

2014 -- S 2344

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LC004107  
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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2014

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A N A C T

RELATING TO PUBLIC PROPERTY AND WORKS

Introduced By: Senators Lombardi, McCaffrey, Lombardo, Conley, and Jabour

Date Introduced: February 12, 2014

Referred To: Senate Finance

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 37-2-27.1 of the General Laws in Chapter 37-2 entitled "State  
2 Purchases" is hereby amended to read as follows:

3 **37-2-27.1. Procurement of construction manager at-risk services -- Written**  
4 **determination.** -- (a) Prior to procuring construction manager at-risk services the chief  
5 purchasing officer must sign a written determination documenting the following:

6 (1) That in accordance with [the factors set forth in subsection \(c\) of this section](#) ~~section~~  
7 ~~37-2-18~~, a general contractor selected as the lowest responsive bidder based on a lump-sum, fixed  
8 fee contract is not practicable for the construction of the project ~~and~~ [or](#) will not result in the best  
9 value for the state;

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

12 (3) That the building project has an estimated construction value of five million dollars  
13 (\$5,000,000) or more;

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

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

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

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

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

11 (1) That in accordance with [the factors set forth in subsection \(c\) of this section](#) ~~section~~  
12 ~~37-2-18~~, a general contractor selected as the lowest responsive bidder based on a lump-sum, fixed  
13 fee contract is not practicable for the construction of the project ~~and~~ [or](#) will not result in the best  
14 value for the state;

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

17 (3) That the building project has an estimated construction value of five million dollars  
18 (\$5,000,000) or more;

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

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

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

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

30 [\(c\) When evaluating the procurement of construction manager at-risk services, the factors](#)  
31 [which may be considered in determining whether competitive sealed bidding is not practicable or](#)  
32 [will not result in the best value for the state shall include:](#)

33 [\(1\) Whether specifications can be prepared that permit award on the basis of either the](#)  
34 [lowest bid or the lowest evaluated bid price;](#)

- 1           (2) Whether the available sources, the time and place of performance, and other relevant  
2 circumstances exist as are appropriate for the use of competitive sealed bidding;
- 3           (3) The complexity of the project including the existing or proposed infrastructure or  
4 structures, required demolition or abatement, adjacency to other structures or abutters, site  
5 constraints, building systems, uniqueness of design elements, or environmental implications;
- 6           (4) The size, scope, and estimated cost of the project;
- 7           (5) The adequacy of available documentation regarding the existing site, buildings or  
8 structures, abutter infrastructure, buildings, or structures, or other documentation of as-built  
9 conditions;
- 10          (6) Phasing or logistical challenges arising out of the need to maintain existing  
11 occupancy, continue existing operations, provide phased occupancy, or achieve more favorable  
12 project financing terms;
- 13          (7) The anticipated impact of fast tracked design and construction on project cost or  
14 schedule;
- 15          (8) Potential to achieve optimal minority or woman business enterprise or other  
16 subcontractor or vendor participation required in accordance with any applicable state or federal  
17 laws;
- 18          (9) The amount and type of financing available for the project, including whether the  
19 budget is fixed and the source of funding, for example, general or special appropriation, federal  
20 assistance moneys, general obligation bonds or revenue bonds;
- 21          (10) The administration or implementation of procedures required to comply with  
22 applicable regulations or statutes; and
- 23          (11) Mitigating the potential claims against the state arising from the inherent risks  
24 associated with factors noted in subdivisions (3) through (10) of this subsection.
- 25          (d) The provisions of Rhode Island general law §§ 37-2-27.1 through 37-2-27.5 shall not  
26 apply to road, bridge and heavy construction projects that are managed by the Rhode Island  
27 department of transportation and are funded in whole or in part by federal funds. Such projects  
28 are subject to the methods of management of construction contracting, including the criteria for  
29 selecting such methods, that are set forth in applicable federal laws including, but not limited to,  
30 23 U.S.C. 112(b) as amended, and regulations promulgated thereunder.

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

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EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF  
A N A C T  
RELATING TO PUBLIC PROPERTY AND WORKS

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1           This act would amend the provisions of the general laws relating to the written  
2           determination of procurement of construction manager at-risk services, by delineating those  
3           conditions or situations when competitive sealed bidding is not practicable or will not result in the  
4           best values for the state.

5           This act would take effect upon passage.

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