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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2020

A N A C T

RELATING TO PUBLIC PROPERTY AND WORKS -- STATE PURCHASES

Introduced By: Senator V. Susan Sosnowski

Date Introduced: March 04, 2020

Referred To: Senate Finance

(University of Rhode Island)

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 37-2-7 of the General Laws in Chapter 37-2 entitled "State
2 Purchases" is hereby amended to read as follows:

3 **37-2-7. Definitions. [Effective February 1, 2020.]**

4 The words defined in this section have the meanings set forth below whenever they appear
5 in this chapter, unless the context in which they are used clearly requires a different meaning or a
6 different definition is prescribed for a particular section, group of sections, or provision:

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

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

12 (3) "Chief purchasing officer" shall mean: (i) For a state agency, the director of the
13 department of administration, and (ii) For a public agency, the executive director or the chief
14 operational officer of the agency.

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

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

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

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

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

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

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

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

21 (12) "May" means permissive.

22 (13) "Negotiation" means contracting by either the method set forth in §§ 37-2-19, 37-2-
23 20, or 37-2-21.

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

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

29 (16) "Public agency" shall mean the Rhode Island industrial recreational building authority,
30 the Rhode Island commerce corporation, the Rhode Island industrial facilities corporation, the
31 Rhode Island refunding bond authority, the Rhode Island housing and mortgage finance
32 corporation, the Rhode Island resource recovery corporation, the Rhode Island public transit
33 authority, the Rhode Island student loan authority, the Howard development corporation, the water
34 resources board corporate, the Rhode Island health and education building corporation, the Rhode

1 Island turnpike and bridge authority, the Blackstone Valley district commission, the Narragansett
2 Bay water quality management district commission, the Rhode Island telecommunications
3 authority, the convention center authority, the Channel 36 foundation, the Rhode Island lottery
4 commission their successors and assigns, any other body corporate and politic which has been or
5 will be created or established within this state excepting cities and towns, the university of Rhode
6 Island board of trustees for all purchases that are funded by restricted, sponsored, or auxiliary
7 monies, and the council on postsecondary education for all purchases that are funded by restricted,
8 sponsored, or auxiliary monies.

9 (17) "Purchase request" or "purchase requisition" means that document whereby a using
10 agency requests that a contract be entered into to obtain goods and/or services for a specified need,
11 and may include, but is not limited to, the technical description of the requested item, delivery
12 requirements, transportation mode request, criteria for evaluation of proposals, and/or preparation
13 of suggested sources of supply, and information supplied for the making of any written
14 determination and finding required by § 37-2-6.

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

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

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

28 (21) "Shall" means imperative.

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

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

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

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

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

9 (27) For purposes of §§ 37-2-62 -- 37-2-70, "directors" means those members of a public
10 agency appointed pursuant to a statute who comprise the governing authority of the board,
11 commission, authority, and/or corporation.

12 (28) "State agency" means any department, commission, council, board, bureau,
13 committee, institution, or other governmental entity of the executive or judicial branch of this state
14 not otherwise established as a body corporate and politic, and includes, without limitation, the
15 council on postsecondary education except for purchases which are funded by restricted, sponsored,
16 or auxiliary moneys, the university of Rhode Island board of trustees except for all purchases which
17 are funded by restricted, sponsored, or auxiliary monies, and the council on elementary and
18 secondary education.

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

22 (30) "Construction management at-risk" or "construction management at-risk services" or
23 "construction management at-risk delivery method" is a construction method wherein a
24 construction manager at-risk provides a range of preconstruction services and construction
25 management services which may include cost estimation and consultation regarding the design of
26 the building project, the preparation and coordination of bid packages, scheduling, cost control, and
27 value engineering, acting as the general contractor during the construction, detailing the trade
28 contractor scope of work, holding the trade contracts and other contracts, evaluating trade
29 contractors and subcontractors, and providing management and construction services, all at a
30 guaranteed maximum price, which shall represent the maximum amount to be paid by the using
31 agency for the building project, including the cost of work, the general conditions, and the fee
32 payable to the construction management at-risk firm.

33 (31) "Construction manager at-risk" or "construction management at-risk firm" is a person
34 or business experienced in construction that has the ability to evaluate and to implement drawings

1 and specifications as they affect time, cost and quality of construction and the ability to coordinate
2 and deliver the construction of the project within a guaranteed maximum price, which shall
3 represent the maximum amount to be paid by the using agency for the building project, including
4 the cost of the work, the general conditions, and the fee payable to the construction management
5 at-risk firm. The construction manager at-risk provides consultation services during the
6 preconstruction and construction phases of the project. The project engineer, architect, or owner's
7 program manager may not serve as the construction manager at-risk.

8 (32) "Owner's program manager" shall be an entity engaged to provide project management
9 services on behalf of a state agency for the construction and supervision of the construction of a
10 building project. The owner's program manager acts as the owner's agent in all aspects of the
11 construction project, including, but not limited to, architectural programming, planning, design,
12 construction, and the selection and procurement of an appropriate construction delivery method.
13 The owner's program manager shall have at least seven (7) years experience in the construction and
14 supervision of construction of buildings of similar size and complexity. The owner's program
15 manager shall not have been employed during the preceding year by the design firm, the
16 construction firm, and/or the subcontractors associated with the project.

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

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

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1 This act would amend the definition of "state agency" for purposes of the chapter on "state
2 purchases" to provide for an exemption for the University of Rhode Island board of trustees when
3 making purchases funded by restricted, sponsored, or auxiliary monies, from the provisions of the
4 chapter.

5 This act would take effect upon passage.

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