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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2005

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A N A C T

RELATING TO PUBLIC PROPERTY AND WORKS -- STATE PURCHASES

Introduced By: Senator Daniel DaPonte

Date Introduced: May 19, 2005

Referred To: Senate Finance

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 37-2-15, 37-2-17, 37-2-17.1 and 37-2-18 of the General Laws in
2 Chapter 37-2 entitled "State Purchases" are hereby amended to read as follows:

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

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

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

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

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

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

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

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

1 reliability, maintainability, useful life, and residual value.

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

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

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

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

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

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

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

22 **37-2-17. Method of source selection.** -- Except for purchases solicited pursuant to the
23 provisions for small purchases set forth in section 37-2-22, all state contracts and purchases shall
24 be solicited through utilization of the Rhode Island Vendor Information Program (RIVIP) as set
25 forth in section 37-2-17.1. Except as otherwise authorized by law, all state contracts shall be
26 awarded by:

27 (1) Competitive sealed offers, pursuant to section 37-2-18;

28 (2) Competitive negotiation, pursuant to sections 37-2-19 and 37-2-20;

29 (3) Noncompetitive negotiation, pursuant to section 37-2-21; ~~or~~

30 (4) Small purchase procedures, pursuant to section 37-2-22; or

31 (5) Reverse auctions, pursuant to section 37-2-18.1.

32 **37-2-17.1. Rhode Island vendor information program (RIVIP).** -- (a) The chief
33 purchasing officer is directed to institute an electronic vendor information program which shall
34 enable all invitations for bid and requests for a proposal to be accessed electronically by all

1 potential vendors. This program is to be readily accessible through public access stations located
2 at the following locations:

3 (1) One Capitol Hill, Providence, Rhode Island;

4 (2) City hall, town hall or public library of each of the thirty-nine (39) cities and towns in
5 the state.

6 (b) Further, the vendor information program shall be accessible to potential vendors
7 through means of computer modem.

8 [\(c\) The chief purchasing officer may contract with auctioneers as defined in section 37-2-](#)
9 [15\(10\) to conduct electronic reverse auctions, provided that notification of the opportunity to](#)
10 [participate in the auction is posted on the RIVIP in accordance with the requirements of section](#)
11 [37-2-25.1.](#)

12 **37-2-18. Competitive sealed bidding.** -- (a) Contracts exceeding the amount provided by
13 section 37-2-22 shall be awarded by competitive sealed bidding unless it is determined in writing
14 that this method is not practicable [or that the best value for the state may be obtained by using an](#)
15 [electronic reverse auction as set forth in section 37-2-18.1.](#) Factors to be considered in
16 determining whether competitive sealed bidding is practicable shall include whether:

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

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

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

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

33 (d) Bids shall be opened publicly at the time and place designated in the invitation for
34 bids. Each bid, together with the name of the bidder, shall be recorded and an abstract made

1 available for public inspection. Subsequent to the awarding of the bid, all documents pertinent to
2 the awarding of the bid shall be made available and open to public inspection and retained in the
3 bid file.

4 (e) The contract shall be awarded with reasonable promptness by written notice to the
5 responsive and responsible bidder whose bid is either the lowest bid price, lowest evaluated, or
6 responsive bid price.

7 (f) Correction or withdrawal of bids may be allowed only to the extent permitted by
8 regulations issued by the chief purchasing officer.

9 SECTION 2. Chapter 37-2 of the General Laws entitled "State Purchases" is hereby
10 amended by adding thereto the following section:

11 **37-2-18.1. Reverse auctions.** – (a) Contracts exceeding the amount provided by section
12 37-2-22 may be awarded by electronic reverse auctions when it is determined in writing by the
13 chief purchasing officer that the state will obtain a better value with this method than with a
14 competitive sealed bid process. Factors to be considered in determining whether electronic
15 reverse auctions shall be utilized shall include:

16 (1) Whether specifications can be prepared that permit electronic posting of bid
17 solicitations and secure receipt of electronic bids; and

18 (2) The cost for preparing and executing the auction; and

19 (3) Whether conditions are such that the commodities or services to be purchased are
20 appropriately competitive.

21 (b) All reverse auctions shall be conducted electronically using real-time, on-line bidding
22 procedures. These procedures shall include the following:

23 (1) Participation as a bidder shall be subject to a prequalification process conducted in
24 accordance with the provisions of section 37-2-25.1.

25 (2) The solicitation shall designate both an opening date and time and a closing date and
26 time. The closing date and time may be dependent on a variable or variables specified in the
27 solicitation. At the opening date and time, the auctioneer shall begin accepting real-time, on-line
28 bids. The solicitation shall remain open until the closing date and time.

29 (3) Following receipt of the first bid after the opening date and time, all bid prices shall
30 be posted electronically to the internet and updated on a real-time basis. At any time before the
31 closing date and time, a bidder may offer a lower bid than the lowest bid of any bidder, including
32 his own. A bidder's lowest bid shall supersede any prior higher bid offered by that bidder. Bid
33 prices may not be increased at any time after the opening date and time. All bids shall be binding
34 and may not be withdrawn. If a price entered by the bidder is in error, the bidder must correct the

1 bid within the time period and manner specified in the solicitation.

2 (4) The invitation for bids shall state that the award shall be made on the basis of the
3 lowest responsive bid price.

4 (c) The contract shall be awarded with reasonable promptness by written notice to the
5 responsive and responsible bidder whose bid is either the lowest bid price, lowest evaluated, or
6 responsive bid price.

7 (d) Subsequent to the awarding of the contract, all documents pertinent to the awarding of
8 the contract shall be made available and open to the public inspection and retained in the bid file.

9 **37-2-25.1. Prequalification of vendors for electronic reverse auctions.** – (a) Potential
10 bidders shall be prequalified for participation in each electronic auction.

11 (b) A request for qualifications shall be issued stating the intent to conduct a reverse
12 auction in accordance with the provisions of section 37-2-18.1. The request for qualifications
13 shall identify the goods and services to be purchased and the criteria to be used to determine how
14 many and/or which bidders will be selected to participate in the reverse auction. All requests for
15 qualifications shall be solicited through utilization of the Rhode Island Vendor Information
16 Program (RIVIP) as set forth in section 37-2-17.1.

17 (c) Participants shall be selected based on the criteria set forth in the request for
18 qualifications, including agreement to any terms, conditions or other requirements of the
19 solicitation. Written or oral discussions may be conducted with all responsible vendors
20 determined in writing to be reasonably susceptible of being selected for award.

21 (d) Prior to the execution of the auction potential bidders shall be required to receive
22 instruction on the use of the selected electronic bidding procedure. Only bidders who
23 successfully complete the training phase of prequalification shall be permitted to participate in the
24 electronic reverse auction specified in the request for qualifications.

25 SECTION 3. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
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- 1 This act would amend Chapter 37-2 to expand the authorized methods of obtaining bids
- 2 form state vendors to include electronic reverse auctions.
- 3 This act would take effect upon passage.

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