections refer to competitive negotiation, noncompetitive negotiation, sole source, single source and emergency procurements, respectively. [37-2-7(13)]

"Negotiation" shall also mean the process of establishing contractual provisions and of gaining contractual acceptance, other than solely as the result of normal competitive bidding (described elsewhere herein). For the purpose of this definition, two distinct categories of negotiation shall be recognized:

- (a) "Competitive negotiation" shall mean a specialized bidding procedure characterized by modifications to the offers of at least two vendors and/or alteration of the specifications for which, or the terms and conditions under which, RITBA has solicited offers.
- (b) "Noncompetitive negotiation" shall mean the establishment of contractual terms and conditions, including but not limited to contract price, by discussions with a single vendor, outside of the procedures established for competitive bidding.

"Offeror" shall mean an individual who proposes a specific offer to sell goods and services to RITBA, whether in response to a bid or request for proposals or unsolicited.

"Person" shall mean any business, individual, organization or group of individuals. [37-2-7(14)]

"Personal services" shall mean services provided by persons who are paid directly by RITBA but are not on the RITBA payroll.

"Practice of Engineering" shall mean any service or creative work, the adequate performance of which requires engineering education, training and experience in the application of special knowledge of the mathematical, physical and engineering sciences to such services or creative work as consultation, investigation, evaluation surveys, planning and design of engineering systems, and the supervision of construction for the purpose of assuring compliance with specifications; and embracing those services or work in connection with any public or private utilities, structures, buildings, machines, equipment, processes, work, or projects wherein the public welfare or the safeguarding of life, health, or property is involved or concerned, and including such architectural work as is incidental to the practice of engineering. [5-8-2]

"Prime contractor" shall mean a contractor who engages subcontractors in the course of satisfying the requirements of fulfilling a contract.

"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 contracts, and all phases of contract administration. [37-2-7(15)]

"Professional Consultant" shall mean an individual or a firm which is a specialist and/or has the expertise, as demonstrated by the possession of appropriate professional licensing, certification, and/or experience, necessary to give advice, direction or information regarding that particular area of knowledge.

Consultant services shall be characterized by research and analysis, recommended courses of action, identification of priorities, and unspecified outcomes. Examples of professional consultations include:

- (i) systems analysis (computer, personnel, management review);
- (ii) program analysis (medical program planning); and
- (iii) policy recommendations (abandonment or adoption of programs, establishment of decision criteria).

"Professional Service Provider" shall mean an independent contractor who is a specialist and/or has the expertise, as demonstrated by professional licensing or certification and experience, necessary to carry out tasks regarding that particular field of expertise.

Professional services shall be characterized by specific activities and/or the attainment of measurable outcomes. Examples of professional services include:

- (i) legal representation in litigation and administrative advice (interpretation of law, contracts, etc.);
- (ii) computer programming;
- (iii) construction management; and
- (iv) arbitration.

"Proprietary Information" shall mean information or data describing technical processes, mechanisms, or operational factors that a business wishes to keep from general public view in order to maintain competitive capabilities in the market.

"Protest" shall mean a complaint about a governmental action or decision brought by a prospective bidder, a bidder, a contractor, or other interested party to the appropriate administrative section with the intention of achieving a remedial result.

"Public Agency" shall be defined as set forth in Section 37-2-7(16) of the State Purchases Act. [37-2-7(16)]

"Public works contract" shall mean a contract for grading, clearing, demolition, improvement, completion, repair, alteration or construction of any public road or any bridge, or portion thereof, or any public building or portion thereof, or any heavy constructions, or any public works projects of any nature or kind whatsoever. [37-13-1]

"Public Works Contractor" shall mean a contractor, in accordance with Section 37-12-1 of the General Laws of Rhode Island

"Purchase of Services" shall mean monies expended for the provision of specific units of time and effort rather than an end product.

"Purchase Order" shall mean a document issued by the RITBA Purchasing Agent to formalize a purchase transaction with a vendor. The purchase order shall contain statements as to the quantity, description, and price of the goods or services ordered, applicable terms as to payment, discounts, date of performance, transportation, and other factors or suitable references pertinent to the purchase and execution by the vendor. Purchase orders shall include blanket orders, master pricing agreements, and utility purchase orders.

"Purchase Requisition" shall mean a document whereby RITBA requests that a contract be entered into to obtain goods and/or services for a specified need, and may include, but is not limited to, the technical description of the requested item, delivery requirements, transportation mode request, criteria for

evaluation of proposals, and/or suggested sources of supply, and information supplied for the making of any written determination and finding required by Section 37-2-6 of the State Purchases Act.

A "purchase requisition" shall also mean an internal document by which RITBA initiates a procurement. The request may include, but is not limited to, a performance or technical description of the requested item, delivery schedule, transportation mode, criteria for evaluation, suggested sources of supply, and information related to the making of any written determination required by policy or procedure. [37-2-7(17)]

"Purchasing Agent" shall mean that person appointed as the purchasing agent pursuant to Section 37-2-7(19) and Section 3.1.2 of these Rules.

"Qualified Bidder" shall mean a bidder determined by the RITBA Purchasing Agent to meet standards of business competence, reputation, financial ability, and product quality.

"Reimbursement" shall mean monies paid to a beneficiary, client, or claimant to make restoration for expenses such person has undertaken.

"Request for Proposal (RFP)" shall mean all documents, whether attached or incorporated by reference, utilized for soliciting competitive proposals. [37-2-15(5)]

"Request for Quotation (RFQ)" shall mean a document or oral solicitation used for seeking competition on small purchases or on any purchase lower than the amount that requires competitive bidding.

"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. [37-2-15(6)]

"Responsive Bidder" shall mean a person who has submitted a bid under Section 37-2-18 of the State Purchases Act 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 to the substance of any resulting contract.

A "responsive bidder" shall also mean a person who has submitted a bid which conforms in all material respects to the terms and conditions, specifications and any other requirements of the Bid Invitation. [37-2-15(7)]

"RITBA Bidders List" shall mean a list maintained by the RITBA Purchasing Agent containing the names and addresses of suppliers of various goods and services from whom bids, proposals, and quotations can be solicited.

"Services" shall mean the rendering, by a contractor, 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 the RITBA or of State agencies. [37-2-7(20)]

"Shall" shall mean imperative. [37-2-7(21)]

"Solicitation" shall mean the process of notifying prospective bidders or offerors that RITBA wishes to receive bids for furnishing goods and services. The process may consist of public advertising, mailing Invitations to Bid, posting notices, and/or telephone or telegraph messages to prospective bidders.

"Source Selection" shall mean the technique of appropriate selection by solicitation, e.g., competitive sealed bidding, multi-step competitive sealed bidding, competitive negotiation, small purchase procedure, sole source or emergency purchase.

"Special Services" shall mean services which RITBA deems necessary or desirable to purchase provided by individuals or firms possessing special knowledge or skills for which formal licensing or certification is not necessarily required. Examples of special services include:

- (i) expert witness testimony;
- (ii) art;
- (iii) interpretation (languages, deaf);
- (iv) public information;
- (v) stenographic services; and
- (vi) training.

"Specification" shall mean a description of what RITBA seeks to buy, and consequently, what a bidder must be responsive to in order to be considered for award of a contract. A specification may be a description of the physical or functional characteristics, or the nature of, a supply or service. It may include a description of any requirements for inspecting, testing, or preparing a supply or service item for delivery; a purchase description.

["Spot Purchase" shall mean a one-time purchase occasioned by a small requirement, an unusual circumstance, or to take advantage of a favorable market condition.]

"Standard" shall mean a characteristic or set of characteristics for an item that, for reasons of performance level, compatibility or interchangeability with other products, etc., is generally accepted by producers and by users of the item as a required characteristic of all items for the designed purpose.

"State agency" shall mean any state governmental body other than the General Assembly or public body as defined herein.

"State Purchasing Agent" shall mean the person appointed in accordance with Section 1 of the State Purchases Act as the administrator of the State's central purchasing and contracting authority.

"State" shall mean the State of Rhode Island and any of its departments or agencies and public agencies. [37-2-7(22)]

"State Bidders List" shall mean lists maintained by the State's Purchasing Agent containing the names and addresses of suppliers of various goods and services from whom bids, proposals and quotations may be solicited.

"Subcontractor" shall mean any person undertaking part of the work under the terms of the contract, by virtue of an agreement with the prime contractor, who, prior to such undertaking, receives in writing the consent and approval of RITBA.

"Subsidies" shall mean monies provided by RITBA, to the extent permitted by law, to or on behalf of individuals or entities to assist in defraying general expenses.

"Supplemental Agreement" shall mean any contract modification which is accomplished by the mutual action of the parties. [37-2-7(23)]

"Supplemental Services" shall mean all services performed in a capacity which supplements the basic staffing of RITBA.

"Supplier" shall mean an actual or potential contractor; a vendor.

"Supplies" shall mean all property, including but not limited to leases of real property, printing and insurance, except land or permanent interest in land. [37-2-7(24)]

"Vendor" shall mean a supplier or contractor.

## SECTION 2 - GENERAL PROVISIONS

### 2.1 PURPOSES AND POLICIES

#### 2.1.1 Administrative Practices and Policies

##### 2.1.1.1 Underlying Purposes.

2.1.1.1.1 To simplify, clarify, and modernize purchasing activities undertaken by the RITBA;

2.1.1.1.2 To permit the continuous development of purchasing policies and practices;

2.1.1.1.3 To provide for increased public confidence in the procedures followed in public procurement;

2.1.1.1.4 To insure fair and equitable treatment of all persons who deal with the procurement system of the RITBA;

2.1.1.1.5 To provide increased economy in RITBA procurement activities by fostering effective competition;

2.1.1.1.6 To provide safeguards for the maintenance of a procurement system of quality, integrity and the highest ethical standards; and

2.1.1.1.7 To provide for clearly defined accountability and responsibility for procurement actions.

2.1.1.2 Competition - RITBA will operate an effective procurement system by obtaining goods and services within a competitive environment whenever possible. The primary method of assuring that procurements are to the advantage of RITBA will be the use of competitive bidding procedures.

2.1.1.3 Responsibility and Accountability - All RITBA officials shall be responsible for compliance with purchasing legislation enacted by the Rhode Island General Assembly and with all related policies, rules, regulations, procedures and codes promulgated by the State Chief Purchasing Officer to the extent applicable and shall be held accountable for violations of the spirit, intent and letter of these governing requirements. All RITBA

employees shall be responsible for carrying out their designated functions with care, integrity and a sense of responsibility to the taxpayers of Rhode Island for providing public services in the most cost-effective manner possible.

## 2.2 APPLICATION OF STATE PURCHASES ACT

2.2.1 Expenditure of Public Funds under any Contract. In accordance with Section 37-2-4 of the General Laws of Rhode Island, Chapter 2 of Title 37 of the General Laws of Rhode Island (the "State Purchases Act") shall apply to every expenditure of public funds, except as otherwise provided by law, by RITBA under any contract or like business agreement, excepting only those contracts or like business agreements between RITBA and the State or its political subdivisions or other governments. It shall also apply to the disposal of RITBA supplies. Nothing in the State Purchases Act or in the regulations promulgated thereunder shall prevent RITBA from complying with the terms and conditions of any grant or funding, including without limitation, any grant or funding from or through the Federal Highway Administration or any state agency, or any gift, bequest or co-operative agreement.

### 2.2.2 Option to Make Purchases Internally or through State Central Purchasing Authority

2.2.2.1 [37-2-12] Internal Adherence - RITBA does not have to utilize the State Central Purchasing Authority, but RITBA, through its existing internal purchasing functions, shall adhere to the general principles, policies and practices set forth in the State Purchases Act.

2.2.2.2 Use of State Central Purchasing Authority - RITBA may utilize the State Central Purchasing Authority as a procurement agency provided that such activity is conducted in accordance with all purchasing policies, procedures and regulations promulgated by the State Chief Purchasing Officer.

2.2.2.3 Assignment - Nothing contained in these Procurement Rules shall prevent RITBA from accepting assignment of any contract from the State of Rhode Island, any of its departments, including without limitation the Rhode Island Department of Transportation or any other entity; provided, however, that any such contract shall have been awarded in accordance with the requirements of the State Purchases Act.

## 2.3 DOCUMENTATION AND REPORTS

### 2.3.1 Purchase Reports

2.3.1.1 [37-2-54(i)] Records of Purchases and Sales - RITBA shall maintain records of all purchases and sales made under its authority.

2.3.1.2 [37-2-54(i)] Records of Trends in Costs and Prices - RITBA shall also maintain records of trends in costs and prices, including savings realized through improved practices.

#### 2.3.1.3 Sole Source, Emergency and Small Purchases -

2.3.1.3.1 [37-2-37] Retention and Inspection of Sole Source, Emergency and Small Purchases Records - A summary shall be compiled annually by the purchasing agent, within ninety (90) days following the close of the fiscal year of sole source, emergency and small purchases during the preceding fiscal year. The summary shall:

(1) Name each contractor; and

(2) State the amount and type of each contract.

All documentation of contracts made for sole source, emergency and small purchase procurements shall be retained for a period of five (5) years and made available for public inspection.

2.3.2 Adequacy of Written Records. Adequate written records shall be maintained in RITBA's purchasing files to document procurement activities, reasons for selection of the supplier's product and justification of price.

2.3.2.1 Source Selection and Pricing - At a minimum, documentation shall include adequate justification of source selection and pricing.

2.3.2.2 Extent May Vary - The extent of documentation may vary with RITBA needs and requirements and the value and complexity of the purchase.

2.3.2.3 Audit Trail Requirement - RITBA procurement officials shall be required to provide an "audit trail" for every purchase. Such documentation shall be

recorded and maintained in accordance with procedures established by the RITBA Purchasing Agent. RITBA purchasing personnel shall document and maintain records of all actions with respect to a purchase for the purpose of:

2.3.2.3.1 providing background information to assure that informed decisions are made at each step in a procurement;

2.3.2.3.2 rationale for action taken;

2.3.2.3.3 providing information for reviews and audits conducted by RITBA purchasing management and audit agencies; and

2.3.2.3.4 furnishing facts in the event of litigation.

2.3.3 Documentation Signed or Initialed. Purchasing documentation shall be signed or initialed (as appropriate) by duly authorized RITBA officials. Such signature or initialing shall constitute certification by the official that the action documented meets the administrative requirements for which he or she is responsible.

2.3.4 Form of Documentation. Documentation records may be in the form of copies, microfilms, computer files or other means permitted in accordance with procedures established and published by the State Chief Purchasing Officer or shall be original documents as required by law or the State Controller.

2.3.5 Audit of contractors' records

2.3.5.1 [37-2-34(b)] RITBA may audit the books and records of any person who has submitted cost or pricing data for certain negotiated contracts or change orders at any time until the period of record retention as set forth in Section 37-2-34(c) shall have expired. The right to audit hereunder shall only extend to those books and records reasonably connected with cost or pricing data submitted in accordance with Section 37-2-27.

2.3.5.1.1 "Certain negotiated contracts or change orders" shall mean negotiated contracts exceeding fifty thousand dollars (\$50,000) and negotiated change orders exceeding twenty five thousand dollars (\$25,000).

2.3.5.2 [37-2-34(c)] RITBA may audit the books and records of a contractor or any subcontractor under any negotiated contract or subcontract other than

a firm fixed-price type contract, provided, however, that this subsection shall not limit the right to audit as set forth in subsection (b) of Section 37-2-34.

2.3.5.3 [37-2-34(b) and (c)] Such books and records shall be maintained by the contractor for a period of three (3) years from the date of final payment under the prime contract and by the subcontractor for a period of three (3) years from the date of the final payment under the subcontract.

2.3.6 [37-2-36(b)] Documents Relating to Collusion. All documents involved in any procurement in which collusion is suspected shall be retained until the Attorney General gives notice that they may be released, and all such documents shall be made available to the Attorney General or his designee upon request.

2.3.7 [37-2-6] Determinations in Writing. Every determination required by the State Purchases Act and the policies contained herein shall be in writing and based upon written findings of fact by the RITBA official making the determination. These determinations and written findings shall be retained in an official contract file in the RITBA office.

2.3.8 [37-2-18(2)(d)] Bid Abstracts; Access. Each bid, together with the name of the bidder, shall be recorded and an abstract made available for public inspection. Subsequent to the award, all documents pertinent to the awarding of the bid shall be made available and open to public inspection and retained in the bid file.

2.3.8.1 All documentation records shall be subject to public disclosure with the following exceptions:

2.3.8.1.1 Proprietary information submitted by vendors; and

2.3.8.1.2 Information furnished by a bidder in connection with an inquiry related to responsibility, including without limitation confidential financial information.

2.3.8.2 The RITBA Purchasing Agent shall assure that information not in the public domain is not divulged.

2.3.8.3 Bids shall not be available for public inspection at the bid opening. Bid abstracts shall be available for public inspection at the RITBA office no later than ten (10) working days after an award has been made.

- 2.3.8.4 Requests for access to records other than bid abstracts shall be made in writing and signed by the applicant.
  - 2.3.8.4.1 The RITBA Purchasing Agent shall have a reasonable time to respond to requests for access to information.
  - 2.3.8.4.2 Reviews of document records shall be permitted by appointment only and shall be conducted under the supervision of a RITBA official.
  - 2.3.8.4.3 No documentation shall be removed from the premises of the RITBA office without the written consent of the RITBA Executive Director.

## **2.4 BREACH OF CONTRACT DISPUTES**

- 2.4.1 [37-2-46] Authority to resolve contract and breach of contract controversies. Prior to the institution of arbitration or litigation concerning any contract, claim, or controversy, the RITBA Executive Director is authorized, subject to any limitations or conditions imposed by regulations and in accordance with the terms and conditions of the applicable contract, to settle, compromise, pay, or otherwise adjust the claim by or against or controversy with, a contractor relating to a contract entered into by RITBA including a claim or controversy based on contract, mistake, misrepresentation, or other cause for contract modification or rescission, in an amount not greater than Five Percent (5%) of the dollar value of such contract, or Ten Thousand Dollars (\$10,000), whichever is greater, but excluding any claim or controversy involving penalties or forfeitures prescribed by statute or regulation where an official other than the RITBA Executive Director is specifically authorized to settle or determine such controversy. The RITBA Executive Director shall advise the RITBA Board of Directors of the amount and nature of any such settlement, compromise, payment or other adjustment of claim promptly after he completes the same. The RITBA Board of Directors shall have the authority to make any settlement, compromise, payment or other adjustment of claim in an amount greater than such 5% or \$10,000, whichever is greater.
  - 2.4.1.1 "Contract dispute" shall mean a circumstance whereby a contractor and RITBA are unable to arrive at a mutual interpretation of the requirements, limitations, or compensation for the performance of a contract.

- 2.4.1.2 The RITBA Executive Director shall be authorized to resolve contract disputes between contractors and RITBA upon the submission of a request in writing from the contractor, which request shall provide:
  - 2.4.1.2.1 a description of the problem, including all appropriate citations and references from the contract in question;
  - 2.4.1.2.2 a clear statement by the party requesting the decision of his interpretation of the contract; and
  - 2.4.1.2.3 a proposed course of action to resolve the dispute.
- 2.4.1.3 The RITBA Purchasing Agent shall determine whether:
  - 2.4.1.3.1 the interpretation provided is appropriate;
  - 2.4.1.3.2 the proposed solution is feasible; or
  - 2.4.1.3.3 another solution may be negotiable.

2.4.2 [37-2-47] Failure to render timely decisions. This section shall apply to a claim or controversy arising under contracts between RITBA and its contractors. If such a claim or controversy is not resolved by mutual agreement, the RITBA Executive Director or his designee shall promptly issue a decision in writing. A copy of the decision shall be mailed or otherwise furnished to the contractor. If the RITBA Executive Director 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.

2.4.3 Legal Remedy for Disputes

- 2.4.3.1 [37-2-48] Public Works Contracts - Disputes involving public works contracts shall be resolved in accordance with the provisions for arbitration set forth in Chapter 16 of Title 37 of the General Laws of Rhode Island.
- 2.4.3.2 [37-2-49(b)] Other Contracts - Any person, firm or corporation, having a lawfully authorized written contract with RITBA may bring an action against RITBA on the contract, including but not limited to actions either for breach of contract or for enforcement of contract or for both. All

defenses in law or equity, except the defense of governmental immunity, shall be preserved to RITBA.

## 2.5 RESOLUTION OF PROTESTS

- 2.5.1 [37-2-51] Presumption of Correctness. The decision of any RITBA official, board, agent, or other person appointed by the State concerning any controversy arising under, or in connection with, the solicitation or award of a contract, shall be entitled to a presumption of correctness and shall not be disturbed unless the decision was procured by fraud; in violation of constitutional or statutory provisions; in excess of the statutory authority of RITBA; made upon unlawful procedure; affected by other error of law; clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or arbitrary or capricious or characterized by the abuse of discretion or clearly unwarranted exercise of discretion.
- 2.5.2 Authority to resolve protests
- 2.5.2.1 [37-2-52(a)] Solicitation or Selection for Award of Contract. The RITBA Executive Director or his designee shall have authority to determine protests and other controversies of actual or prospective bidders or offerors in connection with the solicitation or selection for award of a contract.
- 2.5.2.2 [37-2-52(b)] Protests. Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation or selection for award of a contract may file a protest with the RITBA Executive Director. 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.
- 2.5.2.3 [37-2-52(c)] Decision in Writing. The RITBA Executive Director shall promptly issue a decision in writing. A copy of that decision shall be mailed or otherwise furnished to the aggrieved party and shall state the reasons for the action taken.
- 2.5.2.4 Decision Final. Any such decision by the RITBA Executive Director shall be considered final for purposes of the Administrative Procedures Act set forth in R.I. GEN. LAWS §§ 42-35-1 et seq.
- 2.5.3 [37-2-53] Protest Tolls Solicitation or Award. In the event of a protest timely filed under Section 37-2-52(b) of the State Purchases Act, RITBA shall not proceed

further with the solicitation or award involved, until the RITBA Executive Director makes a written and adequately supported determination that continuation of the procurement is necessary to protect a substantial interest of RITBA.

## 2.6 IMPREST FUNDS

[[37-2-55(a)] RITBA may establish one (1) or more imprest cash funds in an amount not greater than Two Hundred Fifty Dollars (\$250) for the purpose of making disbursements requiring prompt cash outlay, and to carry out the provisions of the State Purchases Act.]

## SECTION 3 - PROCUREMENT STRUCTURE AND ACCOUNTABILITY

### 3.1 PROCUREMENT AUTHORITY FOR RITBA

- 3.1.1 [37-2-54(c)] Approval by RITBA Required. No purchase or contract shall be binding on RITBA unless approved by RITBA in accordance with the provisions hereof.
- 3.1.2 [37-2-1] RITBA Purchasing Agent's Duties. Within RITBA there shall be a purchasing agent who shall be appointed by the RITBA Executive Director with the approval of the RITBA Board of Directors. The Executive Director may serve as purchasing agent. [37-2-11] The RITBA Purchasing Agent shall be the administrator of the RITBA division of purchases and shall:
- 3.1.2.1 [37-2-11(1)] Serve as the procurement and contracting agent of RITBA for individual contracts in an amount not greater than One Thousand Five Hundred Dollars (\$1,500);
  - 3.1.2.2 [37-2-11(2)] Recommend regulations, rules, and procedures to the RITBA Executive Director;
  - 3.1.2.3 [37-2-11(3)] Purchase or otherwise acquire, or, with the approval of the RITBA Executive Director, delegate the purchase and acquisition of, all supplies, services and construction for RITBA.
- 3.1.3 [37-2-54(a)] RITBA Executive Director's Duties. The RITBA Executive Director, except as otherwise provided by law, shall serve as the procurement and contracting agent of RITBA for individual contracts greater than One Thousand Five Hundred Dollars (\$1,500) but not greater than Fifty Thousand Dollars (\$50,000). He shall also serve as the procurement and contracting agent of RITBA for individual contracts greater than Fifty Thousand Dollars (\$50,000), and for all contracts relating to RITBA's interest in real property, provided that the RITBA Board of Directors has approved such contracts.
- 3.1.4 [37-2-9(a)] Policy Determinations. The RITBA Executive Director shall consider and decide matters of policy with regard to RITBA procurement. The RITBA Executive Director shall have the power of review with respect to the implementation of regulations and policy determinations.
- 3.1.5 [37-2-54(d)] Inventories. The RITBA Executive Director shall require RITBA to take and maintain inventories of plant and equipment.

- 3.1.5.1 Annual or Multi-Year Plans - The RITBA Executive Director may require the purchasing agent to submit annual or multi-year plans for proposed procurements of supplies, material, equipment, and supplemental services.
- 3.1.5.2 Procurement Plans - The RITBA Executive Director may require the submission of procurement plans with the submission of budget requests.
- 3.1.5.3 [37-2-45] Supply Disposition Process - The RITBA Executive Director shall sell or otherwise dispose as permitted by the Master Indenture of Trust between RITBA and State Street Bank and Trust Company, as Trustee securing Revenue Bonds dated as of December 15, 1997 (the "Master Indenture of Trust") of all property (excluding any interest in real property, which must be authorized by the RITBA Board of Directors) of RITBA which is not needed or no longer useful in connection with the construction or the maintenance or the operation of the system (as defined in the Master Indenture of Trust), as determined by the RITBA Executive Director pursuant to the provisions of Chapter 7 of Title 37 of the General Laws of Rhode Island. The determination of RITBA shall be set forth in writing. Such writing shall describe the property and state the reasons why RITBA believes disposal should be effected. All instruments required by law to be recorded which convey any interest in any such real property so disposed of shall be executed and signed by RITBA pursuant to the provisions of Chapter 7 of Title 37 of the General Laws of Rhode Island.

## **3.2 STRUCTURE AND RESPONSIBILITIES FOR RITBA PROCUREMENT**

- 3.2.1 RITBA Executive Director's Responsibilities. The RITBA Executive Director shall be responsible for:
  - 3.2.1.1 Policy formulation and dissemination;
  - 3.2.1.2 Establishing standards;
  - 3.2.1.3 Defining and promulgating procedures;
  - 3.2.1.4 Monitoring and evaluating RITBA purchasing activity to ensure that RITBA is attaining the most advantageous procurements possible; and

3.2.1.5 Determining courses of action when the policies and procedures outlined herein require interpretation and/or when situations arise where conflicts exist or occur.

3.2.2 RITBA Purchasing Agent's Responsibilities. The RITBA Purchasing Agent shall be responsible for:

3.2.2.1 Assuring adherence to state procurement laws, regulations, rules, codes and procedures;

3.2.2.2 Supervising procurement activity within RITBA;

3.2.2.3 Assuring that delegated purchasing authority is exercised properly;

3.2.2.4 Establishing and maintaining good relations with suppliers and potential suppliers without conflicts of interest;

3.2.2.5 Assuring that procurements are made in a context which supports to the greatest extent possible:

3.2.2.5.1 competitive purchases;

3.2.2.5.2 opportunities for minority and women owned/operated businesses; and

3.2.2.5.3 opportunities for local Rhode Island enterprises;

3.2.2.6 Assuring that a pool of responsible, qualified suppliers is developed, maintained and utilized;

3.2.2.7 Assuring compliance with appropriate competitive bidding procedures throughout RITBA's procurement system;

3.2.2.8 Promoting standardization of requirements to increase opportunities for the economic advantages of combined purchasing;

3.2.2.9 Establishing and monitoring standards of quality;

3.2.2.10 Assuring that goods and services are delivered according to specified requirements; and

3.2.2.11 Supervising RITBA's warehousing and inventory activities.

3.2.3 RITBA Budget Officer's Responsibilities. The RITBA Budget Officer shall be responsible for reviewing all purchase documentation for certification as to the availability of the funds necessary to support a purchasing commitment and authorizing expenditures as requested.

### **3.3 VIOLATIONS OF PURCHASING LAWS AND REGULATIONS**

3.3.1 Violation of RITBA Policy. Deliberate disregard for RITBA regulations, policies and procedures shall be subject to disciplinary action, including dismissal of RITBA employees and debarment of vendors conducting business within the State.

3.3.2 Violation of Purchasing Code of Ethics. Violations of the State Purchasing Code of Ethics adopted by RITBA and set forth herein shall be subject to appropriate sanctions by the RITBA Executive Director including: censure, dismissal, suspension, and debarment.

3.3.3 Violations of State Code of Ethics. Suspected violations of State Code of Ethics laws and regulations regarding procurement or RITBA procurement Code of Ethics set forth herein shall be reported in confidence to the RITBA Executive Director and acted upon by the RITBA Executive Director in accordance with the rules and regulations established by the State Ethics Commission.

3.3.4 Violations of Purchasing Laws. Violations of purchasing laws, regulations, policies, and procedures shall be reported to the RITBA Executive Director , who shall have authority to apply sanctions.

3.3.5 [37-2-36(a)] Collusion Reported to Attorney General. When for any reason collusion is suspected among any bidders or offerors, a written notice of the facts giving rise to such suspicion shall be transmitted to the Attorney General.

3.3.6 Falsification of Certification Reported to Attorney General. Suspected falsification of certifications shall be referred to the Attorney General for investigation and prosecution.

**SECTION 4 - CODE OF ETHICS AND PROFESSIONAL BEHAVIOR;  
STATE CODE OF PROCUREMENT ETHICS**

**4.1 APPLICABILITY OF RHODE ISLAND CODE OF ETHICS**

All RITBA officials and employees shall be subject to the provisions of Chapter 14 of Title 36 of the General Laws of Rhode Island, as amended from time to time (the "Code of Ethics"), all regulations promulgated by the Rhode Island Ethics Commission, as amended from time to time, and any special provisions of this section.

**4.2 RITBA POLICY**

[36-14-1] It is the policy of RITBA that RITBA officials and employees must adhere to the highest standards of ethical conduct, respect the public trust and the rights of all persons, be open, accountable and responsive, avoid the appearance of impropriety, and not use their positions for private gain or advantage.

**4.3 PROHIBITED ACTIVITIES UNDER THE RHODE ISLAND CODE OF ETHICS**

**[36-14-5]** RITBA officials and employees shall comply with all requirements of the Code of Ethics, including without limitation the following:

- 4.3.1 No person subject to the Code of Ethics shall have any interest, financial or otherwise, direct or indirect, or engage in any business, employment, transaction or professional activity, or incur any obligation of any nature, which is in substantial conflict with the proper discharge of his or her duties or employment in the public interest and of his or her responsibilities as prescribed in the laws of this State.
- 4.3.2 No person subject to the Code of Ethics shall accept other employment which will either impair his or her independence of judgment as to his official duties or employment or require him or her, or induce him or her, to disclose confidential information acquired by him or her in the course and by reason of his or her official duties.
- 4.3.3 No person subject to the Code of Ethics shall willfully and knowingly disclose, for pecuniary gain, to any other person, confidential information acquired by him or her in the course of and by reason of his or her official duties or employment or use any information for the purpose of pecuniary gain.
- 4.3.4 No person subject to the Code of Ethics shall use in any way his or her public office or confidential information received through his or her holding any public office to obtain financial gain, other than that provided by law, for himself or herself or any

person within his or her family or business associate or any business by which the person is employed or which the person represents.

4.3.5 No person subject to the Code of Ethics shall:

4.3.5.1 Represent himself or herself before RITBA. In cases of hardship the Ethics Commission may permit such representation upon application by the official and provided that he or she shall first:

4.3.5.1.1 Advise RITBA in writing of the existence and the nature of his or her interest in the matter at issue;

4.3.5.1.2 Recuse himself or herself from voting on or otherwise participating in RITBA's consideration and disposition of the matter at issue; and

4.3.5.1.3 Follow any other recommendations the Ethics Commission may make to avoid any appearance of impropriety in the matter.

4.3.5.2 Represent any other person before RITBA.

4.3.5.3 Act as an expert witness before RITBA with respect to any matter RITBA's disposition of which will or can reasonably be expected to directly result in an economic benefit or detriment to himself or herself, or any person within his or her family or any business associate of the person or any business by which said person is employed or which the person represents.

4.3.5.4 Shall engage in any of the activities prohibited by subsections 4.3.5.1, 4.3.5.2 or 4.3.5.3 of this section for a period of one year after he or she has officially severed his or her position with RITBA; provided, however, that this prohibition shall not pertain to a matter of public record in a court of law.

4.3.6 No business associate of any person subject to the Code of Ethics shall represent himself or herself or any other person or act as an expert witness before RITBA unless (i) he or she shall first advise RITBA of the nature of his or her business relationship with the person subject to the Code of Ethics, and (ii) the person subject to the Code of Ethics shall recuse himself or herself from voting on or otherwise participating in RITBA's consideration and disposition of the matter at issue.

- 4.3.7 No person subject to the Code of Ethics or spouse (if not estranged) or dependent child or business associate of the person or any business by which the person is employed or which the person represents, shall solicit or accept any gift, loan, political contribution, reward, or promise of future employment based on any understanding that the vote, official action or judgment of the person would be influenced thereby.
- 4.3.8 No person subject to the Code of Ethics or any person within his or her family or business associate of the person or any business entity in which the person or any person within his or her family or business associate of the person has a ten percent (10%) or greater equity interest or five thousand dollars (\$5,000) or greater cash value interest, shall enter into any contract with RITBA unless the contract has been awarded through an open and public process, including prior public notice and subsequent public disclosure of all proposals considered and contracts awarded; provided, however, that contracts for professional services which have been customarily awarded without competitive bidding shall not be subject to competitive bidding if awarded through a process of public notice and disclosure of financial details.
- 4.3.9 No person shall give or offer to any person covered by this Code of Ethics, or to any candidate for public office, or to any person within his or her family or business associate of any person, or to any business by which the person is employed or which the person represents, any gift, loan, political contribution, reward, or promise of future employment based on any understanding or expectation that the vote, official action or judgment of the person would be influenced thereby.
- 4.3.10 No person subject to the Code of Ethics, shall, either directly or indirectly, through any government agency, or through a business associate, or through any other person, threaten or intimidate any complainant or witness or any family member of any complainant or witness in any proceeding before the State Ethics Commission.

#### **4.4 SUPPLEMENTAL STATE CODE OF PROCUREMENT ETHICS**

The following supplemental State Code of Procurement Ethics is hereby adopted.

- 4.4.1 General Requirements. The following obligations shall apply to all RITBA employees involved in the procurement process:
- 4.4.1.1 To consider, first, the interests of RITBA in all transactions;
- 4.4.1.2 To support and carry out RITBA policies;

- 4.4.1.3 To buy without prejudice;
  - 4.4.1.4 To avoid any conflict of interest with respect to procurement, or the appearance thereof;
  - 4.4.1.5 To obtain the maximum ultimate value for each dollar of expenditure;
  - 4.4.1.6 To subscribe to and work for honesty and truth in buying and selling, and to denounce all forms and manifestations of commercial bribery; and
  - 4.4.1.7 To respect obligation and to require that obligations to RITBA be respected, consistent with good business practice.
- 4.4.2 Relations With Suppliers. A primary responsibility of RITBA purchasing personnel shall be to maintain good relations with suppliers and potential suppliers. Relationships shall be maintained in a manner which assures that no conflict of interest situations arise.
- 4.4.2.1 All potential suppliers shall be afforded the courtesy of a fair opportunity to present their capabilities and products.
  - 4.4.2.2 Reasonable effort shall be made to provide fair bidding opportunities to all qualified and interested suppliers.
  - 4.4.2.3 [37-2-9(b)(7)] RITBA officials shall observe a commitment to maintain the confidentiality of information submitted by suppliers and potential suppliers.
    - 4.4.2.3.1 Supplier proposals shall be treated in confidence with regard to technical approach and terms and conditions.
    - 4.4.2.3.2 Distribution of information contained in supplier proposals shall be limited to those having a "need to know" as determined by the RITBA Purchasing Agent.
    - 4.4.2.3.3 Under no circumstances shall confidential information be made available to other vendors.
    - 4.4.2.3.4 RITBA personnel are prohibited from engaging in any conduct which may tend to cause any existing or prospective supplier of goods or services to believe that his relationship with

RITBA will be affected by his purchasing or failing to purchase goods or services from any representative of RITBA.

4.4.2.3.5 Under no circumstances may a vendor provide to a RITBA procurement official nor may a RITBA purchasing agent (any person authorized by RITBA in accordance with procedures prescribed herein acting within the limits of authority to commit RITBA funds to obtain goods and services) accept any goods or services, regardless of monetary value, for personal use for less than fair market value.

4.4.2.3.6 [Reserved]

4.4.2.4 [Reserved]

4.4.3 It shall be the obligation of all RITBA employees to avoid conflicts of interest with respect to procurement, and to report promptly to the RITBA Executive Director all instances where a conflict exists or is suspected to exist.

4.4.3.1 Conditions under which a conflict of interest may be held to exist include, but are not limited to the following:

4.4.3.1.1 Where a procurement official with a principal responsibility for a category of goods or services:

4.4.3.1.1.1 receives personal enrichment as a result of an award;

4.4.3.1.1.2 holds a secured financial interest in a firm offering such goods or services;

4.4.3.1.1.3 receives indirect or subsequent income, by way of employment, retainer, consultancy, or other remuneration from a firm offering such goods or services; or

4.4.3.1.1.4 has an immediate family member or blood relative holding an equity interest, or a management or directorial position in a firm offering such goods or services.

- 4.4.3.1.2 Where any RITBA employee divulges or withholds information (including, but not limited to, price, design, or requirement information) with the intent or result that one vendor is competitively advantaged over another.
        - 4.4.3.1.3 Under any circumstances described in Chapter 36-14 of the General Laws of Rhode Island.
- 4.4.4 The RITBA Executive Director shall have the responsibility to investigate all claims with respect to conflicts of interest in procurement, to issue determinations which define whether or not conflict, in fact, existed, and to take action to resolve such conflict.
  - 4.4.4.1 Resolution of conflict may include, but shall not be limited to, the following measures:
    - 4.4.4.1.1 Reassignment of the RITBA procurement official or other RITBA employee involved;
    - 4.4.4.1.2 Termination of employment of the RITBA procurement official or other RITBA employee involved; and
    - 4.4.4.1.3 Debarment of any and all vendors who may be involved.
- 4.4.5 [Reserved]
- 4.4.6 Membership and active participation in the meetings and activities of local purchasing organizations are encouraged.
- 4.4.7 Samples provided by vendors shall be deemed to be the property of RITBA which the RITBA Executive Director may determine appropriate for donation to charitable organizations or needy individuals.
- [4.4.8 Promotional programs and campaigns available through airlines, rental companies, hotels, motels, etc., which provide bonuses and rebates, and result from RITBA paid travel, shall be applied toward RITBA use or benefit and not personal use.]
- 4.4.9 Purchasing personnel shall not make purchases for personal use in the name of RITBA or through the use of any RITBA procurement forms.

## **SECTION 5 - VENDOR QUALIFICATION, PREQUALIFICATION AND SOLICITATION**

### **5.1 RESPONSIBILITY AND AUTHORITY OF THE RITBA PURCHASING AGENT**

Unless notified in writing by the RITBA Executive Director to the contrary, the RITBA Purchasing Agent shall be authorized to act on behalf of the RITBA Executive Director in carrying out the responsibilities and authority set forth herein for selection, evaluation, approval, debarment, suspension, rejection, and restriction of bidders and offerors.

### **5.2 RESPONSIBILITIES OF BIDDERS AND OFFERORS**

5.2.1 [37-2-24(a)] Determination of Responsibility. A reasonable inquiry to determine the responsibility of a bidder or offeror may be conducted. A written determination of responsibility of a bidder or offeror shall be made and it shall be made in accordance with the following regulations. The failure of a bidder or offeror to supply information promptly (within five (5) working days unless otherwise specified by the RITBA Purchasing Agent) in connection with an inquiry related to responsibility may be grounds for a determination of nonresponsibility.

5.2.1.1 [37-2-24(d)] Prohibition on Disclosure - Except as otherwise provided by law, information furnished by a bidder or offeror pursuant to this Section may not be disclosed outside of RITBA without prior written consent of the bidder or offeror.

5.2.1.2 Factors in Responsibility Determination - The RITBA Purchasing Agent may utilize factors such as financial capability, reputation, management, etc., to evaluate the responsibility and qualifications of potential suppliers in order to develop a list of prospective bidders qualified to be sent invitations to bid.

5.2.1.3 Performance Bond Requirements - Ability to meet performance bond requirements set forth for public works contractors in Section 37-13-14 of the General Laws of Rhode Island shall be valid criteria for determination of responsibility, provided that the RITBA Purchasing Agent may waive such requirement for good cause for contracts not exceeding fifty thousand dollars (\$50,000) except where prohibited by terms of a grant.

5.2.1.4 Bidder Registration Forms - The RITBA Purchasing Agent may require interested suppliers to submit completed Bidder Registration Forms to RITBA for consideration by the RITBA Purchasing Agent. The RITBA Purchasing Agent may recommend to the RITBA Board of Directors that RITBA charge,

and the RITBA Board of Directors may adopt a resolution allowing RITBA to charge, a reasonable fee to accompany each Bidder Registration Form.

- 5.2.1.4.1 General Terms and Conditions - A copy of RITBA's General Terms and Conditions for contracts shall be distributed with the Bidder Registration Form.
- 5.2.1.4.2 Significance of Signature - The Bidder Registration Form shall be signed by a representative of the supplier who has the capacity to enter into contracts. The signature shall be an original signature made in ink and dated by the signatory. The signature shall affirm that:
  - 5.2.1.4.2.1 any and all information on the Bidder Registration Form is true and accurate;
  - 5.2.1.4.2.2 the existence of a relationship (blood, spousal, adoptive, financial, etc.) between a principal of the firm and any RITBA employee where a conflict of interest which may exist has been disclosed; and
  - 5.2.1.4.2.3 that falsification of information contained on a signed Bidder Registration Form may be grounds for criminal charges of perjury and that conviction of such charges may be grounds for debarment.
- 5.2.1.4.3 Prerequisite for Award - As a prerequisite condition for contract award, the RITBA Purchasing Agent may require any bidder to complete a Bidder Registration Form and/or submit current certifications of financial responsibility, affirmative action compliance, drug-free and barrier free environment, status as small, women-owned and/or disadvantaged businesses, and any applicable requirement of federal law or regulation.

### **5.3 RITBA BIDDERS LIST**

A RITBA Bidders List shall be maintained by the RITBA Purchasing Agent consisting of the names and addresses of suppliers of various goods and services from whom bids, proposals, and quotations can be solicited. The RITBA Purchasing Agent may utilize the RITBA Bidders List, the State Bidders List, or a combination of both in soliciting bids, proposals, and quotations from bidders.

- 5.3.1 MBEs. The RITBA Bidders List shall be formatted in a manner which identifies those suppliers certified as MBEs by the Rhode Island Department of Economic Development.
- 5.3.2 Changes. The RITBA Purchasing Agent or his designee may add to or delete suppliers from the RITBA Bidders List based on information made available to him.
- 5.3.3 Registered and Unregistered Suppliers. The RITBA Bidders List may consist of:
- 5.3.3.1 Registered Suppliers - The names of interested suppliers who have submitted completed Bidder Registration Forms to RITBA which have been reviewed and approved by the RITBA Purchasing Agent.
- 5.3.3.2 Unregistered Suppliers - Suppliers which have not expressed interest in selling to RITBA by submitting a Bidder Registration Form, but who have been determined by the RITBA Purchasing Agent, due to the nature of the firm's status in the market, to be responsible and qualified with regard to particular commodities. Inclusion of any firm on the RITBA Bidders List without a supporting registration form shall be permitted with the written approval of the RITBA Purchasing Agent.
- 5.3.4 Restriction on Solicitation. Based on the RITBA Purchasing Agent's review of a supplier's level of financial responsibility and/or qualification, the RITBA Purchasing Agent may restrict the items or size of orders for which a supplier will be solicited.
- 5.3.4.1 Restriction shall relate to:
- 5.3.4.1.1 limiting the kinds of goods and services for which the supplier may be solicited to a portion of those indicated on a Bidder Registration Form.
- 5.3.4.1.2 limiting the scope/amount of goods and services for which the supplier may be solicited (e.g., categorizing a contractor by the size of construction projects he is deemed capable of undertaking).
- 5.3.4.2 The RITBA Purchasing Agent shall notify in writing any supplier whose inclusion on the RITBA Bidders List has been restricted and the reason for such action, informing the vendor that he has a right to request reconsideration of such decision.

- 5.3.4.2.1 Upon receipt of a request for reconsideration from a vendor providing sufficient justification for such reconsideration, the RITBA Purchasing Agent may amend the RITBA Bidders List.
- 5.3.4.2.2 Within fifteen (15) calendar days after a request for reconsideration has been denied in writing by the RITBA Purchasing Agent, a vendor may submit an appeal to the RITBA Executive Director, providing justification for his appeal.
- 5.3.4.2.3 The RITBA Executive Director shall make a determination on the appeal within thirty (30) calendar days. Such decision shall be final.

5.3.5 Updated Bidder Registration Forms. The RITBA Purchasing Agent may require registered suppliers to resubmit updated Bidder Registration Forms annually, but at least every five years.

5.3.6 Vendor Information File. RITBA shall maintain Vendor Information Files for the following documentation purposes:

5.3.6.1 General

5.3.6.1.1 Bidder Registration Forms;

5.3.6.1.2 Results of investigations for prequalification, responsibility, suspension, debarment, restriction, and nonperformance;

5.3.6.1.3 Certifications; and

5.3.6.1.4 Correspondence.

5.3.6.2 Bidding history; and

5.3.6.3 Performance history.

## **5.4 PREQUALIFICATION OF CONTRACTORS**

5.4.1 [37-2-25] General Procurement. The RITBA Executive Director may provide for prequalification of suppliers as responsible prospective contractors for particular types of supplies, services, and construction. Solicitation mailing lists of potential contractors of such supplies, services, and construction shall include but need not be limited to such prequalified contractors. Prequalification shall not foreclose a written determination:

- 5.4.1.1 Between the time of the bid opening or receipt of offers and the making of an award, that a prequalified supplier is not responsible; or
- 5.4.1.2 That a supplier who is not prequalified at the time of bid opening or receipt of offers is responsible.
- 5.4.2 Prequalification Information. Prequalification information may be submitted within a time period subsequent to a project bidder's conference, which period has been specified in the bid solicitation.
- 5.4.3 Supplementary Prequalification Information. The RITBA Purchasing Agent may conduct supplementary prequalification examinations of registered bidders prior to solicitation or award which include, but are not limited to:
  - 5.4.3.1 requirement for additional certification(s);
  - 5.4.3.2 requirement for demonstration of additional licensure;
  - 5.4.3.3 requirement for recent financial information;
  - 5.4.3.4 submission of an affirmative action employment plan; and
  - 5.4.3.5 submission of the names of proposed MBE subcontractors and the value of such subcontracts.
- 5.4.4 Inclusion Constitutes Prequalification. Inclusion of a supplier on the RITBA Bidders List shall constitute a prequalification determination.
- 5.4.5 Construction Management.
  - 5.4.5.1 Information Required. [37-2-27] A person who bids on a construction management contract shall provide the following information, which information shall constitute the prequalifications for a construction management contract:
    - 5.4.5.1.1 Firm History - Name of the firm, location of principal and branch offices, length of time in business, firm ownership structure, and annual construction management volume for each of the past five (5) years including number of projects and total construction volume.

- 5.4.5.1.2 Personnel - Total number of the firm's personnel, other than secretarial/clerical, by professional or skill group, and outside firms which will be used to provide such services as estimating, value engineering analysis, scheduling or computer services.
- 5.4.5.1.3 Experience Information - Experience information regarding projects which the firm has constructed during the past five (5) years, including those where the firm has served as construction manager, including project name and address, year completed, type of project, construction cost, and reference(s).
- 5.4.5.1.4 Project Staffing -
  - 5.4.5.1.4.1 The firm's proposed management staff for the project, including an organizational chart identifying the firm's key staff members and showing how each staff member interacts with other staff members assigned to the project; and
  - 5.4.5.1.4.2 A detailed resume for each key staff member which summarizes education, professional registration, professional society membership, construction experience, and construction management project experience.
- 5.4.5.1.5 Services -
  - 5.4.5.1.5.1 Scope of preconstruction phase services, including how such services are provided, with specific attention to the first budget estimate, methods of cost control, scheduling, value engineering and the method of reporting project status and schedule position;
  - 5.4.5.1.5.2 Scope of construction phase services and how such services are to be provided;
  - 5.4.5.1.5.3 The firm's method of working with the project architects, engineers, consultants and other planning team members; and

5.4.5.1.5.4 The firm's method of coordinating the efforts of various trade contractors.

## 5.5 DEBARMENT AND SUSPENSION

5.5.1 Exclusion. The RITBA Executive Director may exclude a supplier from the RITBA Bidders List and from the bidding process.

5.5.1.1 Exclusion Defined - "Exclusion" shall refer to:

5.5.1.1.1 Debarment - permanent removal from the RITBA Bidders List;

5.5.1.1.2 Suspension - temporary removal from the RITBA Bidders List; or

5.5.1.1.3 Rejection - lack of inclusion on the RITBA Bidders List.

5.5.2 Just Cause for Debarment. Just cause for debarment may include but shall not be limited to:

5.5.2.1 Conviction of fraud or perjury;

5.5.2.2 Falsification of information on a Bidder Registration Form;

5.5.2.3 Substantial nonperformance on more than two contracts with RITBA or with any Rhode Island state agency;

5.5.2.4 Debarment by the state or federal government; or

5.5.2.5 Lack of responsibility - withdrawal of more than two bids after an award has been announced without written consent of the RITBA Purchasing Agent.

5.5.3 Just Cause for Suspension. Just cause for suspension may include but shall not be limited to:

5.5.3.1 Any cause for debarment, depending on the severity of the violation;

5.5.3.2 Suspension by the state or federal government;

5.5.3.3 Substantial nonperformance on at least one contract;

- 5.5.3.4 Failure to respond to three consecutive solicitations for commodities which the vendor has indicated on the Bidder Registration Form that he could supply; or
- 5.5.3.5 Lack of responsibility evidenced by:
  - 5.5.3.5.1 Withdrawal of more than two bids within a two-year period, even with the consent of the RITBA Purchasing Agent; or
  - 5.5.3.5.2 Correction of more than three bids within a two-year period, with or without the consent of the RITBA Purchasing Agent.
- 5.5.4 Just Cause for Rejection. Just cause for rejection may include but shall not be limited to:
  - 5.5.4.1 Lack of a properly prepared and submitted Bidder Registration Form;
  - 5.5.4.2 Refusal to submit a Bidder Registration Form;
  - 5.5.4.3 Falsification of information on Bidder Registration or Certification Forms;
  - 5.5.4.4 Suspension or debarment by the state or federal government;
  - 5.5.4.5 Conviction of fraud or perjury; or
  - 5.5.4.6 Lack of competence, financial responsibility, or other limitations related to the ability of a supplier to provide the goods and services indicated on his Bidder Registration Form.
- 5.5.5 Written Notice. The RITBA Executive Director shall notify in writing any registered vendor whom he intends to debar, suspend or reject.
  - 5.5.5.1 Such notice shall:
    - 5.5.5.1.1 state the nature of and, in the case of suspension, the duration of the sanction;
    - 5.5.5.1.2 provide the vendor with a rationale for the decision; and
    - 5.5.5.1.3 establish a specific time for reconsideration not less than two weeks nor more than three weeks within which the vendor may provide justification for why such action should not be implemented.

- 5.5.5.2 The provision for a reconsideration period shall not apply to those circumstances where the RITBA Purchasing Agent has determined that issuance of a purchase order to a particular vendor may present a serious compromise of the interests of RITBA.
- 5.5.5.3 Upon the expiration of the reconsideration period, the RITBA Executive Director shall notify the affected vendor of his final decision. If no request for reconsideration has been submitted, the RITBA Executive Director shall implement the appropriate action.
- 5.5.6 Period of Suspension. The RITBA Executive Director may suspend a vendor for not less than a three month and not more than a two year period, depending on the severity of a particular violation.
- 5.5.7 Request for Reinstatement. A vendor who has been suspended or rejected from the RITBA Bidders List shall not be reinstated until he has submitted a request for reinstatement to the RITBA Purchasing Agent with a new Bidder Registration Form. Such request shall be submitted with evidence that the reason for the suspension or rejection has been corrected.
- 5.5.8 Reconsideration on a Case-by-Case Basis. Reconsideration of suppliers who have been rejected shall be undertaken on a case-by-case basis.
- 5.5.9 Protests. Protests of decisions rendered by the RITBA Executive Director shall be administered in accordance with the requirements of [Section 37-2-52] of the State Purchases Act.
- 5.5.10 [37-2-73] Pest Control Services. Upon receipt of an order from the Director of Environmental Management pursuant to Section 23-25-28(a)(1) of the General Laws of Rhode Island that an entity has violated pesticide control law, the RITBA Purchasing Agent shall take such steps as are necessary to insure that such entity shall not be eligible to receive RITBA contracts for pest control services for the duration of the period enumerated in said Director's order.

## SECTION 6 - COMPETITIVE REVIEW AND SOURCE SELECTION

### 6.1 COMPETITION

In accordance with the purposes set forth in Section 37-2-2(b)(6) and subject to the exceptions and other terms and conditions hereof, the RITBA Executive Director shall assure that all RITBA procurement activities foster effective competition, such that economies in expenditure can be obtained. A competitive environment shall be considered to exist when the following conditions are met:

- 6.1.1 Two or more items or offers can be compared to determine relative merit;
- 6.1.2 Objective standards of comparison are fairly and impartially applied;
- 6.1.3 Offers are evaluated within a market context:
  - 6.1.3.1 The lowest price offered may not be considered to be a competitive price when not supported by evaluation of the market or market conditions within which the offer was rendered; and
  - 6.1.3.2 Market evaluation must be conducted using objective standards to assure fairness and to encourage participation; and
- 6.1.4 An equal opportunity for participation in any procurement applies to all prospective offerors, and affirmative action to achieve participation in the procurement process as a means of achieving social objectives is accomplished without violation of these general principles.

### 6.2 GENERAL PROVISIONS

- 6.2.1 Method of Source Selection. Except for purchases solicited pursuant to the provisions for small purchases set forth in Section 6.7.2, all RITBA contracts and purchasers shall be solicited through utilization of the Rhode Island Vendor Information Program (RIVIP). Except as otherwise authorized by law, all RITBA contracts shall be awarded by:
  - 6.2.1.1 Competitive sealed offers, pursuant to Section 6.7.4;
  - 6.2.1.2 Competitive negotiation, pursuant to Section 7.2;
  - 6.2.1.3 Noncompetitive negotiation, pursuant to Section 7.4;

- 6.2.1.4 Small purchase procedures, pursuant to Section 6.7.2;
- 6.2.1.5 Requests for Proposals; or
- 6.2.1.6 Where permitted by law, grants.

6.2.2 Rhode Island Vendor Information Program (RIVIP).

- (a) The director of administration shall institute an electronic vendor information program which shall enable all invitations for bid and requests for a proposal to be accessed electronically by all potential vendors. This program is to be readily accessible through public access stations located at the following locations: (1) One Capital Hill, Providence, Rhode Island; (2) City hall, town hall or public library of each of the thirty-nine (39) cities and towns in the state.
- (b) Further, the vendor information program shall be accessible to potential vendors through means of computer modem. [37-2-17.1]

**6.3 RULES FOR SOLICITATION**

- 6.3.1 RITBA Bidders List. In general, solicitations will be sent only to those suppliers who have formally expressed a desire to bid on the particular types of items which are the subject of the bid solicitation; however, the RITBA Purchasing Agent may determine that competition would be enhanced by soliciting bidders who are not on the established RITBA Bidders List.
- 6.3.2 MBEs and Rhode Island Businesses. MBE and Rhode Island businesses shall be solicited to the maximum extent determined by the RITBA Executive Director to be practicable.
  - 6.3.2.1 All solicitations described elsewhere under Small Purchase Procedure shall include solicitation from at least one responsible supplier certified by the Department of Economic Development as an MBE, where suppliers have been identified for the product or service in question.
  - 6.3.2.2 For all awards of \$250 or less, RITBA shall attempt to utilize MBEs as suppliers.
- 6.3.3 Notification and Advertising

- 6.3.3.1 Notices shall be published in sufficient time to afford suppliers a fair opportunity to respond prior to the bid opening date and time [37-2-18].
- 6.3.3.2 Advertisements may be utilized in conjunction with requests for quotations or proposals for products or services at any estimated level of expenditure if the RITBA Purchasing Agent determines:
  - 6.3.3.2.1 that the commodity or service is of such special nature that opportunities for competition will be enhanced by extending invitations to other than known suppliers;
  - 6.3.3.2.2 that a purchase will be of interest to supportive industries, e.g. construction projects;
  - 6.3.3.2.3 that a purchase is unusually large or infrequent.
- 6.3.3.3 The RITBA Purchasing Agent may advertise in widely circulated newspapers and/or trade journals to promote effective competition.
- 6.3.3.4 The RITBA Purchasing Agent may place advertisements in publications directed to minority communities and/or women to enhance opportunities for disadvantaged businesses to participate in the bidding process.
- 6.3.4 Solicitation of those not on RITBA Bidders List. The RITBA Purchasing Agent may consider soliciting offers from prospective suppliers not on the RITBA Bidders List; however, contract award shall be subject to the bidder satisfying all requirements for Bid Registration prior to a bid opening or award of contract.
- 6.3.5 Offers not Solicited. RITBA shall be under no obligation to consider an offer which has been submitted without solicitation.
- 6.3.6 Forms of Solicitation. Solicitations shall be prepared in a manner and form which enables suppliers to submit fully responsive and knowledgeable offers, and which clearly defines the criteria to be used in evaluating responses.
- 6.3.7 Measurable Criteria. Wherever possible, solicitations shall incorporate a standard specification, describing the level of performance required, and measurable criteria which define acceptance.

- 6.3.7.1 In certain cases, following detailed evaluation, brand name or other designations may be defined as standard items, where it is determined to be in the best interest of RITBA with regard to economies of scale, or cost or value analysis.
- 6.3.7.2 RITBA may develop standards committees (product advisory committees) to review, develop and update specifications and standard item designations for frequently and/or extensively used products.
- 6.3.8 Selection and Evaluation Criteria Defined. Selection and evaluation criteria shall be clearly defined in all solicitations.
  - 6.3.8.1 [37-2-18(b)] The invitation for bids shall state whether award shall be made on the basis of the lowest bid price or 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.
  - 6.3.8.2 Unless alternate offers are clearly requested or allowed, only those offers which are responsive, in all material respects, to the terms of the solicitation shall be considered.
  - 6.3.8.3 Used items may be purchased to achieve financial benefit if the manufacturer will provide warranties for maintenance requirements and for the replacement of parts. Such certification/warranties shall be the same as that provided for new equipment. Purchase of used items which exceed a value of two hundred fifty dollars (\$250) shall require approval by the RITBA Executive Director.

## **6.4 BIDDER SECURITY**

- 6.4.1 [37-2-40(1)] Bond or Cash Equivalent. Bidder's security shall be a bond provided by a surety company authorized to do business in Rhode Island, or the equivalent in cash, in a form satisfactory to RITBA.
  - 6.4.1.1 The bidder may submit a certified check, bank check or money order as surety instead of a bond.
  - 6.4.1.2 All such sureties must be dated within 30 days of the bid opening date and shall be valid for no less than 60 days from the bid opening date.
  - 6.4.1.3 All such sureties shall be made payable to RITBA.

- 6.4.1.4 All sureties shall contain an identification of the bid number for which the surety is intended.
- 6.4.2 [37-2-40(a)] Construction Contracts in excess of \$50,000. Bidder security shall be required for all competitive sealed bidding for construction contracts when the estimated price exceeds fifty thousand dollars (\$50,000). Nothing herein prevents the requirement of such bonds on construction contracts under fifty thousand dollars (\$50,000) when circumstances warrant.
- 6.4.2.1 Bidder security may be required for contracts involving blanket orders, services or high value items when the value of the contract exceeds five thousand dollars (\$5,000).
- 6.4.3 [37-2-40(b)] Minimum of Five Percent. Bidder's security shall be in an amount equal to at least five percent (5%) of the amount of the bid.
- 6.4.4 [37-2-40(c)] Rejection for Noncompliance. When the invitation for bids requires that bid security be provided, noncompliance requires that the bid be rejected; provided, however, that the RITBA Executive Director may set forth by regulations exceptions to this requirement in the event of substantial compliance.
- 6.4.5 [37-2-40(d)] Bids Irrevocable. 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 bid before award because of a mistake in the bid as allowed by law or regulation, no action shall be taken against the bidder or the bidder's surety.
- 6.4.6 Return of Sureties of All But Three Lowest Bidders. After the bid opening the RITBA Purchasing Agent shall return the sureties of all but the three (3) apparent lowest bidders. When the evaluation of the bid has been completed, the RITBA Purchasing Agent shall return all but the lowest bidder's surety.
- 6.4.7 Return of Low Bidder's Surety. After the low bidder has been notified of RITBA's intent to proceed with a contract, the low bidder's bid surety shall be returned. When performance, labor and/or material bonds are required, the bid surety shall be returned upon receipt of the appropriate bond(s).

## **6.5 CANCELLATION OF INVITATION FOR BIDS AND REQUEST FOR PROPOSALS**

[37-2-23] An invitation for bids, a request for proposals, or other solicitation may be cancelled, or all bids or proposals may be rejected, if it is determined in writing that such action is taken in the best interests of RITBA and approved by the RITBA Executive Director.

- 6.5.1 No Proposals Reasonably Close to Expectations. If a solicitation results in none of the proposals being reasonably close to expectations, the RITBA Purchasing Agent may, with the written approval of the RITBA Executive Director, declare all bids unacceptable and resolicit the procurement.
- 6.5.2 Only One Proposal. If a solicitation results in only one proposal, the price of which is not reasonably close to expectations, the RITBA Purchasing Agent may recommend that the RITBA Executive Director declare the bid unacceptable and either resolicit the procurement or ask that the price be negotiated with the vendor.

## **6.6 CORRECTION OR WITHDRAWAL OF BIDS**

- 6.6.1 [37-2-18(f)] As Permitted by RITBA Executive Director. Correction or withdrawal of bids may be allowed only to the extent described below.
- 6.6.2 Penalty. The RITBA Purchasing Agent or his designee shall be the sole determiner of whether correction or withdrawal of bids may be made without penalty.
- 6.6.3 Requests for Correction or Withdrawal. The RITBA Purchasing Agent shall respond to requests for correction or withdrawal within ten (10) working days, notifying the bidder of the status of his bid, bid surety and continued inclusion in the RITBA Bidders List.
- 6.6.4 Correction of a bid
  - 6.6.4.1 Correction of a bid at any time prior to bid opening may be permitted without penalty when a bidder requests that his bid be returned and he resubmits a corrected bid prior to the bid opening.
  - 6.6.4.2 A vendor who fails to resubmit a corrected bid before the bid opening shall be considered nonresponsive.
  - 6.6.4.3 Requests by the apparent low bidder for correction of bids identifying all error(s) and specifying corrective action shall be submitted in writing to the RITBA Purchasing Agent and shall be re-evaluated with all other offers within five (5) working days after the bid opening.

6.6.5 Withdrawal of bids

- 6.6.5.1 Requests for withdrawal of bids shall be submitted in writing to the RITBA Purchasing Agent, providing an explanation for the action and advising the RITBA Purchasing Agent as to why the bidder should not be suspended from the RITBA Bidders List.
- 6.6.5.2 Withdrawal of bids without the written consent of the RITBA Purchasing Agent shall result in forfeiture of bid sureties and shall result in suspension or debarment from the RITBA Bidders List, depending upon the severity of the violation.

**6.7 SOLICITATION METHODOLOGY**

- 6.7.1 Procurements in Excess of \$5,000 for Construction and \$2,500 for all Other Purchases. Competitive offers shall be solicited for all procurements with a value greater than \$5,000 for construction and \$2,500 for all other purchases except under specifically prescribed circumstances set forth herein.
- 6.7.2 [37-2-22] Small Purchases. Procurements not to exceed an aggregate amount of ten thousand dollars (\$10,000) for construction and five thousand dollars (\$5,000) for all other purchases may be made in accordance with the following small purchase regulations set forth below. Procurement requirements shall not be artificially divided so as to constitute a small purchase under this section.
  - 6.7.2.1 Small construction purchases shall include building, altering, repairing, improving or demolishing buildings or other improvements to real property. Small construction purchases shall not include routine maintenance or repair of existing structures, buildings, or real property performed by salaried employees of RITBA in the usual course of their jobs.
- 6.7.3 Three Bid Minimum. Competitive bids shall be obtained from a sufficient number of suppliers to be considered representative of the industry cited. Although three bids shall be considered the minimum, the RITBA Purchasing Agent may in some instances declare the existence of two bids to be considered to provide adequate price competition. The determination shall be made in writing and placed in the bid file.
- 6.7.4 [37-2-18(a)] Sealed, Written Competitive Bids in Excess of \$10,000 for Construction Contracts and \$5,000 for All Others. Sealed written competitive bids shall be required for purchase orders exceeding ten thousand dollars (\$10,000) for construction contracts

and five thousand dollars (\$5,000) for all other purchases unless such method is not practicable.

- 6.7.4.1 [37-2-18(a)] Factors in Determining Whether Practicable - Factors to be considered in determining if competitive sealed bidding is practicable shall include whether specifications can be prepared which permit award on the basis of either the lowest bid price or the lowest evaluated bid price, the available sources, the time and place of performance, and other relevant circumstances appropriate for the use of competitive sealed bidding.
- 6.7.4.2 [37-2-18(c)] Adequate Public Notice - 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 consist of a written invitation soliciting quotations from suppliers on RITBA's approved vendors list. Such notice may include publication in a newspaper of general circulation in the State of Rhode Island as determined by the RITBA Executive Director not less than seven (7) days nor more than twenty-eight (28) days before the date set for the opening of the bids. The RITBA Executive Director may make a written determination that there is a need to waive the twenty-eight (28) day limitation. The written determination shall state the reason why the twenty-eight (28) 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.
- 6.7.4.3 [37-2-18(d)] Opening of Bids - 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 as soon as practicable thereafter. 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.

#### 6.7.5 Formal Competitive Bids

- 6.7.5.1 Procurements in Excess of \$1,000; Written Quotations - Except under emergency circumstances, competitive bids shall be obtained in the form of sealed written quotations for all procurements exceeding one thousand dollars (\$1,000).
- 6.7.5.2 Characteristics of Formal Bids - A formal bid shall be distinguished by:

- 6.7.5.2.1 a specific date and time by which sealed written bids must be submitted;
- 6.7.5.2.2 an opening and reading of all bids at a specified time at RITBA's office; and
- 6.7.5.2.3 the solicitation of a minimum of three selected bidders who are potential suppliers for the commodity or service to be procured.

6.7.6 Informal Competitive Bids

- 6.7.6.1 Procurements Less Than \$1,000; Oral Quotations - Oral quotations (including telephone) may be solicited for purchase orders with a value less than one thousand dollars (\$1,000). If RITBA is unable to verify prices using published lists/catalogs or by market analysis, the lowest quotation obtained by telephone solicitation for procurements exceeding two hundred fifty dollars (\$250) shall be confirmed in writing.
- 6.7.6.2 Characteristics of Informal Bids - An informal bid shall be distinguished by:
  - 6.7.6.2.1 lack of a specific time by which bids must be submitted;
  - 6.7.6.2.2 lack of sealed written bids; quotes may be oral on the spot or by telephone and confirmed at a later date in writing;
  - 6.7.6.2.3 lack of an opening and reading of bids; and
  - 6.7.6.2.4 the solicitation of selected registered or unregistered bidders who are potential suppliers for the commodity or service to be procured and/or vendors suggested for consideration by RITBA.
- 6.7.6.3 Three Bid Minimum - Informal bids shall be solicited from a minimum of three suppliers.
- 6.7.6.4 Maximizing Participation - All informal bid invitations shall be conducted in such fashion as to maximize the opportunity for participation of all responsible suppliers.
- 6.7.6.5 Equitable Distribution - For those purchases not affected by regional considerations, requests for quotations (RFQs) shall be distributed equitably

among various responsible suppliers. Where practical, a quotation will be solicited from other than the previous supplier prior to placing a repeat order.

6.7.6.6 Written Justification - When informal competitive bids are received in accordance with the provisions contained herein and award is not made to the low bidder, the purchase order file shall be annotated with statements of how the supplier was selected and why the price is fair and reasonable.

6.7.6.7 Quarterly Audit - RITBA purchasing management shall audit the use of informal competitive bids. As a minimum, quarterly review of performance by buyers should be conducted to sample (on a random basis) the reasonableness and effectiveness of buyer use and documentation of the informal bid process.

#### 6.7.7 Requests for Proposals

6.7.7.1 When Used - Requests for Proposals (RFPs) shall be utilized to solicit competitive offers in all cases where

6.7.7.1.1 Lowest price is not the sole or primary consideration to be used in determining an award;

6.7.7.1.2 Performance is neither specific nor objective, and open to the offeror's interpretation;

6.7.7.1.3 It is otherwise anticipated that offers may be substantially different and that there is insufficient common ground for objective comparison; or

6.7.7.1.4 It is anticipated that changes will be made after proposals are opened and that the nature of the proposals and/or prices offered will be negotiated prior to award.

6.7.7.2 Criteria to be Used - Wherever possible, the Request for Proposals shall define the performance or benefit required and shall set forth specific criteria to be utilized in evaluation of offers.

6.7.7.3 How Offers Evaluated - Offers shall be evaluated by a committee comprised of representatives of RITBA on the basis of:

6.7.7.3.1 The qualifications of the offerors, established by professional accomplishment and previous experience;

- 6.7.7.3.2 Aspects of offers which provide benefit, other than those based on cost; and
- 6.7.7.3.3 Other provisions of offers which are determined to serve the best interests of RITBA.
- 6.7.7.4 Award Solely on Basis of Cost - Nothing herein shall be construed to preclude the possibility of determining an award solely on the basis of cost.
- 6.7.7.5 Full Documentation - The evaluation of offers, including the weight assigned to various aspects of the offers, and all award determinations, including the reasons for a selection recommendation, shall be fully documented.

## **6.8 SOURCE SELECTION AND CONTRACT AWARD**

- 6.8.1 [37-2-18(e)] Award to Lowest Bid or Lowest Evaluated or Responsive Bid. The contract shall be awarded with reasonable promptness by written notice to the responsive and responsible bidder whose bid is either the lowest bid price or lowest evaluated or responsive bid price.
  - 6.8.1.1 Awards Within Sixty Days of Bid Opening - Awards shall be made within sixty (60) days of the bid opening unless expressly provided for to the contrary in the solicitation. Bids may not be withdrawn during this period without penalty without the express permission of the RITBA Purchasing Agent.
  - 6.8.1.2 Special Consideration to MBEs - In accordance with Chapter 14.1 of Title 37 of the General Laws of Rhode Island, the RITBA Purchasing Agent may, after considering the overall cost to RITBA prior to making a final determination of award, apply special consideration to the offers of MBEs when:
    - 6.8.1.2.1 the solicitation provides for such consideration;
    - 6.8.1.2.2 the offer is fully responsive to the terms and conditions of the solicitation;
    - 6.8.1.2.3 the price offer made by the MBE is determined to be within a competitive range (not to exceed five percent (5%) higher than the lowest responsive price offer) for the product or service; and

6.8.1.2.4 the firm making the offer conforms to the definition of a minority business enterprise as set forth herein.

6.8.2 Ten Percent of Construction Contracts Exceeding \$5,000 to MBEs. In accordance with the provisions of Section 37-14.1-7 of the General Laws of Rhode Island, ten percent (10%) of the dollar value of the work performed against contracts for construction exceeding five thousand dollars (\$5,000) shall be performed by MBEs where it has been determined that subcontract opportunities exist, and where certified MBE contractors are available.

[6.8.2.1 Award of such contracts shall be subject to approval by the RITBA Executive Director, based on the bidder's subcontracting plan. Such plan shall be submitted to the RITBA Executive Director prior to or upon tentative notification of award by the RITBA Purchasing Agent.]

**[6.9 MINORITY BUSINESS ENTERPRISES SET-ASIDES**

Notwithstanding anything to the contrary herein, in order to assist RITBA in attaining its MBE goals set forth elsewhere herein, RITBA may identify certain construction projects as

suitable for competitive bidding among MBEs only and, with respect to such projects, may solicit bids therefor solely from MBEs, provided, however, that there exist at least three (3) MBEs with capabilities consistent with contract requirements so as to permit competition, as required under 49 Code of Federal Regulations Part 23.]

## SECTION 7 - NEGOTIATION

### 7.1 GENERAL PROVISIONS

- 7.1.1 Objective. The objective of negotiation shall be to secure advantageous terms and conditions, and/or to exact improvements in terms and conditions offered to RITBA, and/or to reduce potential cost to RITBA.
- 7.1.2 When Negotiation Used. Negotiation shall be used to establish or modify contractual provisions in all cases where:
- 7.1.2.1 Responsive firm, fixed pricing is not the sole determinant for award;
  - 7.1.2.2 Responses to competitive bidding suggest that lower pricing, or other improvements in offers, are achievable;
  - 7.1.2.3 Single or sole source procurements are made;
  - 7.1.2.4 Responses to Requests for Proposals do not permit effective comparison, due to the differing nature of the responses;
  - 7.1.2.5 The scope of a contract changes during the performance period, such that modification of price, or of other provisions, may be called for; or
  - 7.1.2.6 The RITBA Purchasing Agent has determined in writing that a product, or the market in which a product is sold, is noncompetitive in nature.

### 7.2 COMPETITIVE NEGOTIATION

When Competitive Negotiation Used. A contract may be awarded by competitive negotiation when:

- 7.2.1 [37-2-19] it is determined in writing by the RITBA Purchasing Agent that the bid prices received by competitive sealed bidding either are unreasonable as to all or part of the requirements, or were not independently reached in open competition, and for which:
- 7.2.1.1 Each competitive bidder has been notified of the intention to negotiate and is given reasonable opportunity to negotiate;
  - 7.2.1.2 The negotiated price is lower than the lowest rejected bid by any competitive bidder; and

7.2.1.3 The negotiated price is the lowest negotiated price offered by a competitive offeror; or

7.2.2 In any case where the scope, term, or other requirements of the procurement have not been determined at the time that a purchase requisition is issued, or where optional offers are desired and encouraged, or where the value of the procurement has not been definitively established.

### **7.3 PROCEDURES**

7.3.1 Request for Proposals ("RFPs") When Competitive Negotiation is Used. When competitive negotiation is used, RFPs shall be used in accordance with the following procedure:

7.3.1.1 [37-2-19(b)] Adequate public notice of the RFP shall be given in the same manner as provided for in competitive sealed bidding.

7.3.1.2 An RFP shall describe and enumerate the item(s) covered, their specification(s), contract terms(s), and any other special provisions or requirements.

7.3.1.2.1 [37-2-19(c)] The request for proposals shall indicate the relative importance of price and other evaluation factors.

7.3.1.3 At a public opening of responses to RFPs, the RITBA Purchasing Agent shall not be allowed to reveal other than the names of those responding. The nature of responses shall not be subject to public disclosure until a contract has been awarded.

7.3.2 Review and Discussion

7.3.2.1 [37-2-19(d)] Written or oral discussions shall be conducted with all responsible offerors who submit proposals determined in writing 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:

7.3.2.1.1 With respect to prices, where such prices are fixed by law or regulation, except that consideration shall be given to competitive terms and conditions;

- 7.3.2.1.2 Where time of delivery or performance will not permit discussions;  
or
  - 7.3.2.1.3 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.
- 7.3.2.2 Responses to the Request for Proposals shall be evaluated:
- 7.3.2.2.1 To determine nonresponsive offers, which shall be eliminated from further consideration;
  - 7.3.2.2.2 To determine the lowest-cost combination of options, terms, and conditions, establishing a base-line; and
  - 7.3.2.2.3 To establish a cost ranking of responses to that base-line.
- 7.3.2.3 [37-2-20(b)] Where there is more than one offeror, competitive negotiations shall be conducted with the three (or 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:
- 7.3.2.3.1 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.
  - 7.3.2.3.2 A request for proposals, based upon revised specifications or quantities, shall be issued as promptly as possible, shall provide 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 offeror.
    - 7.3.2.3.2.1 The provisions of Section 37-2-20(2) may be waived in any case where the lowest-cost response

is ten percent (10%) or more lower than the next lowest cost offered.

7.3.3 [37-2-54(b)] General Service Administration Contracts. Neither the RITBA Executive Director nor the RITBA Purchasing Agent is prohibited from negotiating with vendors who maintain a General Service Administration price agreement with the United States of America or any agency thereof or with the State of Rhode Island or any agency thereof; provided, however, that no contract executed under this provision shall authorize a price higher than is contained in the contract between General Service Administration and the vendor affected.

7.3.4 Request for Best and Final Offer

7.3.4.1 On the basis of discussions with offerors, a request for Best and Final Offer, which describes the requirements of the procurement in the final form, shall be issued to all offerors still under consideration.

7.3.4.2 Each offeror shall submit a Best and Final Offer, which defines such offeror's best price, and other terms, for the procurement.

7.3.4.3 Best and Final Offers shall be evaluated in the same fashion as a normal competitive bid.

7.3.4.3.1 [37-2-19(d)] Award shall be made to the responsible and responsive offeror whose proposal is determined in writing to be the most advantageous to RITBA taking into consideration price and the evaluation factors set forth in the request for proposals.

**7.4 NONCOMPETITIVE NEGOTIATION**

7.4.1 When Noncompetitive Negotiation Used. Noncompetitive negotiation may be used:

7.4.1.1 [37-2-20(a)] In the event that all competitive sealed bids submitted through a formal solicitation result in bid prices in excess of the funds available for the purchase, and the RITBA Executive Director determines in writing that there are no additional funds available from any source so as to permit an award to the lowest responsive and responsible bidder, and the best interests of RITBA will not permit the delay attendant to a resolicitation under revised specifications, or for revised quantities, under competitive sealed bidding;

- 7.4.1.2 to improve the price offered of the evaluated lowest-cost response to any competitive bid;
- 7.4.1.3 where the RITBA Purchasing Agent has determined in writing that:
  - 7.4.1.3.1 A single or sole source procurement is involved;
  - 7.4.1.3.2 The product, or market in which a product is sold, is noncompetitive in nature; or
  - 7.4.1.3.3 Collusive or exclusionary selling practices are in evidence; or
- 7.4.1.4 to modify a contract during its performance, provided that no attempt is made to reduce the contractual obligations of the supplier, vendor, or contractor, or the contract term is not extended except in response to a request by the supplier, vendor, or contractor in consideration for other substantive changes, and where such extension of term of contract is determined in writing by the Purchasing Agent to be in the best interests of RITBA.

7.4.2 Written Documentation. The conduct of noncompetitive negotiation including, but not limited to, issues discussed, options considered, the rationale applied to decisions made and agreements reached shall be documented in summary form and placed in the purchase order file.

## **7.5 TRUTH IN NEGOTIATIONS REQUIREMENTS - COST OR PRICING DATA**

- 7.5.1 [37-2-28(a)] Accuracy of Cost and Pricing Data. In all negotiated contracts, a contractor shall submit cost or pricing data and shall certify that, to the best of his knowledge and belief, the cost or pricing data submitted were accurate, complete, and current as of a mutually determined specified date prior to the date of:
  - 7.5.1.1 The pricing of any negotiated contract where the total contract price is expected to exceed fifty thousand dollars (\$50,000); or
  - 7.5.1.2 The pricing of any change order or contract modification which is expected to exceed twenty-five thousand dollars (\$25,000), or such lesser amount in either instance as may be prescribed by the RITBA Purchasing Agent.
- 7.5.2 Applicability

- 7.5.2.1 The requirements of Section 7.5.1 above apply to all change orders or contract modifications over \$25,000 incorporating an aggregate of changes equal to this value, e.g., an additive change of \$20,000 and a deductive change of \$11,000 are equal to an aggregate change value of \$31,000 and thus are subject to the requirements of this section.
- 7.5.2.2 [37-2-28(c)] The requirements of this section need not be applied to contracts where the price negotiated is based on adequate price competition, established catalogue 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 it is determined in writing by the RITBA Executive Director that the requirements of this section may be waived, and the reasons for such waiver are stated in writing.
- 7.5.3 Cost or Pricing Data Factors. Cost or pricing data may include such verifiable factors as all vendor quotations, nonrecurring costs, changes in production methods and production or procurement volume, data in support of contractor projection of business prospects and objectives, together with related costs of operations, unit cost trends such as those associated with labor efficiency, make-or-buy decisions and estimated resources to attain business goals and any other management decisions which reasonably could be expected to have a significant bearing on costs under a proposed contract.
- 7.5.4 When Requirement Met. The requirement for submission of cost or pricing data is met when all data reasonably available to the contractor have been submitted or identified in writing at the time of agreement on price. The availability of books, records, and other documents without specific identification and explanation shall not be considered submission for the purposes of verification and agreement.
- 7.5.5 Subcontracting Requirements
- 7.5.5.1 Subcontractors' Cost or Pricing Data - In all contracts involving subcontractors, prime contractors shall require subcontractors to submit cost or pricing data for procurements in excess of fifty thousand dollars (\$50,000) unless exempted herein.
- 7.5.5.2 Certification - Prime contractors shall require subcontractors to certify that cost and pricing data submitted are accurate, complete, and current as of the date of agreement on price.
- 7.5.5.3 [37-2-28(b)] Adjustment Due to Inaccurate Cost or Pricing Data of Contractor - Any contract, change, or modification thereto under which a

certificate is required shall contain a provision that the price to RITBA, including profit or fee, shall be adjusted to exclude any significant sums by which the RITBA Purchasing Agent finds that such price was increased because the contractor furnished cost or pricing data which as of the date agreed upon between the parties, was inaccurate, incomplete, or not current.

- 7.5.5.4 Adjustment Due to Inaccurate Cost or Pricing Data of Subcontractor - Prime contractors must agree that the prime contract price shall be reduced in any significant amounts by which the prime contract price was overstated because a subcontractor did not submit accurate, complete, and current cost or pricing data when required by law.

## 7.6 GUIDELINES IN NEGOTIATIONS

- 7.6.1 Written Statement Regarding Negotiation. The RITBA Purchasing Agent who is responsible for the negotiation shall prepare a written statement at the conclusion of each negotiation phase setting forth the principal elements of the price negotiation.
- 7.6.1.1 Sufficient detail shall be recorded to reflect the most significant considerations controlling the establishment of the price.
- 7.6.1.2 If cost and pricing data were not required, a statement detailing the basis for determining that the price was fair and reasonable and the extent to which the data submitted were not a factor in the price negotiated shall be recorded.
- 7.6.2 Audit Clause. Contracts shall contain an audit clause which provides that if, after award, the RITBA Purchasing Agent obtains information that submitted data were inaccurate, incomplete or not current, or if the data were not adequately verified at the time of negotiation, then a post-award audit shall be undertaken by the RITBA Purchasing Agent or his designee and the contract shall be deemed to be automatically modified to reflect the data submitted.
- 7.6.3 Unit Pricing. Contracts shall contain to the extent possible language which provides for unit pricing for potential change orders.
- 7.6.4 Analysis in Absence of Competitive Sealed Bidding. The RITBA Purchasing Agent shall conduct or shall obtain price analyses to ascertain whether the price quoted is fair and reasonable in relation to comparable procurements when the absence of open market competition precludes the use of competitive sealed bidding.

- 7.6.5 Contracts Terminated for the Convenience of RITBA. In the negotiation of settlements of contracts which have been terminated for the convenience of RITBA:
- 7.6.5.1 Contract settlement shall be made in accordance with terms specified in the purchase order;
  - 7.6.5.2 In the absence of appropriate contract language, the vendor shall be paid for costs incurred, plus a reasonable profit, until the contract was terminated; and
  - 7.6.5.3 Penalties due to RITBA in accordance with a contract may be deducted from any payment to which a vendor is entitled.
- 7.6.6 Reimbursement of Costs. To determine the allowability of incurred costs for the purpose of reimbursing costs under contract provisions which provide for the reimbursement of costs, reimbursements shall be made only upon the presentation of documented, auditable evidence to RITBA that the vendor has incurred an eligible expense.

## SECTION 8 - SUPPLEMENTAL SERVICES

### 8.1 GENERAL PROVISIONS

- 8.1.1 Need for Supplemental Services. The RITBA Executive Director may delegate to the RITBA division of personnel all or a portion of responsibility for evaluation of the need for supplemental services and for verification/validation of qualifications of proposed service providers.
- 8.1.2 Change Orders to Professional Consultant Contracts. The RITBA Purchasing Agent shall review proposed change orders to professional consultant contracts (other than medical, dental and legal) which are reasonably estimated to exceed twenty thousand dollars (\$20,000) and shall determine whether such changes constitute a scope of service requiring open competition.
- 8.1.3 Competition for Supplemental Services. To the extent practicable, selection of supplemental service providers shall be based upon competition. The RITBA Purchasing Agent shall require that, whenever possible, a scope of services be defined in terms for which a bid or a response to a request for proposals may be solicited.
- 8.1.4 Legal Services. The RITBA Board of Directors shall recommend the final selection of providers of legal services. RITBA shall not commit funds for proposed services prior to receiving approval of the recommended provider from the RITBA Executive Director or his designee.
- 8.1.5 Architecture or Engineering. In accordance with the provisions of Chapters 5-1 and 5-8 of the General Laws of Rhode Island, no contract shall be awarded to a person practicing architecture or engineering who has not been professionally certified by the appropriate registration boards.
- 8.1.6 Construction Management Contractors. Requirements for the selection of construction management contractors shall be the same as those for the selection of architects and engineers.
- 8.1.7 Selection of Professionals with Place of Business Located in Rhode Island. The State of Rhode Island and Providence Plantations has a large number of architectural, engineering, and consulting firms well qualified in their fields of endeavor. In instances where contracts are entirely supported by state funds, it is the policy of RITBA that all other things being equal, the services of these qualified and capable professionals with offices in

Rhode Island, or secondly those professionals who propose a joint venture with a Rhode Island firm, be utilized. [37-2-59.1]

**8.2 ARCHITECTURAL, ENGINEERING AND CONSULTANT SERVICES  
SELECTION COMMITTEE**

[37-2-59(b)] A selection committee appointed by the Chairperson of the RITBA Board of Directors shall select persons or firms to render architectural, engineering and other professional consultant services, other than medical, dental and legal services, which are reasonably estimated to exceed twenty thousand dollars (\$20,000).

8.2.1 A quorum shall require the presence of a majority of the committee and must be present to conduct business.

8.2.2 The committee may utilize the services of such other persons it deems necessary to provide technical advice in evaluating consultant proposals. Such technical advisors shall not be considered members of the committee and shall not be entitled to vote on the selection of candidates to be recommended for consideration by the RITBA Executive Director.

**8.3 SUPPLEMENTAL SERVICES NOT EXCEEDING \$5,000**

The RITBA Executive Director may delegate authority for selection of supplemental service providers to the RITBA Purchasing Agent when the total annual (fiscal year) value of any such relationship does not exceed five thousand dollars (\$5,000).

**8.4 ARCHITECTURAL, ENGINEERING AND CONSULTANT SERVICES  
SELECTION PROCESS FOR SERVICES NOT EXCEEDING \$20,000**

When a professional consultant contract is estimated reasonably to be between five thousand dollars (\$5,000) and twenty thousand dollars (\$20,000), the RITBA Executive Director may establish a technical review committee to evaluate the qualifications of potential suppliers. Membership shall be determined on a case by case basis.

The technical committee shall recommend no more than three candidates to the RITBA Purchasing Agent, who shall forward his recommendations to the RITBA Executive Director, who shall be responsible for the final selection.

**8.5 ARCHITECTURAL, ENGINEERING AND CONSULTANT SERVICES  
SELECTION PROCESS FOR SERVICES EXCEEDING \$20,000**

## 8.5.1 Solicitation

8.5.1.1 [37-2-60] Public Announcement - The RITBA Executive Director shall give public notice of the need for professional architectural, engineering or consultant services which are reasonably estimated to exceed twenty thousand dollars (\$20,000).

8.5.1.1.1 Such 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.

8.5.1.1.2 The notice shall:

(a) contain a brief statement of the services required;

(b) describe the project;

(c) specify how a solicitation containing specific information on the project may be obtained; and

(d) be published in a newspaper of general circulation in Rhode Island and in such other publications as in the judgment of the committee shall be desirable.

8.5.1.2 [37-2-61] The solicitation shall describe RITBA's requirements and set forth evaluation criteria for the selection of the successful candidate and shall be distributed to interested persons.

8.5.2 Bidders' Conference. A conference shall be held at which the following shall be provided:

8.5.2.1 a description of the criteria to be used in evaluating a bidder's statement of qualification and performance data for the purpose of selecting a firm;

8.5.2.2 a discussion and further definition of the scope of work; and

8.5.2.3 an on-site review, if appropriate.

8.5.3 [37-2-63(a)] Selection Committee. The selection committee shall select no more than three (3) firms evaluated as being professionally and technically qualified.

- 8.5.4 [37-2-63(a)] Additional Information. The firms selected, if still interested in providing the services, shall make a representative available to the RITBA Executive Director at such time and place as he shall determine, to provide such further information as he may require.
- 8.5.5 [37-2-63(b)] Negotiation with Highest Qualified Firm. The RITBA Executive Director or his designee shall negotiate with the highest qualified firm for a contract for architectural, engineering, or consultant services for RITBA at a level of compensation which he determines to be fair and reasonable to RITBA. In making such determination, the RITBA Executive Director shall take into account the following: professional competence, technical merits, and fee structure.
- 8.5.6 [37-2-63(b)] Final Selection. The RITBA Board of Directors shall be responsible for the final selection of the providers of architectural and engineering services.

## **8.6 EVALUATION FOR SELECTION**

- 8.6.1 Criteria for Evaluation. Criteria for evaluation of candidates for supplemental services shall include, but shall not be limited to:
- 8.6.1.1 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;
  - 8.6.1.2 Ability to perform the services as reflected by workload and availability of adequate personnel, equipment, and facilities to perform the services expeditiously;
  - 8.6.1.3 Past performance as reflected by the evaluation of private persons and officials of other governmental entities which have retained the services of the firm with respect to such factors as control of costs, quality of work, and ability to meet deadlines; and
  - 8.6.1.4 In the case of consultant services, the vendor's proposed approach to the project/assignment shall be an additional criterion.
- 8.6.2 Statements Evaluated. The selection committee shall evaluate the following in light of the criteria set forth in the solicitation:

- 8.6.2.1 statements submitted in response to the solicitation of consultant services; and
- 8.6.2.2 other required statements of qualifications and performance data.

## **8.7 REQUIREMENTS FOR SUPPLEMENTAL LEGAL SERVICES**

8.7.1 [37-2-70] Professional services - Legal. Before RITBA procures the services of an attorney, it shall demonstrate to the satisfaction of RITBA's Board of Directors the following:

### 8.7.1.1 Criteria to be Demonstrated

- 8.7.1.1.1 The need for the services required including the scope of the services to be performed;
- 8.7.1.1.2 That no legal personnel employed by RITBA or the State on a full-time basis are available to perform such services;
- 8.7.1.1.3 That funding is available, indicating from which sources such funding is to be provided;
- 8.7.1.1.4 That attorneys to be engaged meet the following minimum requirements:
  - 8.7.1.1.4.1 professional licensing;
  - 8.7.1.1.4.2 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; and
  - 8.7.1.1.4.3 ability to perform the services as reflected by workload and availability of adequate personnel, equipment and facilities to perform the services expeditiously.

8.7.1.2 Letter of Engagement. The attorney shall enter into a letter of engagement with RITBA. 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.

8.7.2 Minimum Requirements for Professionals. Demonstration to the satisfaction of the RITBA Executive Director that professionals meet minimum requirements may be accomplished using the following:

8.7.2.1 RITBA may obtain annual verification of the status of an attorney(s) from the Supreme Court listing of members of the Rhode Island Bar.

8.7.2.2 RITBA may obtain annual verification of the status of medical doctors and medical professionals from the Department of Health.

8.7.2.3 The RITBA Executive Director may delegate authority to determine the appropriateness of qualifications to RITBA personnel subject to the following:

8.7.2.3.1 Such delegation shall be at the request of and justified by the Executive Director of RITBA;

8.7.2.3.2 A complete description of the evaluation procedure is provided; and

8.7.2.3.3 The names, qualifications and official capacity of the persons participating in the evaluation process or as members of professional review boards are provided.

## **8.8 AUDITING AND ACCOUNTING**

8.8.1 [37-2-59(c)] Procurement for Independent Audit. The procurement of auditing and accounting services shall be subject to the provisions of Sections 22-13-6 and 35-7-13 of the General Laws of Rhode Island which require that the Auditor General shall review and approve:

8.8.1.1 the proposed scope of services for an independent audit; and

8.8.1.2 the firm selected to conduct the audit.

- 8.8.2 Purchase Requisitions for Independent Audit Services. Purchase Requisitions for independent audit services shall be submitted to the State Office of Purchases with written verification of the Auditor General's approval of the proposed purchase of services. Copies of correspondence from the Auditor General to RITBA shall be considered sufficient authorization to proceed.
- 8.8.3 Contract Amendments. Contract amendments which materially increase the original approved scope of work shall also require the Auditor General's authorization.

## SECTION 9 - CONTRACTS

### 9.1 FUNDAMENTAL REQUIREMENTS AND PRINCIPLES FOR RITBA CONTRACTS

- 9.1.1 [37-2-54(c)] Purchase Order as Primary Contractual Instrument. No purchase or contract shall be binding on RITBA unless approved by RITBA in accordance with the procedures set forth herein.
- 9.1.1.1 The terms and conditions of a valid Purchase Order and its supplements, as issued by RITBA and signed by the RITBA Purchasing Agent or his designee, shall constitute the primary contractual instrument of RITBA.
- 9.1.1.1.1 Unless specifically established by law or regulation adopted by the RITBA Board of Directors, no other instrument shall constitute a RITBA purchasing contract.
- 9.1.1.1.2 Oral Agreements - Any alleged oral agreement or arrangement made by a bidder or contractor with RITBA or an employee of RITBA may be disregarded and shall not be binding on RITBA unless subsequently confirmed in writing by RITBA.
- 9.1.2 [37-2-13(d)] New Regulation has No Effect on Existing Contract. No State or RITBA purchasing regulation shall change in any way a contract commitment by RITBA nor of a contractor to RITBA which was in existence on the effective date of the regulation.
- 9.1.3 [37-2-13(e)] RITBA Purchasing Regulations Incorporated by Reference. The provisions of RITBA purchasing regulations shall be considered to be incorporated by reference in all RITBA contracts.
- 9.1.4 [37-2-13(f)] Unlawful Contracts Void Ab Initio. Contract provisions and contracts entered into in violation of state law or RITBA purchasing regulations shall be void "ab initio" (from inception).
- 9.1.5 Supplemental Principles of Law - Obligation of Good Faith
- 9.1.5.1 [37-2-3(a)] Unless displaced by the particular provisions of the State Purchases Act, the principles of law and equity, including the Uniform Commercial Code, the law merchant, and the law of contracts, including, but

not limited to, agency, fraud, misrepresentation, duress, coercion, mistake, and bankruptcy, shall supplement these provisions.

9.1.5.2 [37-2-3(b)] Every contract or duty under this chapter shall impose upon both parties the obligation of good faith in its performance and/or enforcement. "Good faith" shall mean honesty in fact in the conduct or transaction concerned and the observance of reasonable commercial standards of fair dealing.

[9.1.6 Compliance with Applicable State and Federal Laws. Contractors and subcontractors must comply with all applicable state and federal laws, as amended from time to time, to the full extent that such laws are applicable, including without limitation:

9.1.6.1 All state statutes, including without limitation:

- a. State equal opportunity requirements, including without limitation, Section 28-5.1-10 of the General Laws of Rhode Island;
- b. State prevailing wage statutes; and
- c. State Minority Business Enterprise statutes.
- d. Steel Products Procurement Act - R.I. GEN. LAWS Section 37-2.1-1 et seq.

[9.1.6.2 All applicable federal statutes.

9.1.6.3 All Presidential executive orders, including without limitation:

- a. Executive Order 12372 - Intergovernmental Review of Federal Programs.
- b. Executive Order 11246 - Equal Employment Opportunity.

9.1.6.4 All Gubernatorial executive orders.

9.1.6.5 All applicable federal regulations.

9.1.6.6 All state regulations.

9.1.6.7 All applicable Office of Management and Budget Circulars, including without limitation:

a. A-87 - Cost Principles Applicable to Grants and Contracts with State and Local Governments.

b. A-128 - Audits of State and Local Governments.

9.1.7 [37-2-41] Contractor's Bonds. The provisions of chapter 12 of Title 37 of the General Laws of Rhode Island shall apply to all construction contracts awarded under the State Purchases Act.

9.1.7.1 "Performance Bond" shall mean a contract of guaranty executed subsequent to award by a successful bidder to protect RITBA from loss due to contractor inability to complete a contract.

9.1.7.2 Chapter 12 of Title 37 of the General Laws of Rhode Island requires that every person awarded a public works contract shall furnish to RITBA good and sufficient surety (performance bond) not less than fifty percent (50%) and not more than one hundred percent (100%) of the contract price conditioned that the contractor, principal in said bond, the person's executors, administrators or successors, shall keep and perform the covenants, conditions and agreements in the contract. However, provided that good cause is shown, the Executive Director of RITBA may waive the requirements for contracts not in excess of fifty thousand dollars (\$50,000).

9.1.7.3 [37-13-14] A contractor's performance bond required for contracts exceeding one thousand dollars (\$1,000) under Chapter 37-12 must be furnished by a surety company authorized to do business in Rhode Island.

9.1.7.4 Nothing herein shall prevent RITBA from requiring a contractor to furnish a payment bond.

## **9.2 GENERAL CHARACTERISTICS OF RITBA CONTRACTS**

9.2.1 General Terms and Conditions. The RITBA Purchasing Agent shall develop and make available to potential suppliers a document stating the general terms and conditions applicable to all quotations and RITBA purchasing contracts.

9.2.1.1 The General Terms and Conditions shall:

- 9.2.1.1.1 be referenced and made a part of all solicitations for proposals and quotations; all RITBA purchase orders, contracts, and letters of authorization; and bidder registration documentation.
- [9.2.1.1.2 provide notice to bidders that contract award may be subject to the bidder signing an affirmation (certification) regarding certain legal requirements or restrictions relating to foreign corporations, goods produced in South Africa, disadvantaged business enterprises, labor rates, local product preference, etc., as required by the RITBA Purchasing Agent.]
- 9.2.1.2 When a contract has been entered into between RITBA and another party, neither party shall have the legal right to add new terms or conditions without the consent of the other, unless the contract so specifies.
- 9.2.1.3 All contract pricing shall be firm and fixed unless contract language provides for reconsideration. Issuance of purchase orders shall not be made on the basis of "advise pricing" (or "pricing to be determined") agreements. All commitments shall be on the basis of estimated prices with a "not to exceed" maximum authorization when firm, fixed pricing agreements are not possible.
- 9.2.1.4 Changes in scope, price, and length of contract period shall require contract amendments which are specified in writing.
- 9.2.1.5 Unanticipated changes may be considered with the express consent of both parties.
- 9.2.1.6 The issuance of a Purchase Change Order in accordance with the provisions of the contract and other requirements specified herein shall be considered a binding contract.
- 9.2.2 Termination. As appropriate, RITBA contracts shall include clauses which address special conditions/procedures for termination of contract not contained in RITBA's General Terms and Conditions; e.g., provisions for penalties or forfeitures for contract noncompliance may be included; a convenience termination clause which permits RITBA to terminate, at its own discretion, the performance of work in whole or in part, and to make a settlement of the vendor's claims in accordance with appropriate regulations and applicable contractual conditions.
- 9.2.3 Mutual Agreement. The agreement shall consist of an offer by one party, called the offeror, and an acceptance by the other party, called RITBA.

- 9.2.3.1 When a purchase order is issued which does not differ from the bid submitted by an offeror, mutuality shall be assumed.
- 9.2.3.2 In accordance with the General Terms and Conditions which notify offerors that the RITBA Purchasing Agent reserves the right to make partial bid awards, mutuality shall be assumed when a purchase order does not differ from the elements of a bid submitted by an offeror.
- 9.2.3.3 Any offer, whether in response to a solicitation for proposals or bids, or made without a solicitation, which is accepted in the form of an order made by the RITBA Purchasing Agent, or a RITBA official with purchasing authority delegated by the RITBA Purchasing Agent, shall be considered a binding contract.
- 9.2.4 Consideration. Although consideration to support a contract may assume other forms, generally it shall mean the agreement to pay a sum of money for the delivery of the desired items or services rendered. It shall not be essential that the consideration be of a substantial consequence but shall have some value. Compensation shall be specified and shall include but not be limited to: (a) terms of payment for partial delivery or completion; (b) unit of cost (hourly rate, per report rate), if appropriate; (c) frequency/conditions for payment - weekly, monthly, upon completion of percentage of work, etc.; and (d) retainage, when appropriate.
- 9.2.5 Capacity of Parties. The contracting parties shall have the legal authority to enter into contracts.
- 9.2.6 Competence of Parties. The contracting parties shall be of legal age and of sound mind.
- 9.2.7 Duration. Length of contract period shall be specified.
- 9.2.8 Designated Contact. A RITBA official from whom the contractor shall obtain direction shall be named and/or a format for written authorization to deliver (e.g., request for delivery form for master pricing agreement) shall be specified.
- 9.2.9 Public Works/Construction Contracts. Public Works/Construction Contracts shall provide for the following:
  - 9.2.9.1 Certificates of insurance to protect the general public or property belonging to RITBA or the State from injury or loss arising from actions or inaction of the contractor during the progress of a contract.

- 9.2.9.2 Each contractor shall be responsible for providing satisfactory evidence of complete coverage of all insurances, including without limitation workers' compensation insurance, permits, and licenses required by state, city or town statutes, ordinances, and/or regulations.

### **9.3 THE PURCHASE ORDER CONTRACT**

- 9.3.1 Entire Agreement. When a purchase order form is used, the entire agreement with the supplier shall, at all times, reside solely in the purchase order form and its supplements.
- 9.3.2 Purchase Order Supplements. Purchase Order Supplements shall consist of all of the following documents:
  - 9.3.2.1 RITBA's General Terms and Conditions;
  - 9.3.2.2 RITBA's request for quotations or proposals, including specifications;
  - 9.3.2.3 The contractor's offer which is responsive to the solicitation; and/or
  - 9.3.2.4 As appropriate, additional contract provisions.

### **9.4 MULTI-YEAR CONTRACTS**

- 9.4.1 [37-2-33(a)] When Permitted. Unless otherwise provided by appropriations therefor, multi-year contracts for supplies and services may be entered into for periods extending beyond the end of the fiscal year in which the contract was made, if funds for the first fiscal year of the contemplated contract are available at the time of contracting. Payment and performance obligations for succeeding fiscal years shall be subject to the availability of funds therefor.
  - 9.4.1.1 "Biennium" shall mean a period of time equal to two fiscal years.
  - 9.4.1.2 "Fiscal year" shall mean RITBA's fiscal year.
  - 9.4.1.3 Multi-year contracts which extend beyond a biennium shall be permitted provided that:
    - 9.4.1.3.1 funds for the first year of the biennium have been included in RITBA's budget;

- 9.4.1.3.2 contracts shall contain a standard clause which states that implementation of the contract beyond the first fiscal year shall be subject to the availability of funds; and
- 9.4.1.3.3 a written justification is placed in the purchase order file or the category of procurement has by regulation or policy been identified by the RITBA Executive Director as appropriate for multi-year contracting, e.g., property leases.
- 9.4.1.4 Multi-year contracts shall specify the annual costs and total value of each contract.
- 9.4.2 [37-2-33(b)] Determination of Necessity. Prior to the utilization of a contract as described in subsection 37-2-33(1), it shall be determined in writing by the RITBA Executive Director:
  - 9.4.2.1 That estimated requirements cover the period of the contract and are reasonably firm and continuing; and
  - 9.4.2.2 That such contract will serve the best interests of RITBA by encouraging effective competition or otherwise promoting economics in RITBA procurement.
  - 9.4.2.3 The RITBA Executive Director may delegate to the RITBA Purchasing Agent all or a portion of the responsibility and authority to make such determinations.
- 9.4.3 [37-2-33(c)] Cancellation. When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent year of a multi-year contract, the contract for such subsequent year may be cancelled and the contractor shall be reimbursed for the reasonable value of nonrecurring costs incurred but not amortized in the price of the supplies or services delivered under the contract.
 

[37-2-33(c)] The cost of cancellation may be paid from:

  - 9.4.3.1 Funds in RITBA's budget currently available for performance of the contract;
  - 9.4.3.2 Funds in RITBA's budget currently available for procurement of similar supplies or services and not otherwise obligated; or
  - 9.4.3.3 Funds in RITBA's budget made specifically for the payment of such cancellation costs.

9.4.4 Appropriate Cases for Multi-Year Contracts. Multi-year contracts shall be appropriate purchasing instruments for transactions for which the nature of the goods and services will remain relatively stable over time; and for which potential changes in price can be predicted and agreed to in advance, including provisions for mandated escalation requirements, such as:

9.4.4.1 Lease and lease-purchase agreements for equipment, real property, and facilities;

9.4.4.2 Maintenance and repair of specialized equipment;

9.4.4.3 Special licensing agreements (computer, communication);

9.4.4.4 Special services for which the contract award is based on a request for proposals;

9.4.4.5 Supplemental services, the approval of which is based upon the recommendation of a RITBA selection committee; and selection by the RITBA Executive Director;

9.4.4.6 Any other contractual relationship where it has been determined in writing by the RITBA Executive Director that a long-term agreement shall be the most cost-effective method of procurement.

## **9.5 LETTER OF AUTHORIZATION**

When the RITBA Executive Director determines in writing that it is absolutely essential that the vendor be given a binding commitment so that work can be commenced immediately and that negotiation of a definitive contract cannot be accomplished in sufficient time, the RITBA Purchasing Agent may issue a Letter of Authorization.

9.5.1 Letter of Authorization Instrument. A Letter of Authorization ("LA") shall mean a written instrument binding only when signed by the RITBA Purchasing Agent, which authorizes immediate commencement of implementation of the delivery of supplies or the performance of services.

9.5.2 Requirements of an LA. Such instrument shall:

9.5.2.1 Represent a preliminary authorization subject to the subsequent issuance of a purchase order.

- 9.5.2.2 Be superseded by a definitive contract at the earliest practicable date not later than the greater of the following:
  - 9.5.2.2.1 the expiration of 180 days from the date of the LA; or
  - 9.5.2.2.2 delivery of forty percent (40%) of the contract.
- 9.5.2.3 Be specifically negotiated and shall address the following contractual requirements:
  - 9.5.2.3.1 the vendor will proceed immediately with performance of the contract, including procurement of necessary materials;
  - 9.5.2.3.2 the extent and method of payment in the event of termination for the convenience of RITBA or for default;
  - 9.5.2.3.3 the vendor is not authorized to expend monies or incur obligations in excess of the maximum liability of RITBA as set forth in the letter contract;
  - 9.5.2.3.4 the type of definitive contract contemplated;
  - 9.5.2.3.5 as many definitive contract provisions as possible;
  - 9.5.2.3.6 the vendor shall provide such price and cost information as may reasonably be required by RITBA; and
  - 9.5.2.3.7 the vendor and RITBA shall enter into negotiations promptly and in good faith to reach agreement and execute a definitive contract.

## **9.6 CHANGES TO PURCHASE ORDERS**

- 9.6.1 Change Orders. All agreements and changes to scope of work, price, or other terms shall be incorporated into purchase orders via "change order" documents incorporating contract amendments.
- 9.6.2 Exclusive Documents for Changes. Change Orders issued by RITBA shall be the only binding documents which may create a change in a purchase order or any other contract.
- 9.6.3 Prior Necessary Approvals. Personnel shall not commit RITBA to technical/contractual changes to purchase orders without first securing all necessary approvals.

- 9.6.4 Changes Prior to Change Order. All written or oral potential changes may be disclaimed as not being binding on the supplier or RITBA until formally incorporated in the purchase order via a change order.
- 9.6.5 Letter of Authorization. In general, change orders shall be issued by RITBA following receipt of quotations and discussions of price and delivery with the supplier. If circumstances preclude immediate issuance of a formal change order, interim direction to the supplier may be made via an LA signed by the RITBA Purchasing Agent.

## **9.7 TERMINATION OF CONTRACT**

- 9.7.1 Invalidity of Bidder Certifications. If required bidder certifications are determined to be invalid, the RITBA Purchasing Agent shall declare the purchase order void.
- 9.7.2 Written Notice of Termination. Notice of termination by either party shall be submitted in writing to the other party in accordance with the termination clause of the contract.
- 9.7.3 Cancellation of a Contract by RITBA for Nonperformance
- 9.7.3.1 Cancellations of Purchase Order Contracts or Master Pricing Agreements shall require the signature of the RITBA Purchasing Agent or his designee.
- 9.7.3.2 A contract may be cancelled or annulled at the contractor's expense upon determination by the RITBA Purchasing Agent that a condition of nonperformance exists.
- 9.7.3.3 "Nonperformance" shall mean lack of compliance with the contract specifications and/or terms and conditions.
- 9.7.3.4 Cancellation by the RITBA Purchasing Agent for nonperformance shall be subject to the following rules:
- 9.7.3.4.1 The RITBA Purchasing Agent shall notify the contractor in writing that he or she is not in compliance with the contract. Such notice of nonperformance shall:
- 9.7.3.4.1.1 specify the nature of the complaint;
- 9.7.3.4.1.2 direct the contractor to take corrective action;

- 9.7.3.4.1.3 direct the contractor to respond in writing to the notice of nonperformance within a specified time period; and
      - 9.7.3.4.1.4 notify the contractor that failure to respond as directed may result in cancellation of the order.
- 9.7.3.5 If a contractor fails to take corrective action and/or respond to a notice of nonperformance, the RITBA Purchasing Agent may issue a change order cancelling the contract.
- 9.7.3.6 If, after reviewing the contractor's response, the RITBA Purchasing Agent determines that the contractor is in compliance with the contract requirements, he shall so notify the contractor in writing, providing a rationale for his decision.
- 9.7.3.7 If the RITBA Purchasing Agent determines that valid extenuating circumstances out of the control of the contractor have prevented compliance with the contract requirements, he may amend the contract to provide for a reasonable opportunity for the vendor to perform the contract, if necessary.
- 9.7.3.8 If the RITBA Purchasing Agent believes that a contractor's action or lack thereof presents a clear and immediate danger to the public interest, he may request in writing that the RITBA Executive Director authorize immediate termination of the contractual relationship.
- 9.7.3.9 Copies of all communications with a contractor regarding nonperformance shall be sent to the contractor's bonding company, power of attorney and RITBA legal counsel.
- 9.7.3.10 If the RITBA Purchasing Agent determines that a contractor is unwilling or unable to perform a contract, he shall:
  - 9.7.3.10.1 direct the contractor's bonding company to assume responsibility for the performance of the contract if a performance bond has been issued;
  - 9.7.3.10.2 so notify the contractor; and
  - 9.7.3.10.3 notify the contractor whether he/she has been temporarily suspended or permanently debarred from the RITBA Bidders List

and shall be responsible for any costs incurred by RITBA in the completion of the contract.

## **9.8 TYPES OF PURCHASE ORDER CONTRACTS**

### **9.8.1 Fixed Price (FP)**

- 9.8.1.1 The Firm Fixed Price (FFP) contract shall mean one which provides for a price which is not subject to any adjustment by reason of the seller's cost experience in the performance of the contract. This type of contract should be used when the price is based on credible cost data for the completion of the order.
- 9.8.1.2 The Fixed Price with Economic Price Adjustment (FPW/EPA) contract shall mean one which provides for the upward or downward revision of stated price upon the occurrence of certain economic conditions which are specifically defined in the contract. These conditions are limited to those beyond the control of the seller.
- 9.8.1.3 A Fixed Price Redeterminable (FPR) contract shall mean one which permits reconsideration of price at a stated time after contract initiation when the only supplier capable of performing a job cannot quote a fixed price with full assurance that it will be fair and reasonable.
- 9.8.1.4 The Fixed Price Incentive (FPI) contract shall mean one which provides for the adjustment of profit (fee) and price according to a sharing arrangement based on the relationship which final negotiated total cost bears to the negotiated target cost.

### **9.8.2 Cost Reimbursement**

- 9.8.2.1 A Cost No Fee (CNF) contract shall mean one under which the seller receives no fee.
- 9.8.2.2 A Cost Sharing (CS) contract shall mean one under which the seller not only receives no fee but is reimbursed for only an agreed upon portion of its allowable costs.
- 9.8.2.3 A Cost Plus Fixed Fee (CPFF) contract shall mean one which provides for the payment of a fixed fee to the seller. The fixed fee negotiated does not vary

with actual cost, but may be adjusted as a result of any subsequent changes in the work or service to be performed under the purchase order.

9.8.2.4 A Cost Plus Incentive Fee (CPIF) contract shall mean one which provides for a fee which is adjusted by formula in accordance with the relationship which total allowable costs bear to target costs, a target fee, a minimum and maximum fee, and a fee adjustment formula. Upon completion of the order, the fee is determined in accordance with the established formula as an incentive for performance efficiency; however, there is no ceiling price specified and the seller is under no obligation to complete the order once the funds obligated have been exhausted.

9.8.2.5 A Time and Materials (T/M) contract shall mean one which provides for the purchase of supplies or services on the basis of (1) direct labor hours at specified fixed hourly rates (which rates include direct and indirect labor, overhead and profit) and (2) material at cost. Material handling costs may be included to the extent they are clearly excluded from any factor of the charge computed against direct labor hours (L/H).

9.8.3 A Blanket Order shall mean an arrangement under which a purchaser contracts with a vendor to provide the purchaser's requirements for an item or a service, on an as-required and often over-the-counter basis. Such an arrangement sets a limit on the period of time it is valid and the maximum amount of money which may be spent at one time or within a specified period. (Usually, but not always, the funds for agency blanket orders will be encumbered.)

9.8.3.1 A Pricing Agreement (PA) shall mean a special blanket order which establishes the terms and conditions under which a specific item or a specific category of items in an indefinite quantity, are to be purchased for a specific period of time, usually one year.

9.8.3.2 A Master Pricing Agreement (MPA) shall mean a pricing agreement which has been established on behalf of more than one entity. (Usually, funds for MPA contracts are not encumbered.)

9.8.3.3 A Term Contract shall be synonymous with a MPA contract.

9.8.4 Prohibited Contracts. Use of the following types of contract is prohibited:

9.8.4.1 A Cost Plus Percentage of Cost (CPPC) contract shall mean one which provides for a fee which is adjusted by percentage formula in accordance with

the relationship to total cost. The percentage formula may be fixed, but fee paid may be adjusted as a result of any subsequent changes in the work or service to be performed under the purchase order. [37-2-29]

- 9.8.4.2 A To Be Determined (TBD) contract shall mean one which enables the buyer and the seller to enter into a relationship with no predetermined terms at the initiation of the contract.

## **9.9 PRINCIPLES FOR SELECTION OF TYPE OF PURCHASE ORDER CONTRACT**

The selection of the appropriate type of contract is a matter which requires the exercise of judgment in order to obtain fair and reasonable prices in accordance with the circumstances of the procurement.

- 9.9.1 Factors in Determining Type of Contract. In determining the type of contract to be used, consideration shall be given but not limited to such factors as:

- 9.9.1.1 Type and complexity of the item or scope of work to be performed;
- 9.9.1.2 Urgency of the requirement;
- 9.9.1.3 Prospective period of contract performance;
- 9.9.1.4 Degree of competition present;
- 9.9.1.5 Extent of completion of baseline and detail design, which in turn may influence other considerations such as the adequacy and firmness of specifications, and the availability of relevant historical pricing data and prior experience;
- 9.9.1.6 Availability of comparative price data, or lack of firm market prices or wage levels;
- 9.9.1.7 Prior experience with the supplier;
- 9.9.1.8 Extent and nature of subcontracting contemplated;
- 9.9.1.9 Assumption of business risk;
- 9.9.1.10 Supplier technical capability and financial responsibility;
- 9.9.1.11 Administrative costs;

- 9.9.1.12 Adequacy of the supplier's accounting system; and
- 9.9.1.13 Other concurrent contracts.

9.9.2 [37-2-32] Firm Fixed Price Contracts Preferred. Except with respect to firm fixed price contracts, no contract type shall be used unless it has been determined in writing that the proposed contractor'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 contractor's accounting system is adequate to allocate costs in accordance with generally accepted accounting principles.

9.9.2.1 The firm fixed price contract shall be used in applications and under limitations hereinafter set forth, unless the use of another type of contract is more appropriate.

9.9.3 [37-2-31] Best Interests of RITBA. Subject to the limitations on entering into cost plus percentage of cost and cost reimbursement contracts set forth herein, any type of contract which will promote the best interests of RITBA may be used.

9.9.4 Cost Reimbursement Contracts

9.9.4.1 [37-2-30(a)] No contract providing for the reimbursement of the contractor's cost plus a fixed fee (cost reimbursement) may be made through negotiation or in sole source or emergency procurements unless it is determined in writing by the RITBA Executive Director that such contract is likely to be less costly to RITBA than any other type of contract, or that it is impracticable to obtain supplies or service of the kind or quality required except under such a contract.

9.9.4.2 [37-2-30(b)] Each contractor under a cost reimbursement type contract shall obtain consent from the RITBA Executive Director, as provided for in the contract, before entering into:

9.9.4.2.1 a cost reimbursement subcontract; or

9.9.4.2.2 any other type of subcontract involving more than ten thousand dollars (\$10,000) or ten percent (10%) of the estimated cost of the prime contract, whichever is greater.

9.9.4.3 [37-2-30(c)] All cost reimbursement contracts shall contain a provision that only costs recognized as allowable, in accordance with cost principles set

forth in regulations issued by the RITBA Executive Director will be reimbursed.

9.9.5 FPW/EPA Contracts. When an FPW/EPA contract is employed, provisions shall be included for downward adjustment of the contract price in those instances where the prices or rates may be expected to fall below the base price agreed to by contract.

9.9.5.1 Types of Economic Adjustments. Types of economic adjustments shall include but shall not be limited to:

9.9.5.1.1 Price Adjustment - a modification of the base purchase order price on the basis of increases or decreases in published or established prices of specific items.

9.9.5.1.2 Labor and Material Adjustment - a modification of the contract base price on the basis of increases or decreases of wage rates, specific material costs, or both, using agreed upon standards or indices.

9.9.5.2 This type of contract may be appropriate where valid doubt exists as to the predictability of economic conditions which will exist during a multi-year contract period. Price adjustment provisions shall not be used to provide protection to contractors against contingencies which arise from inaccurate estimates of the quantities of labor or materials required for completion of a contract.

9.9.6 FPR Contracts. When FPR contracts are employed the basis for adjustments shall be established when the contract is negotiated and a cost baseline shall be established.

9.9.6.1 The following data shall be secured from each source before placing a redeterminable order: number of estimated hours and method used in arriving at hours; direct labor rates per hour; material cost, including both quantities and unit prices; overhead rates (categorized by element); profit, any other data deemed pertinent for analysis of the prices quoted.

9.9.6.2 The establishment of a redeterminable type of contract shall require the written authorization of the RITBA Executive Director.

9.9.7 FPI Contracts. When FPI contracts are employed:

- 9.9.7.1 There shall be an initially negotiated firm target cost, a target profit, a price ceiling and a final profit and price adjustment formula. After completion, a final cost shall be negotiated and a final price established in accordance with the predetermined formula.
- 9.9.7.2 The circumstances must be such that targets are reasonably free of contingencies and provided that a fair and reasonable incentive formula can be established at the time of initial contract negotiation and the contract is of sufficient duration to permit achievement of substantial cost reductions.
- 9.9.7.3 The same supplier cost data shall be required as for a redetermination contract.
- 9.9.8 CNF Contracts. A CNF contract may be used for research and development work, particularly with nonprofit organizations and educational institutions.
- 9.9.9 CPFF Contracts. A CPFF contract is suitable when:
  - 9.9.9.1 The scope and nature of work cannot be definitely specified.
  - 9.9.9.2 Definite specifications exist but the seller lacks a valid basis for estimating costs because the supplies called for are not items regularly manufactured, or the services called for have not been previously performed, or partial experience will not reveal a proper pricing basis for the remainder of the contract.
  - 9.9.9.3 Specifications are not complete or major changes substantially affecting the scope of production or construction work are expected.
  - 9.9.9.4 Work is to be performed in a RITBA-owned facility with the use of RITBA-owned equipment, materials, or personnel.
- 9.9.10 T/M Contracts. A T/M contract shall include the establishment of a cost limitation which the seller may not exceed (except at his or her own risk). A T/M contract shall be used only in situations when:
  - 9.9.10.1 it is not possible at the time of placing the order to estimate the extent of the work or to anticipate final costs with any reasonable degree of accuracy such as: (1) engineering and design services; (2) certain repair, maintenance or overhaul work; and (3) emergencies.

9.9.10.2 provision is made for appropriate surveillance by RITBA personnel during performance.

9.9.11 L/H Contracts. L/H contracts based solely on labor hours shall be considered a subcategory of T/M contracts, subject to the same restrictions as the T/M contract and shall be used only after the RITBA Purchasing Agent has determined that no other type of contract is suitable for meeting the needs of the requisitioner.

9.9.12 MPA Contracts. Considerations for use of an MPA contract:

9.9.12.1 The MPA shall specifically state the term and probable volume consideration of the agreement.

9.9.12.2 The seller shall be authorized to ship to RITBA only those items specified by a delivery request (on a form to be provided) issued under the authority of the Master Pricing Agreement. RITBA is obligated for payment only to the extent of the specific quantities set forth in the delivery request or for express considerations applicable to the contract itself.

9.9.12.3 The specific category of items to be purchased may be listed in a catalog prepared specifically for the agreement, a catalog of items offered for sale by a supplier, a national catalog published by a catalog publishing firm, or such other lists of items as may, from time to time, be determined as being a legally sufficient description of the item or items being purchased.

## **9.10 CONSTRUCTION CONTRACTING MANAGEMENT**

[37-2-39] Responsibility for selection of methods of construction contracting management. For construction contracting management contracts exceeding One Million Dollars (\$1,000,000), the RITBA Executive Director shall provide for as many alternative methods of management of construction contracting as he or she may determine to be feasible, setting forth criteria to be used in determining which method of management of construction is to be used for a particular project, and granting to the RITBA Board of Directors the discretion to select the appropriate method of construction contracting for a particular project; provided, however, that the RITBA Executive Director shall execute and include in the contract file a written statement setting forth the facts which led to the selection of a particular method of management of construction contracting in each instance.

## **SECTION 10 - EXCEPTIONS TO COMPETITIVE BIDDING REQUIREMENTS**

### **10.1 AUTHORITY TO MAKE EXCEPTIONS TO THE REQUIREMENT FOR COMPETITION**

In certain circumstances competitive bidding for purchases may not be the most cost-effective approach to procurement. The RITBA Purchasing Agent may, with the approval of the RITBA Executive Director, waive requirements for competitive sealed bidding in accordance with Section 37-2-54 of the General Laws of Rhode Island, including without limitation in the following circumstances:

10.1.1 Contractual services where no competition exists, such as telephone service, electrical energy, and other public utility services;

10.1.2 Where rates are fixed by law or ordinance;

10.1.3 All other commodities, equipment and services which, in the reasonable discretion of the RITBA Executive Director, are available from only one source;

10.1.4 Interests in real property;

provided, however, the RITBA Executive Director may require competitive bidding in any circumstances where he deems that competition may enhance RITBA's ability to attain cost savings.

### **10.2 GOODS OR SERVICES OBTAINED BY RITBA FROM A STATE AGENCY**

Goods or services obtained by RITBA from a state agency, such as printing from Prison Industries or use of Central Service Accounts, shall be exempt from competition. However, internal service fund purchases shall be made in accordance with all policies and procedures for competitive procurements. NOTE: Purchases of services from state higher educational institutions are subject to competitive review and require the submission of Purchase Requisitions.

### **10.3 SMALL PURCHASES NOT EXCEEDING \$250**

Competitive bids shall not be required for purchase orders up to \$250 in value if the prices are considered to be reasonable; however, RITBA officials shall be encouraged to obtain informal quotes.

10.3.1 Fair and Reasonable Price. It shall be the responsibility of RITBA personnel to exercise good judgment as to what is a fair and reasonable price.

- 10.3.2 Verification When Doubt as to Reasonableness. Specific action to verify the reasonableness of a price shall be taken when it is suspected that the price may not be reasonable, e.g., comparison to previous price paid or personal knowledge of the item involved.
- 10.3.3 Equitable Distribution. When practicable, an effort shall be made so that purchase orders up to \$250 in value shall be distributed equitably among suppliers. Quotations should be solicited from the previous supplier and other bidders prior to placing a repeat order so as to ensure equitable distribution and enhance competition. Additional bidders should be different from previously unsuccessful bidders. When practicable, effort shall be made to solicit small disadvantaged minority or women-owned businesses.
- 10.3.4 Artificial Division of Larger Purchases Prohibited. Under no circumstance shall purchases exceeding \$250 be artificially divided into component parts to circumvent the competitive process. Abuses of this limitation will be reported to the RITBA Executive Director who will hold the responsible party accountable for violations.

## **10.4 SOLE SOURCE**

[37-2-21(a)] A contract may be awarded for a supply, service, or construction item without competition when the RITBA Executive Director determines, in writing, that there is only one source for the required supply, service, or construction item.

- 10.4.1 Delegation to Purchasing Agent. The RITBA Executive Director may delegate the authority for determination of sole source to the RITBA Purchasing Agent.
- 10.4.2 Sole Source Categories. Sole source categories may include:
- 10.4.2.1 items of a unique nature which are unavailable from other sources due to patents or proprietary processes;
  - 10.4.2.2 books, maps, periodicals, and technical pamphlets, films, video and audio cassettes obtained from publishers;
  - 10.4.2.3 certain computer software;
  - 10.4.2.4 licenses - computer software, electronic transmittal;
  - 10.4.2.5 specialized replacement/repair parts or expansion parts necessary to maintain the integrity of system or function, e.g. scientific research;

- 10.4.2.6 works of art for museum or public display;
- 10.4.2.7 specialized services for which there is only one documented accepted source, such as transactions involving unique professional services and/or educational institutions, e.g., visiting speakers or professors, and performing artists; repair/maintenance agreements with manufacturers;
- 10.4.2.8 advertisements, public notices in magazines, trade journals, newspapers, television;

NOTE: Purchase of advertising and public relations campaign services must be established through a competitive selection process.

- 10.4.3 Continuing Responsibility to Evaluate Market. This provision excepting sole source procurements from competitive bidding shall not be interpreted to reduce the responsibility of RITBA to evaluate the market continuously to research product alternatives and develop additional sources (distributors).
- 10.4.4 Alternative Distributors and Manufacturers. In attempting to achieve the goal of maximizing competition to the greatest extent possible, alternative distributors and manufacturers shall be pursued to sole source items by using compatible replacement parts as long as warranties are not affected by substitution.
- 10.4.5 Maintenance Contracts. Maintenance contracts based upon sole source determination shall be subject to the following:
  - 10.4.5.1 Annual maintenance contracts in excess of \$1,000 shall require approval by the RITBA Executive Director.
  - 10.4.5.2 All multi-year contracts shall require approval by the RITBA Executive Director.
  - 10.4.5.3 To achieve better pricing, when the total amount for all contracts with the same supplier exceeds one thousand dollars (\$1,000), RITBA shall consolidate such requirements.
- 10.4.6 Nonprofit Providers. The RITBA Executive Director or his designee may, at his initiation or upon the review of a justified request and/or recommendation from the RITBA Executive Director, make a determination that a category of nonprofit providers constitutes sole source suppliers for certain types of service.



## 10.5 EMERGENCIES

[37-2-21(b)] Notwithstanding any other provision of the State Purchases Act or these procurement rules, the RITBA Executive Director may make or authorize others to make emergency procurements when there exists a threat to public health, welfare or safety under emergency conditions as defined in regulations; 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 contractor shall be included in the contract file.

- 10.5.1 Remedy or Repair Exceeding \$250. In accordance with procedures established by the RITBA Purchasing Agent, authorized officials of RITBA shall be permitted to react quickly to critical situations when the cost for a remedy or repair is in excess of \$250 and there is not sufficient time to undertake a public, formal, or informal bidding process.
- 10.5.2 What Constitutes an Emergency. An emergency shall mean a situation to which an urgent response is required. Immediate dangers to health and safety, threats to property and necessary functions, and failures of critical equipment constitute emergencies.
- 10.5.3 Inadequate Anticipation. Inadequate anticipation of need shall not be considered justification for "emergency" purchases.
- 10.5.4 Commitments Beyond Emergency. Commitments which extend beyond the immediate response to the emergency shall be prohibited, i.e., prevention of future problems by corrective measures other than the immediate restoration of function must be pursued through the competitive purchasing process.
- 10.5.5 State Emergency Response List. The State Office of Purchases shall establish, through competitive bidding, a list of emergency response vendors and shall make such list available to RITBA.
- 10.5.5.1 When possible, RITBA shall obtain services from a list of vendors selected by competitive process to provide specialized trade in emergencies.
- 10.5.5.2 If an emergency cannot be addressed by a designated vendor, the Office of Purchases shall assist in obtaining names and telephone numbers of responsible vendors.
- 10.5.6 Emergency Response Officer. Upon determination of the existence of an emergency, RITBA's designated emergency response officer shall consult with the RITBA Purchasing

Agent before committing to a particular vendor. The RITBA Purchasing Agent shall maintain logs of all oral confirmations of authorization to proceed.

10.5.7 Emergency Outside of Business Hours. If the emergency occurs outside of business hours for the RITBA division of purchases, RITBA shall be authorized to proceed in accordance with the principles and policies of sound procurement practices outlined herein.

10.5.8 Documentation. All emergency purchases shall be documented in accordance with procedures established by the RITBA Purchasing Agent. RITBA shall maintain documentation for the emergency situation and response action in writing. All emergency documentation forms shall be signed by either the RITBA Executive Director or the designated emergency response official.

## **10.6 STANDARD OR ESTABLISHED CATALOGUE ITEMS**

Standard or established catalogue items may be identified by the RITBA Executive Director as exceptions to competitive bidding. RITBA officials may submit requests and justification for Delegated Purchase Authority for the acquisition of such items to the RITBA Purchasing Agent, who shall recommend an appropriate course of action to the RITBA Executive Director.

## **10.7 EXPENDITURES WHICH ARE NOT PROCUREMENTS**

10.7.1 Grants, Benefits, Entitlements, Subsidies and Reimbursements. Grants, benefits, entitlements, subsidies and reimbursements shall not be considered procurements. The following types of expenditures shall not be subject to the provisions of the State Purchases Act for competitive procurement:

10.7.1.1 Reimbursement to local governments.

10.7.1.2 Reimbursements of third parties for client-demand services shall be considered benefits for which competitive solicitation is not required.

10.7.1.3 Entitlements for specific recipients or categories of recipients as prescribed by legislative mandate (including federal programs).

10.7.1.4 Grants, subsidies, entitlements or benefits purchased on behalf of, or paid directly to, individuals.

10.7.1.5 Employee expenses, subsidies and benefits. Examples include but shall not be limited to:

- (a) travel, meals, parking, mileage;
- (b) allowances (e.g., tools, clothing) per union contract;
- (c) fees - dues/membership, tuition costs, conference registration; and
- (e) tests/examinations/certifications.

#### 10.7.2 Responsibility of RITBA to Promote State Competition

- 10.7.2.1 RITBA may obtain services or provide programs on behalf of clients through grants to nonprofit or other entities; however, the purchase of services and programs for which recipients can be defined as suppliers/vendors shall be obtained by a request for proposal procedure to obtain the advantages of competition.
- 10.7.2.2 Nonprofit status shall not automatically exempt organizations from being subject to competitive purchasing principles.

#### 10.7.3 Special Provisions for Grants

- 10.7.3.1 Grants in the form of subsidies or general assistance shall be administered by RITBA in accordance with legal mandates restricting or defining the use of such funds.
- 10.7.3.2 All grant transactions shall be approved in accordance with requirements established by the RITBA budget office.
- 10.7.3.3 Grants for the provision of programs, services, and facility improvements shall not be provided without agreements or contracts which:
  - 10.7.3.3.1 specify the purpose for the grant;
  - 10.7.3.3.2 specify method and terms of payment;
  - 10.7.3.3.3 define service or product, if required;
  - 10.7.3.3.4 outline any legal limitations on the funding;
  - 10.7.3.3.5 set a time limit for distribution of funds;

10.7.3.3.6 require maintenance of records for a specified period of time;

10.7.3.3.7 provide for auditing; and

10.7.3.3.8 provide for termination of agreement/contract.

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