

**RHODE ISLAND CLEAN WATER PROTECTION
FINANCE AGENCY**

PROCUREMENT REGULATIONS

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ARTICLE I. GENERAL PROVISIONS:

Section 1.1. Introduction. The purpose of these Regulations is to ensure that the Rhode Island Clean Water Protection Finance Agency (the "Agency") acts pursuant to Chapter 2 of Title 37 of the Rhode Island General Laws (State Purchases), in connection with the procurement of goods and services.

Section 1.2. Application. The Agency shall follow these Regulations as accepted and filed with the Secretary of State pursuant to Title 42 Chapter 35, of the Rhode Island General Laws except where the Agency must follow the terms and conditions of grant awards, loan agreements, gifts, bequests, or other similar agreement.

Section 1.3. Chief Purchasing Officer. The Executive Director is appointed as the Chief Purchasing Officer (the "Chief Purchasing Officer") for the purpose of these Regulations. He/She may appoint a Chief Purchasing Agent (the "Chief Purchasing Agent") if needed to make recommendations to the Chief Purchasing Officer and to implement purchasing decisions. All purchases shall be approved by the Chief Purchasing Officer.

Section 1.4. Recycled/Environmentally Preferred Products. The Agency will purchase recycled and/or environmentally preferred products for its use and will specify such in all Requests for Proposals for services for the Agency.

ARTICLE II. SMALL PURCHASES:

Section 2.1. Informal Competitive Bids. All purchases under Five Thousand Dollars (\$5,000) shall be subject to informal competitive bids from at least three (3) sources, if available, to determine what is a reasonable price. Bids shall be solicited through oral quotations and confirmed in writing, where appropriate and practicable, by the Chief Purchasing Officer or the Chief Purchasing Agent.

Section 2.2. Approval by the Board of Directors. All purchases of \$500 or more shall be approved by the Agency Board of Directors (the "Board") upon recommendation by the Chief Purchasing Officer.

Section 2.3. Purchases from Minority, Women, or Disabled Business Enterprises. Office supplies shall be purchased at the lowest cost possible while making use of Minority, Women, or Disabled Business Enterprises (MBE/WBE/DBE). The Agency will attempt to conform to Federal and State MBE/WBE/DBE utilization goals whenever possible and to the extent practicable.

Section 2.4. Repairs and Maintenance Agreements. Repairs and maintenance of equipment owned by the Agency shall be in the form of a service contract by the purveyor of the equipment whenever possible and to the extent practicable.

ARTICLE III. PURCHASE ABOVE SPECIFIED AMOUNT; BIDDING PROCESS:

Section 3.1. Purchases Subject to Competitive Bidding. Purchases exceeding the amounts specified by Section 2.1 of these Regulations shall be awarded by competitive sealed bidding unless it is determined in writing that this method is not practicable. Factors to be considered in determining whether competitive sealed bidding is practicable shall include whether:

- (a) Specifications can be prepared that permit an award on the basis of either the lowest bid price or the lowest evaluated bid price; and
- (b) The available sources, the time and place of performance, and other relevant circumstances as are appropriate for the use of competitive sealed bidding.

Section 3.2. Requests for Proposals.

- (a) For purchases to be made pursuant to competitive bidding, the Agency shall prepare a request for proposals ("Request for Proposals") outlining, to the extent practicable, the exact terms or specifications of the product or service needed.
- (b) The Request for Proposals shall state whether the award will be based on lowest bid price, or, on the lowest evaluated or responsive bid price. Objective measurable criteria for this determination shall be included in the Request for Proposals, if available.

Section 3.3. Review of Bids and Contract Award.

- (a) Proposals will be opened publicly at a time and place indicated in the Request for Proposals which provides for adequate public notice of the invitation for bids. After the awarding of the bid, bidder information and an abstract of their bid and all information in relation to the bidding process shall be made available for public review.
- (b) The contract shall be awarded with reasonable promptness by written notice to the responsive and responsible bidder whose bid is accepted.

Section 3.4. Cancellation of Request for Proposals. A Request for Proposals or an invitation to bid may be canceled at any time if it is determined, in writing by the Board, to be in the best interest of the State or the Agency.

Section 3.5. Bidder Responsibilities.

- (a) Responsibilities of bidders include but are not limited to:
 - (1) The description of the bidder's business and qualifications;
 - (2) The identification of key members who will contribute to fulfilling the bidder's responsibilities pursuant to the award;
 - (3) Provision of a listing of past work related to the current service description;
 - (4) The description of affirmative action programs and number and percent of minorities and women who hold key managerial positions in the firm;
 - (5) The description of the firm's use of state Minority, Women, and Disabled Business Enterprises (MBE/WBE/DBE);
 - (6) Provision of a listing of any litigation and proceedings or investigations which are currently being conducted or are threatened, including an indication of the current status of any proceedings.
- (b) Where appropriate, bidders shall provide an itemized schedule of professional service fees and disbursements and shall specify how fees will be calculated.

ARTICLE IV. CONTRACTUAL PROCUREMENT OF PROFESSIONAL SERVICES:

Section 4.1. Subject to Bid. Contractual procurements of professional services shall be subject to the formal competitive bidding process set forth in Article III hereof.

Section 4.2. Definition of Professional Services Contractual procurements of the following services shall be subject to this Article IV:

- (a) Accounting Services;
- (b) Financial Advisor;
- (c) Bond Counsel;
- (d) Underwriters;
- (e) Computer Services;
- (f) Consultants;
- (g) Investment Advisory Services; and;

- (h) Other services not otherwise covered in these Regulations as determined by the Board.

Section 4.3. Requests for Proposals. The Agency shall solicit qualified firms for the delivery of professional services by preparing a Request for Proposals outlining the Agency's requirements and establishing the evaluation criteria. It shall be distributed to interested firms and shall specify the date by which all bids are due.

Section 4.4. Evaluation of Bids. Criteria to be used for evaluating bids for professional services include:

- (a) The competence and ability of the bidder to perform the services;
- (b) Past performance; and,
- (c) Lowest responsible price.

Section 4.5. Notice. Public notice of the request for proposals shall be published in appropriate publication(s) not less than seven (7) days, and not more than twenty-one (21) days before the scheduled opening of proposals. Interested firms are free to call the Agency and request a copy of the Request for Proposals.

Section 4.6. Contract Award. The contract shall be awarded with reasonable promptness by written notice to the responsive and responsible bidder whose bid is accepted.

ARTICLE V. LEGAL COUNSEL AND SERVICES:

Section 5.1. Criteria for Legal Counsel. The Board, upon recommendation by the Chief Procurement Officer shall determine:

- (a) The need for legal counsel including the scope of services to be performed;
- (b) That no full-time legal personnel of the State is available to provide these services;
- (b) That funding is available from the operating revenues of the Agency; and,
- (c) That the legal counsel to be engaged meets the following minimum requirements in accordance with State law:
 - (1) Appropriate professional licensing;
 - (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,

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

Section 5.2. Letter of Engagement. The attorney shall enter into a letter of engagement with the Agency outlining the rate of compensation, and provisions for the payment of expenses incurred in connection with legal services. Said letter of engagement shall certify that the rate of compensation does not exceed the rate of compensation charged by counsel for provided legal services to preferred public or private clients. The letter of engagement shall not be for more than one year.

ARTICLE VI. SELECTION OF AN INDEPENDENT AUDITING FIRM:

Section 6.1. Approval of Auditor General. The selection of an independent auditing firm shall be subject to the approval of the Rhode Island Auditor General and the Rhode Island Department of Administration.

Section 6.2. Guidelines. The Agency will follow the Auditor General's Guidelines for Audit Bids and Specifications for Quasi Public Agencies, (SYS 06), 1/91.

ARTICLE VII. UNSUCCESSFUL COMPETITIVE BIDDING:

Section 7.1. Insufficient Funds. If the quoted price of all bids submitted exceed the funds available to pay for the needed service, the Chief Purchasing Officer shall determine in writing that there are no additional funds available to pay for the procurement.

Section 7.2. Negotiated Awards. (a) If the Agency cannot afford to renew the bid solicitation process with revised specifications, then a negotiated award may be made. If the Agency discusses revisions of specifications with one bidder, then all other bidders must be accorded a similar opportunity to discuss the revised specifications.

- (b) If it is determined in writing by the Board that there is only one responsive and responsible bidder, then a non-competitive negotiated award may be given to that bidder.

ARTICLE VIII. SOLE SOURCE PROCUREMENT AND EMERGENCY PROCUREMENTS:

Section 8.1. Sole Source Procurement. A contract may be awarded for a supply, service or construction item without competition when the Chief Purchasing Officer or the Board determines, in writing, that there is only one practicable source for the required supply, service or construction item.

Section 8.2. Emergency Procurements. Notwithstanding any other provision of these Regulations or applicable law, the Chief Purchasing Officer may make or authorize others to make emergency procurements when there exists a threat to public health, safety, or welfare under emergency conditions as determined by the Chief Purchasing Officer, 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 the basis for the selection of the particular contractor shall be included in the contract file.

ARTICLE IX. SUBCOMMITTEE OF BOARD MEMBERS FOR SELECTION OF PROFESSIONAL SERVICES EXCEEDING \$5,000:

Section 9.1. Appointment by Board. The Board may, at its discretion, appoint a subcommittee of two or more Board members, to:

- (a) Select the firms or persons to be solicited to provide the professional service; or,
- (b) Evaluate the qualifications, competence, and price of proposals submitted through the Request for Proposals process; and,
- (c) Work in conjunction with the Chief Purchasing Officer to choose the best firm at the lowest responsible price to perform the tasks outlined in the Request for Proposals.

Section 9.2. Board Responsibility. It is the ultimate responsibility of the Board to choose firms to provide professional services based on the recommendations of the Subcommittee, the Chief Purchasing Officer, or a collective decision of both.

ARTICLE X. MULTI-YEAR CONTRACTS:

Section 10.1. Two-Year Limit. With the exception of contracts for independent auditing firms pursuant to the Guidelines of the Auditor General's office, multi-year contracts for supplies and services may be entered into for periods not extending beyond two years from the initial date of procurement.

ARTICLE XI. AWARD OF CONTRACTS/LETTERS OF ENGAGEMENT:

Section 11.1. Contract Negotiations. Upon the approval of a purchase decision or the award of a bid, the Chief Purchasing Officer shall negotiate with the most qualified firm or selected bidder, as the case may be, for a contract to provide the professional service at compensation which the Subcommittee and Chief Purchasing Officer determine to be fair and reasonable to the Agency.

Section 11.2. Letters of Engagement. Pursuant to the contract negotiations specified in Section 11.1 hereof, the selected firm or bidder shall provide to the Agency within 30 days, a letter of engagement. Said letter of engagement shall include:

- (a) A detailed description of the services to be performed pursuant to the Request for Proposal;
- (b) A description of the process of calculating compensation to be received upon completion of the described services and payment terms; and,
- (c) A description of the term of the Engagement.

ARTICLE XII. AUTHORITY OF CHIEF PURCHASING OFFICER IN CASES OF BREACH OF CONTRACT/ENGAGEMENT:

Section 12.1. Breach of Engagement Letter. The Chief Purchasing Officer is authorized to issue criteria to be included in the Request for Proposals which stipulate that the firm receiving the award of the contract must provide a letter of engagement to the Agency in accordance with these Regulations. If the selected firm fails to fulfill the terms of the letter of engagement, the Chief Purchasing Officer is authorized to terminate said engagement unless a mutual reconciliation can be reached.

Section 12.2. Termination Notice. If the Chief Purchasing Officer decides to terminate the engagement pursuant to Section 12.1 hereof, the Chief Purchasing Officer shall issue his or her decision in writing and notice of said decision shall be mailed or otherwise furnished to the awarded firm. Upon the receipt of said termination notice, all obligations of the Agency with respect to the terminated firm shall cease.

ARTICLE XIII. PURCHASES NOT OTHERWISE COVERED:

Section 13.1. In the event a matter regarding a purchase is not addressed by the Regulations, the Agency shall follow the principles and policies of state purchasing.

Filed w/Secretary of State: _____

Effective Date: _____