

2018 -- H 7310

LC004107

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2018

A N A C T

RELATING TO PUBLIC PROPERTY AND WORKS - STATE PURCHASES

Introduced By: Representatives Edwards, Cunha, Price, Marshall, and O'Grady

Date Introduced: January 26, 2018

Referred To: House Finance

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 37-2-22 and 37-2-59 of the General Laws in Chapter 37-2 entitled
2 "State Purchases" are hereby amended to read as follows:

3 **37-2-22. Small purchases.**

4 Procurements, not to exceed an aggregate amount of ~~ten thousand dollars (\$10,000)~~
5 twenty thousand dollars (\$20,000) for construction and ~~five thousand dollars (\$5,000)~~ ten
6 thousand dollars (\$10,000) for all other purchases may be made in accordance with small
7 purchase regulations promulgated by the chief purchasing officer. Procurement requirements
8 shall not be artificially divided so as to constitute a small purchase under this section.

9 ~~**37-2-59. Professional services -- Architectural, engineering, and consultant services --**~~
10 ~~**-- Committee. Professional services -- Architectural and engineering services -- Committee**~~
11 ~~**and selection.**~~

12 ~~(a) It shall be the policy of this state to publicly announce requirements for architectural,~~
13 ~~engineering, and consultants services, which are reasonably estimated to exceed twenty thousand~~
14 ~~dollars (\$20,000), and to negotiate contracts for such professional services on the basis of~~
15 ~~demonstrated competence and qualifications and at fair and reasonable prices.~~

16 ~~(b) Except for architectural, engineering and consultant services which can be solicited~~
17 ~~and awarded in accordance with the requirements for competitive sealed offers set forth in §§ 37-~~
18 ~~2-18 -- 37-2-19 of this chapter, a selection committee shall select persons or firms to render such~~
19 ~~professional services. For state agency contracts, the committee shall consist of the following~~

1 ~~individuals: the purchasing agent, or his or her designee, as chairman; a representative of the user~~
2 ~~agency; and a public member, appointed by the governor, subject to the advice and consent of the~~
3 ~~senate, who shall represent the interests of the general public. The governor may appoint an~~
4 ~~alternate public member, subject to advice and consent of the senate, who shall represent the~~
5 ~~interests of the general public who shall serve in the absence of the public member. The term of~~
6 ~~the public member shall be concurrent with that of the governor. Three (3) members, one being~~
7 ~~the purchasing agent or his or her designee, shall constitute a quorum. A quorum must be present~~
8 ~~to conduct business.~~

9 ~~(e) The procurement of auditing and accounting services shall continue to be subject to~~
10 ~~the provisions of §§ 22-13-6 and 35-7-13.~~

11 (a) Policy. It shall be the policy and practice of this state to publicly announce all
12 requirements for architectural and engineering services, in excess of an amount specified by
13 regulation, and to negotiate contracts for architectural and engineering services on the basis of
14 demonstrated competence, experience and qualification for the type of services required, and at
15 fair and reasonable prices.

16 (b) Architectural and engineering selection committee.

17 (1) In the procurement of architectural and engineering services, the chief purchasing
18 officer or the head of a purchasing agency shall encourage firms engaged in the lawful practice of
19 their profession to submit annually a statement of qualifications and performance data.

20 (2) An architect-engineer selection committee shall consider each architectural and
21 engineering services contract over twenty thousand dollars (\$20,000). The selection committee
22 for architectural and engineering services contracts less than this amount shall be established in
23 accordance with regulations promulgated by the chief purchasing officer.

24 (3) The selection committee shall evaluate current statements of qualifications and
25 performance data on file with the state, together with those that may be submitted by other firms
26 regarding the proposed contract. The selection committee shall conduct discussions with and/or
27 receive written statements from no less than three (3) firms (or two (2) firms, if only two (2)
28 apply) regarding the contract and the relative utility of alternative methods of approach for
29 furnishing the required services, and then select therefrom, in order of preference and
30 qualifications, based upon criteria established and published by the selection committee, no less
31 than three (3) of the firms (or two (2) firms, if only two (2) apply) deemed to be the most highly
32 qualified to provide the services required without consideration of cost or pricing information.

33 (c) Negotiation. The purchasing agent shall negotiate a contract with the highest qualified
34 firm as recommended by the selection committee for architectural and engineering services at

1 compensation which the purchasing officer determines in writing to be fair and reasonable to the
2 state. In making this decision, the purchasing officer shall take into account the estimated value,
3 the scope, the complexity, and the professional nature of the services to be rendered. Should the
4 purchasing officer be unable to negotiate a satisfactory contract with the firm considered to be the
5 most qualified, at a price the purchasing officer determines to be fair and reasonable to the state,
6 negotiations with that firm shall be formally terminated. The purchasing officer shall then
7 undertake negotiations with the second most qualified firm. Failing accord with the second most
8 qualified firm, the purchasing officer shall formally terminate negotiations. The purchasing
9 officer shall then undertake negotiations with the third most qualified firm. Should the purchasing
10 officer be unable to negotiate a contract at a fair and reasonable price with any of the selected
11 firms, the purchasing officer shall proceed with the issuance of a new solicitation or select
12 additional firms in order of their competence and qualifications, and the purchasing officer shall
13 continue negotiations in accordance with this section until an agreement is reached.

14 (d) Public agencies. Public agencies purchasing architectural and engineering services
15 contracts over twenty thousand dollars (\$20,000) must comply with subsections (b)(1) and (b)(2)
16 of this section. The purchasing officer may choose to delegate their role as negotiator under
17 subsection (b)(3) of this section to the directors of the public agency.

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

20 **37-2-59.2. Federally funded contracts and prequalification.**

21 (a) Federal requirements. In the procurement of architectural and engineering services
22 and the awarding of contracts, the state shall comply with Federal law and regulations including,
23 but not limited to, the Brooks Architect-Engineers Act, 40 U.S.C. § 1101 et seq., and take all
24 necessary steps to modify its rules, specifications, policies, and procedures accordingly to remain
25 eligible for Federal aid.

26 (b) Prequalification. The state shall establish procedures to prequalify firms seeking to
27 provide architectural and engineering services, or may use prequalification lists from other state
28 agencies to meet the requirements of this section.

29 SECTION 3. Sections 37-2-62 and 37-2-63 of the General Laws in Chapter 37-2 entitled
30 "State Purchases" are hereby repealed.

31 ~~**37-2-62. Evaluation of qualifications and performance data.**~~

32 ~~(a) The committee shall evaluate:~~

33 ~~(1) Statements that may be submitted in response to the solicitation of architectural,~~
34 ~~engineering, or consultant services; and~~

1 ~~(2) Statements of qualifications and performance data, if their submission was required.~~

2 ~~(b) All statements and statements of qualifications and performance data shall be~~
3 ~~evaluated in light of the criteria set forth in the solicitation for architectural, engineering, or~~
4 ~~consultant services.~~

5 ~~**37-2-63. Selection of firms for discussion with chief purchasing officer -- Final**~~
6 ~~**selection.**~~

7 ~~(a) The committee shall select no more than three (3) firms (or two (2) firms, if only two~~
8 ~~(2) apply) evaluated as being professionally and technically qualified. The firms selected, if still~~
9 ~~interested in providing the services, may be required to make a representative available to the~~
10 ~~chief purchasing officer or his or her designee at such time and place as he or she shall determine,~~
11 ~~to provide such further information as he or she may require.~~

12 ~~(b) The chief purchasing officer or his or her designee shall negotiate with the highest~~
13 ~~qualified firm for a contract for architectural, engineering, or consultant services for state~~
14 ~~departments and agencies at compensation which the chief purchasing officer determines to be~~
15 ~~fair and reasonable to the state. In making the determination, the chief purchasing officer shall~~
16 ~~take into account the professional competence of the offerors, the technical merits of the offerors,~~
17 ~~and the price for which the services are to be rendered. The chief purchasing officer shall be~~
18 ~~responsible for the final selection of the providers of architectural, engineering or consultant~~
19 ~~services and shall so inform the purchasing agent.~~

20 SECTION 4. This act shall take effect on December 31, 2018.

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

1 This act would establish a new comprehensive process for the procurement selection of
2 engineering and architectural consultant services based upon demonstrated competence
3 experience and and qualifications at fair and reasonable prices. It would also require the state to
4 comply with Federal laws and regulations in the procurement of architectural and engineering
5 services.

6 This act would take effect on December 31, 2018.

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