

2016 -- S 2267

LC003838

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2016

A N A C T

RELATING TO PUBLIC PROPERTY AND WORKS -- STATE PURCHASES

Introduced By: Senators McCaffrey, and Lombardo

Date Introduced: February 09, 2016

Referred To: Senate Finance

It is enacted by the General Assembly as follows:

SECTION 1. Sections 37-2-2, 37-2-7 and 37-2-18 of the General Laws in Chapter 37-2 entitled "State Purchases" are hereby amended to read as follows:

**37-2-2. General provisions.** -- (a) This chapter shall be liberally construed and applied to promote its underlying purposes and policies.

(b) The underlying purposes and policies of this chapter are to:

(1) Simplify, clarify, and modernize the law governing purchasing by the state of Rhode Island and its local public agencies;

(2) Permit the continued development of purchasing policies and practices;

(3) Make as consistent as possible the purchasing laws among the various states;

(4) Provide for increased public confidence in the procedures followed in public procurement;

(5) Insure the fair and equitable treatment of all persons who deal with the procurement system of the state;

(6) Provide increased economy in state and public agency procurement activities by fostering effective competition;

(7) Provide safeguards for the maintenance of a procurement system of quality, integrity and highest ethical standards; and

(8) Ensure that a public agency, acting through its existing internal purchasing function, adheres to the general principles, policies and practices enumerated herein.

1       (c) The awarding authority shall award contracts pursuant to this chapter in that it is the  
2 intention of this chapter that all contracts governed by this chapter shall be awarded to the lowest  
3 responsive and responsible bidder pursuant to §37-2-18. Provided, that "palpable abuse of  
4 discretion" shall not be a standard in consideration of any bid protests pursuant to any provision  
5 of this chapter.

6       **37-2-7. Definitions.** -- The words defined in this section have the meanings set forth  
7 below whenever they appear in this chapter, unless the context in which they are used clearly  
8 requires a different meaning or a different definition is prescribed for a particular section, group  
9 of sections, or provision:

10       (1) "Business" means any corporation, partnership, individual, sole proprietorship, joint  
11 stock company, joint venture, or any other legal entity through which business is conducted.

12       (2) "Change order" means a written authorization signed by the purchasing agent  
13 directing or allowing the contractor to proceed with changes, alterations, or modifications to the  
14 terms, conditions, or scope of work on a previously awarded contract

15       (3) "Chief purchasing officer" shall mean: (i) for a state agency, the director of the  
16 department of administration, and (ii) for a public agency, the executive director or the chief  
17 operational officer of the agency.

18       (4) "Construction" means the process of building, altering, repairing, improving, or  
19 demolishing any public structures or building, or other public improvements of any kind to any  
20 public real property. It does not include the routine maintenance or repair of existing structures,  
21 buildings, or real property performed by salaried employees of the state of Rhode Island in the  
22 usual course of their jobs.

23       (5) "Contract" means all types of agreements, including grants and orders, for the  
24 purchase or disposal of supplies, services, construction, or any other item. It includes awards;  
25 contracts of a fixed-price, cost, cost-plus-a-fixed-fee, or incentive type; contracts providing for  
26 the issuance of job or task orders; leases; letter contracts; purchase orders; and construction  
27 management contracts. It also includes supplemental agreements with respect to any of the  
28 foregoing. "Contract" does not include labor contracts with employees of state agencies.

29       (6) "Contract amendment" means any written alteration in the specifications, delivery  
30 point, rate of delivery, contract period, price, quantity, or other contract provisions of any existing  
31 contract, whether accomplished by unilateral action in accordance with a contract provision, or by  
32 mutual action of the parties to the contract. It includes bilateral actions, such as supplemental  
33 agreements, and unilateral actions, such as change orders, administrative changes, notices of  
34 termination, and notices of the exercise of a contract option.

1           (7) "Contractor" means any person having a contract with a governmental body.

2           (8) "Data" means recorded information, regardless of form or characteristic.

3           (9) "Designee" means a duly authorized representative of a person holding a superior  
4 position.

5           (10) "Employee" means an individual drawing a salary from a state governmental entity.

6           (11) "State governmental entity" means any entity created as a legislative body or a  
7 public or state agency by the general assembly or constitution of this state, except for municipal,  
8 regional, or county governmental entities.

9           (12) "May" means permissive.

10          (13) "Negotiation" means contracting by either the method set forth in §§ 37-2-19, 37-2-  
11 20, or 37-2-21.

12          (14) "Person" means any business, individual, organization, or group of individuals.

13          (15) "Procurement" means the purchasing, buying, renting, leasing, or otherwise  
14 obtaining of any supplies, services, or construction. It also includes all functions that pertain to  
15 the obtaining of any supply, service, or construction item, including a description of  
16 requirements, selection and solicitation of sources, preparation, and award of contract, and all  
17 phases of contract administration.

18          (16) "Public agency" shall mean the Rhode Island industrial recreational building  
19 authority, the Rhode Island economic development corporation, the Rhode Island industrial  
20 facilities corporation, the Rhode Island refunding bond authority, the Rhode Island housing and  
21 mortgage finance corporation, the Rhode Island resource recovery corporation, the Rhode Island  
22 public transit authority, the Rhode Island student loan authority, the Howard development  
23 corporation, the water resources board corporate, the Rhode Island health and education building  
24 corporation, the Rhode Island turnpike and bridge authority, the Blackstone Valley district  
25 commission, the Narragansett Bay water quality management district commission, the Rhode  
26 Island telecommunications authority, the convention center authority, the Channel 36 foundation,  
27 the Rhode Island lottery commission their successors and assigns, any other body corporate and  
28 politic which has been or will be created or established within this state excepting cities and  
29 towns, and the board of governors for higher education for all purchases which are funded by  
30 restricted, sponsored, or auxiliary monies.

31          (17) "Purchase request" or "purchase requisition" means that document whereby a using  
32 agency requests that a contract be entered into to obtain goods and/or services for a specified  
33 need, and may include, but is not limited to, the technical description of the requested item,  
34 delivery requirements, transportation mode request, criteria for evaluation of proposals, and/or

1 preparation of suggested sources of supply, and information supplied for the making of any  
2 written determination and finding required by § 37-2-6.

3 (18) "Purchasing agency" means any state governmental entity which is authorized by  
4 this chapter, its implementing regulations, or by way of delegation from the chief purchasing  
5 officer to contract on its own behalf rather than through the central contracting authority of the  
6 chief purchasing officer.

7 (19) "Purchasing agent" means any person authorized by a governmental entity in  
8 accordance with procedures prescribed by regulations, to enter into and administer contracts and  
9 make written determinations and findings with respect to contracts. The term also includes an  
10 authorized representative acting within the limits of authority. "Purchasing agent" also means the  
11 person appointed in accordance with § 37-2-1.

12 (20) "Services" means the rendering, by a contractor, of its time and effort rather than the  
13 furnishing of a specific end product, other than reports which are merely incidental to the required  
14 performance of services. "Services" does not include labor contracts with employees of state  
15 agencies.

16 (21) "Shall" means imperative and shall not be modified, limited or conditioned or  
17 replaced by the "palpable abuse of discretion" standard of review, or otherwise rendered other  
18 than an imperative.

19 (22) "State" means the state of Rhode Island and any of its departments or agencies and  
20 public agencies.

21 (23) "Supplemental agreement" means any contract modification which is accomplished  
22 by the mutual action of the parties.

23 (24) "Supplies" means all property, including, but not limited to, leases of real property,  
24 printing, and insurance, except land or permanent interest in land.

25 (25) "Using agency" means any state governmental entity which utilizes any supplies,  
26 services, or construction purchased under this chapter.

27 (26) As used in § 37-2-59, "architect" or "engineer" services means those professional  
28 services within the scope of practice of architecture, professional engineering, or registered land  
29 surveying pertaining to construction, as defined by the laws of this state. "Consultant" means any  
30 person with whom the state and/or a public agency has a contract which contract provides for the  
31 person to give direction or information as regards a particular area of knowledge in which the  
32 person is a specialist and/or has expertise.

33 (27) For purposes of §§ 37-2-62 -- 37-2-70, "directors" means those members of a public  
34 agency appointed pursuant to a statute who comprise the governing authority of the board,

1 commission, authority, and/or corporation.

2 (28) "State agency" means any department, commission, council, board, bureau,  
3 committee, institution, or other governmental entity of the executive or judicial branch of this  
4 state not otherwise established as a body corporate and politic, and includes, without limitation,  
5 the board of governors for higher education except for purchases which are funded by restricted,  
6 sponsored, or auxiliary moneys and the board of regents for elementary and secondary education.

7 (29) "Governmental entity" means any department, commission, council, board, bureau,  
8 committee, institution, legislative body, agency, or government corporation of the executive,  
9 legislative, or judicial branches of state, federal, and/or local governments.

10 (30) "Construction management at-risk" or "construction management at-risk services"  
11 or "construction management at-risk delivery method" is a construction method wherein a  
12 construction manager at-risk provides a range of preconstruction services and construction  
13 management services which may include cost estimation and consultation regarding the design of  
14 the building project, the preparation and coordination of bid packages, scheduling, cost control,  
15 and value engineering, acting as the general contractor during the construction, detailing the trade  
16 contractor scope of work, holding the trade contracts and other contracts, evaluating trade  
17 contractors and subcontractors, and providing management and construction services, all at a  
18 guaranteed maximum price, which shall represent the maximum amount to be paid by the using  
19 agency for the building project, including the cost of work, the general conditions and the fee  
20 payable to the construction management at-risk firm.

21 (31) "Construction manager at-risk" or "construction management at-risk firm" is a  
22 person or business experienced in construction that has the ability to evaluate and to implement  
23 drawings and specifications as they affect time, cost and quality of construction and the ability to  
24 coordinate and deliver the construction of the project within a guaranteed maximum price, which  
25 shall represent the maximum amount to be paid by the using agency for the building project,  
26 including the cost of the work, the general conditions and the fee payable to the construction  
27 management at-risk firm. The construction manager at-risk provides consultation services during  
28 the preconstruction and construction phases of the project. The project engineer, architect or  
29 owner's program manager may not serve as the construction manager at-risk.

30 (32) "Owner's program manager" shall be an entity engaged to provide project  
31 management services on behalf of a state agency for the construction and supervision of the  
32 construction of a building project. The owner's program manager acts as the owner's agent in all  
33 aspects of the construction project, including, but not limited to, architectural programming,  
34 planning, design, construction, and the selection and procurement of an appropriate construction

1 delivery method. The owner's program manager shall have at least seven (7) years experience in  
2 the construction and supervision of construction of buildings of similar size and complexity. The  
3 owner's program manager shall not have been employed during the preceding year by the design  
4 firm, the construction firm, and/or the subcontractors associated with the project.

5 **37-2-18. Competitive sealed bidding.** -- (a) Contracts exceeding the amount provided by  
6 § 37-2-22 shall be awarded by competitive sealed bidding unless it is determined in writing that  
7 this method is not practicable or that the best value for the state may be obtained by using an  
8 electronic reverse auction as set forth in § 37-2-18.1. Factors to be considered in determining  
9 whether competitive sealed bidding is 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 (b) The invitation for bids shall state whether the award shall be made on the basis of the  
15 lowest bid price or the lowest evaluated or responsive bid price. If the latter basis is used, the  
16 objective measurable criteria to be utilized shall be set forth in the invitation for bids, if available.  
17 All documents submitted in response to the bid proposal are public pursuant to chapter 38-2 upon  
18 opening of the bids. The invitation for bids shall state that each bidder must submit a copy of their  
19 bid proposal to be available for public inspection upon the opening of the bids. The burden to  
20 identify and withhold from the public copy that is released at the bid opening any trade secrets,  
21 commercial or financial information, or other information the bidder deems not subject to public  
22 disclosure pursuant to chapter 38-2, the Access to Public Records Act, shall rest with the bidder  
23 submitting the bid proposal.

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

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

1 abstract made available for public inspection.

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

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

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

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

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

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

32 SECTION 2. Sections 45-55-1, 45-55-4 and 45-55-5 of the General Laws in Chapter 45-  
33 55 entitled "Award of Municipal Contracts" are hereby amended to read as follows:

34 **45-55-1. Legislative findings. --** It is declared that a need exists to establish a uniform

1 system for the award of contracts by municipalities, utilizing open cooperative bids. The  
2 awarding authority shall award contracts pursuant to this chapter in that it is the intention of this  
3 statute that all contracts under this chapter shall be awarded to the lowest responsive and  
4 responsible bidder as noted in this chapter. Further, palpable abuse of discretion shall not be a  
5 standard in consideration of any bid protests pursuant to any provision of this chapter.

6 **45-55-4. Definitions. --** The words defined in this section have the following meanings  
7 whenever they appear in this chapter, unless the context in which they are used clearly requires a  
8 different meaning or a different definition is prescribed for a particular section, group of sections  
9 or provision.

10 (1) "Business" means any corporation, partnership, individual, sole proprietorship, joint  
11 stock company, joint venture, or any other legal entity through which business is conducted.

12 (2) "Change order" means a written order signed by the purchasing agent, or contractor  
13 directing or allowing the contractor to make changes which the changes clause of the contract  
14 authorizes the purchasing agent or contractor to order without the consent of the contractor or  
15 purchasing agent.

16 (3) "Construction" means the process of building, altering, repairing, improving, or  
17 demolishing any public structures or building, or other public improvements of any kind to any  
18 public real property. It does not include the routine maintenance or repair of existing structures,  
19 buildings, or real property performed by salaried employees of the municipality in the usual  
20 course of their job.

21 (4) "Contract" means all types of agreements, including grants and orders, for the  
22 purchase or disposal of supplies, services, construction, or any other item. It includes awards;  
23 contracts of a fixed-price, cost, cost-plus-a-fixed-fee, or incentive type; contracts providing for  
24 the issuance of job or task orders; leases; letter contracts, purchase orders, and construction  
25 management contracts. It also includes supplemental agreements with respect to any of the  
26 preceding. "Contract" does not include labor contracts with employees of the municipality.

27 (5) "Contract modification" means any written alteration in the specifications, delivery  
28 point, rate of delivery, contract period, price, quantity, or other contract provisions of any existing  
29 contract, whether accomplished by unilateral action in accordance with a contract provision, or by  
30 mutual action of the parties to the contract. It includes bilateral actions, as supplemental  
31 agreements, and unilateral actions, as change orders, administrative changes, notices of  
32 termination, and notices of the exercise of a contract option.

33 (6) "Contractor" means any person having a contract with a municipality.

34 ~~(8)~~(7) "Data" means recorded information, regardless of form or characteristic.



1           (8) "Designee" means a duly authorized representative of a person holding a superior  
2 position.

3           (9) "Employee" means an individual drawing a salary from a municipality, whether  
4 elected or not, and any nonsalaried individual performing personal services for any municipality.

5           (10) "May" means permissive.

6           (11) "Municipality" means the individual cities and towns of the state of Rhode Island.

7           (12) "Negotiation" means contracting by either of the methods described in §§ 45-55-6,  
8 45-55-7, and 45-55-8.

9           (13) "Person" means any business, individual, organization, or group of individuals.

10          (14) "Procurement" means the purchasing, buying, renting, leasing, or otherwise  
11 obtaining of any supplies, services, or construction. It also includes all functions that pertain to  
12 the obtaining of any supply, service, or construction item, including description of requirements,  
13 selection and solicitation of sources, preparation and award of contract, and all phases of contract  
14 administration.

15          (15) "Purchasing officer" means the person designated in each municipality or quasi  
16 public agency pursuant to section 45-55-3.

17          (16) "Regulations" means rules and regulations adopted by the individual cities or towns,  
18 concerning the implementation of the provisions of this chapter.

19          (17) "Services" means the rendering, by a contractor, of its time and effort rather than the  
20 furnishing of a specific end product, other than reports which are merely incidental to the required  
21 performance of services. "Services" does not include labor contracts with employees of  
22 governmental agencies.

23          (18) "Shall" means imperative, and shall not be modified, limited or conditioned or  
24 replaced by the "palpable abuse of discretion" standard of review or otherwise rendered other  
25 than an imperative.

26          (19) "Supplemental agreement" means any contract modification which is accomplished  
27 by the mutual action of the parties.

28          (20) "Supplies" means all property, including, but not limited, to leases of real property,  
29 printing and insurance, except land or permanent interest in land.

30          **45-55-5. Competitive sealed bidding.** -- (a) Contracts exceeding the amount provided by  
31 § 45-55-9 shall be awarded by competitive bidding unless they are professional  
32 engineering/architectural services pursuant to § 45-55-8.1 and it is determined in writing that this  
33 method is not practicable. Factors to be considered in determining whether competitive sealed  
34 bidding is practicable shall include whether:

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

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

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

8           (c) Adequate public notice of the invitation for bids shall be given a sufficient time prior  
9 to the date stated in the notice for the opening of bids. Notice may include publication in a  
10 newspaper of general circulation in the state as determined by the purchasing officer for the  
11 municipality not less than seven (7) days nor more than twenty-one (21) days before the date set  
12 for opening of the bids. The purchasing officer may make a written determination that the twenty-  
13 one (21) day limitation needs to be waived. The written determination shall state the reason why  
14 the twenty-one (21) day limitation is being waived and shall state the number of days, giving a  
15 minimum and maximum, before the date set for the opening of bids when public notice is to be  
16 given.

17           (d) Bids shall be opened publicly in full view of the public at the time and place  
18 designated in the invitation for bids. Each bid, together with the name of the bidder, shall be  
19 recorded and an abstract made available for public inspection. Subsequent to the awarding of the  
20 bid, all documents pertinent to the awarding of the bid shall be made available and open to public  
21 inspection and retained in the bid file.

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

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

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

=====  
LC003838  
=====

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

\*\*\*

- 1           This act would require the state and municipalities to award bids for purchases of goods  
2   or services to the lowest responsive and responsible bidder whose bid is the lowest price.  
3           This act would take effect upon passage.

=====  
LC003838  
=====