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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2013

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A N A C T

RELATING TO PUBLIC PROPERTY AND WORKS

Introduced By: Senators Miller, Gallo, Doyle, Ciccone, and Lombardi

Date Introduced: April 25, 2013

Referred To: Senate Labor

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 37-2-18, 37-2-27.1 and 37-2-39 of the General Laws in Chapter
2 37-2 entitled "State Purchases" are hereby amended to read as follows:

3 **37-2-18. Competitive sealed bidding.** -- (a) Contracts exceeding the amount provided by
4 section 37-2-22 shall be awarded by competitive sealed bidding unless it is determined in writing
5 that this method is not practicable or that the best value for the state may be obtained by using an
6 alternative method of management of construction contracting as provided under this chapter or
7 regulations promulgated pursuant to section 37-2-39 ~~electronic reverse auction as set forth in~~
8 ~~section 37-2-18.1~~. Factors to be considered in determining whether competitive sealed bidding is
9 practicable shall include whether:

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

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

14 (3) The anticipated complexity of the project such as infrastructure, structure, demolition,
15 abatement, adjacency to other structures, or abutters, site constraints, building systems,
16 uniqueness of design elements or environmental implications;

17 (4) The size, scope, and estimated cost of the project;

18 (5) The adequacy of available documentation regarding the existing site, buildings or
19 structures; abutters infrastructure, buildings, or structures; or other documentation of as-built

1 conditions:

2 (6) Phasing or logistical challenges arising out of the need to maintain existing
3 occupancy, continue existing operations, provide phased occupancy, or achieve more favorable
4 project financing terms;

5 (7) The anticipated impact of fast tracked design and construction on project cost or
6 schedule;

7 (8) Potential to achieve optimal minority or women business enterprise participation in
8 accordance with applicable state regulations;

9 (9) The amount and type of financing available for the project, including, whether the
10 budget is fixed and the source of funding, e.g., general or special appropriation, federal assistance
11 moneys, general obligation bonds or revenue bonds;

12 (10) The administration or implementation of procedures required to comply with
13 applicable regulations or statutes; and

14 (11) Mitigating the potential claims against the state arising from the inherent risks
15 associated with factors noted in subdivisions (3) through (10) above.

16 (b) The invitation for bids shall state whether the award shall be made on the basis of the
17 lowest bid price or the lowest evaluated or responsive bid price. If the latter basis is used, the
18 objective measurable criteria to be utilized shall be set forth in the invitation for bids, if available.
19 All documents submitted in response to the bid proposal are public pursuant to chapter 38-2 upon
20 opening of the bids. The invitation for bids shall state that each bidder must submit a copy of their
21 bid proposal to be available for public inspection upon the opening of the bids. The burden to
22 identify and withhold from the public copy that is released at the bid opening any trade secrets,
23 commercial or financial information, or other information the bidder deems not subject to public
24 disclosure pursuant to chapter 38-2, the Access to Public Records Act, shall rest with the bidder
25 submitting the bid proposal.

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

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

4 (e) The chief purchasing officer shall adopt and file regulations governing the bidding of
5 highway and bridge construction projects in the state not later than December 31, 2011.

6 (f) Immediately subsequent to the opening of the bids, the copies of bid documents
7 submitted pursuant to subsection 37-2-18(b) shall be made available for inspection by the public.
8 Any objection to any bid on the grounds that it is nonresponsive to the invitation for bids must be
9 filed with the purchasing agent within five (5) business days of the opening of the bids. The
10 purchasing agent shall issue a written determination as to whether the subject bid is
11 nonresponsive addressing each assertion in the objection and shall provide a copy of the
12 determination to the objector and all those who submitted bids at least seven (7) business days
13 prior to the award of the contract. If a bid is nonresponsive to the requirements in the invitation to
14 bid, the bid is invalid and the purchasing agent shall reject the bid. The purchasing agent shall
15 have no discretion to waive any requirements in the invitation to bid which are identified as
16 mandatory. Nothing in this section shall be construed to interfere with or invalidate the results of
17 the due diligence conducted by the division of purchasing to determine whether bids are
18 responsive and responsible.

19 (g) Subsequent to the awarding of the bid, all documents pertinent to the awarding of the
20 bid that were not made public pursuant to subsection 37-2-18(e) shall be made available and open
21 to public inspection, pursuant to chapter 38-2, the Access to Public Records Act, and retained in
22 the bid file. The copy of the bid proposal provided pursuant to subsection 37-2-18(b) shall be
23 retained until the bid is awarded.

24 (h) The contract shall be awarded with reasonable promptness by written notice to the
25 responsive and responsible bidder whose bid is either the lowest bid price, lowest evaluated, or
26 responsive bid price.

27 (i) Correction or withdrawal of bids may be allowed only to the extent permitted by
28 regulations issued by the chief purchasing officer.

29 (j) As of January 1, 2011, this section shall apply to contracts greater than one million
30 dollars (\$1,000,000); on January 1, 2012 for all contracts greater than seven hundred fifty
31 thousand dollars (\$750,000); on January 1, 2013 for all contracts greater than five hundred
32 thousand dollars (\$500,000); and on January 1, 2014 for all contracts awarded pursuant to this
33 section.

34 **37-2-27.1. Procurement of construction manager at-risk services -- Written**

1 **determination.** -- (a) Prior to procuring construction manager at-risk services the chief
2 purchasing officer must sign a written determination documenting the following:

3 (1) That in accordance with the factors set forth in subsection ~~section~~ 37-2-18(a), a
4 general contractor selected as the lowest responsive bidder based on a lump-sum, fixed fee
5 contract is not practicable for the construction of the project ~~and~~ or will not result in the best
6 value for the state;

7 (2) That the using agency has clearly identified in writing why the use of construction
8 management at-risk services is appropriate for the building project;

9 (3) That the building project has an estimated construction value of five million dollars
10 (\$5,000,000) or more;

11 (4) That the using agency has in place written procedures to ensure fairness in
12 competition, evaluation and reporting of results at every stage in the procurement process;

13 (5) That the using agency has the capacity, a detailed plan and procedures in place to
14 effectively procure and manage construction management at-risk services for the specific project
15 and has procured the services of a qualified owner's program manager pursuant to chapter 37-2;
16 and

17 (6) That the using agency has a detailed, written plan with clearly identified procedures
18 to monitor and approve all reimbursable costs.

19 The chief purchasing officer shall file copies of the written determination with the
20 president of the senate, the speaker of the house, the senate fiscal advisor and the house fiscal
21 advisor no later than three (3) business days after executing the written determination.

22 (b) Notwithstanding any other provision to the contrary, including any provision
23 exempting any entity from the requirements of this chapter, the chief executive officer of a public
24 corporation as defined in subdivision 35-20-5(4) or the chief executive officer of a quasi-public
25 agency, prior to procuring construction manager at-risk services shall sign a written determination
26 documenting the following:

27 (1) That in accordance with the factors set forth in subsection ~~section~~ 37-2-18(a), a
28 general contractor selected as the lowest responsive bidder based on a lump-sum, fixed fee
29 contract is not practicable for the construction of the project ~~and~~ or will not result in the best
30 value for the state;

31 (2) Why the use of construction management at-risk services is appropriate for the
32 building project;

33 (3) That the building project has an estimated construction value of five million dollars
34 (\$5,000,000) or more;

1 (4) That there is in place written procedures to ensure fairness in competition, evaluation
2 and reporting of results at every stage in the procurement process;

3 (5) That the corporation or quasi-public agency has the capacity, a detailed plan, and
4 procedures in place to effectively procure and manage construction management at-risk services
5 for the specific project and has procured the services of a qualified owner's program manager, as
6 set forth in subdivision 37-2-7(32); and

7 (6) That there is a detailed, written plan with clearly identified procedures to monitor and
8 approve all reimbursable costs.

9 The chief executive officer shall file copies of the written determination with the
10 president of the senate, the speaker of the house, the senate fiscal advisor, and the house fiscal
11 advisor no later than three (3) business days after executing the written determination.

12 **37-2-39. Responsibility for selection of methods of construction contracting**

13 **management.** -- The chief purchasing officer shall issue regulations providing for as many
14 alternative methods of management of construction contracting as he or she may determine to be
15 feasible, setting forth ~~criteria~~ factors to be used in determining which method of management of
16 construction is to be used for a particular project, and granting to the purchasing agent, or the
17 purchasing agency responsible for carrying out the construction project, the discretion to select
18 the appropriate method of construction contracting for a particular project, provided, however,
19 that the chief purchasing officer shall execute and include in the contract file a written statement
20 setting forth the facts which led to the selection of a particular method of management of
21 construction contracting in each instance.

22 SECTION 2. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
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- 1 This act would make changes to the law permitting the state to enter into non-competitive
- 2 bid construction and demolition contracts under some circumstances.
- 3 This act would take effect upon passage.

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