

2021 -- S 0549

LC001764

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2021

A N A C T

RELATING TO PUBLIC PROPERTY AND WORKS -- STATE PURCHASES

Introduced By: Senators Cano, McCaffrey, Goodwin, Euer, Kallman, Acosta, Seveney,
and Mack

Date Introduced: March 04, 2021

Referred To: Senate Labor

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 37-2-18 of the General Laws in Chapter 37-2 entitled "State
2 Purchases" is hereby amended to read as follows:

3 **37-2-18. Competitive sealed bidding.**

4 (a) Contracts exceeding the amount provided by § 37-2-22 shall be awarded by competitive
5 sealed bidding unless it is determined in writing that this method is not practicable or that the best
6 value for the state may be obtained by using an electronic reverse auction as set forth in § 37-2-
7 18.1, [and except as provided in § 37-2-18.3](#). Factors to be considered in determining whether
8 competitive sealed bidding is practicable shall include whether:

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

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

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

16 All documents submitted in response to the bid proposal are public pursuant to chapter 38-2 upon
17 opening of the bids. The invitation for bids shall state that each bidder must submit a copy of their
18 bid proposal to be available for public inspection upon the opening of the bids. The burden to
19 identify and withhold from the public copy that is released at the bid opening any trade secrets,

1 commercial or financial information, or other information the bidder deems not subject to public
2 disclosure pursuant to chapter 38-2, the Access to Public Records Act, shall rest with the bidder
3 submitting the bid proposal.

4 (c) Unless the invitations for bid are accessible under the provisions as provided in § 37-2-
5 17.1, public notice of the invitation for bids shall be given a sufficient time prior to the date set
6 forth therein for the opening of bids. Public notice may include publication in a newspaper of
7 general circulation in the state as determined by the purchasing agent not less than seven (7) days
8 nor more than twenty-eight (28) days before the date set for the opening of the bids. The purchasing
9 agent may make a written determination that the twenty-eight (28) day limitation needs to be
10 waived. The written determination shall state the reason why the twenty-eight (28) day limitation
11 is being waived and shall state the number of days, giving a minimum and maximum, before the
12 date set for the opening of bids when public notice is to be given.

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

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

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

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

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

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

6 (j) As of January 1, 2011, this section shall apply to contracts greater than one million
7 dollars (\$1,000,000); on January 1, 2012 for all contracts greater than seven hundred fifty thousand
8 dollars (\$750,000); on January 1, 2013 for all contracts greater than five hundred thousand dollars
9 (\$500,000); and on January 1, 2014 for all contracts awarded pursuant to this section.

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

12 **37-2-18.3. Local, minority and women-owned business enterprises.**

13 (a) Where a reliable and responsible bidder certified as a minority-owned business
14 enterprise or women-owned business enterprise submits a bid of one million four hundred thousand
15 dollars (\$1,400,000) or less, the bid of the minority or women-owned business enterprise shall be
16 deemed the lowest bid unless it exceeds the bid of the lowest bidder by more than ten percent
17 (10%).

18 (b) Where a reliable and responsible bidder is a preferred vendor, as defined in subsection
19 (c) of this section, submits a bid, the bid of the preferred vendor shall be deemed the lowest bid
20 unless it exceeds the bid of the lowest bidder by more than five percent (5%).

21 (c) For the purposes of this section, "preferred vendor" means a person, firm, or corporation
22 which is granted preference priority according to the following:

23 (1) Produces or manufactures the product within the state;

24 (2) Has an assembly plant or distribution facility for the product within the state; or

25 (3) Is organized for business under the applicable laws of the state as a corporation,
26 partnership, or professional association and has maintained at least one retail outlet or services
27 center for the product or service within the state.

28 SECTION 3. Section 37-14.1-6 of the General Laws in Chapter 37-14.1 entitled "Minority
29 Business Enterprise" is hereby amended to read as follows:

30 **37-14.1-6. Minority business enterprise participation.**

31 (a) Minority business enterprises shall be included in all procurements and construction
32 projects under this chapter and shall be awarded a minimum of ten percent (10%) of the dollar
33 value of the entire procurement or project. The director of the department of administration is
34 further authorized to establish by rules and regulation the certification process and formulas for

1 giving minority business enterprises a preference in contract and subcontract awards.

2 (b) Any minority business enterprise currently certified by the U.S. Small Business
3 Administration as an 8(a) firm governed by 13 C.F.R. part 124 shall be deemed to be certified by
4 the department of administration as a minority business enterprise and shall only be required to
5 submit evidence of federal certification of good standing.

6 (c) Waiver.

7 (1) The department of administration shall provide a list of certified minority and women-
8 owned business enterprises to each prospective contractor and no waiver for this chapter shall be
9 granted until after each prospective contractor receives assistance from the department of
10 administration with compliance of this chapter.

11 (2) Upon issuance of a waiver of compliance, the department of administration shall make
12 publicly available records of all waivers of compliance. Such records shall include:

13 (i) Information identifying the contract, including the value of the contract;

14 (ii) Information identifying the contracting agency;

15 (iii) The name of the contractor receiving the waiver;

16 (iv) The date of the waiver; and

17 (v) The specific contract provisions to which the waiver applies.

18 (d) Each contracting agency that substantially fails to make a good faith effort to achieve
19 the maximum feasible participation of minority and women-owned business enterprises in such
20 agency's contracting shall be required to submit to the director of the department of administration
21 a remedial action plan to remedy such failure.

22 SECTION 4. 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 provide an exception to the requirements of competitive sealed bidding for
2 local, minority and woman-owned business enterprises. This act would also provide a waiver of
3 compliance to contractors requiring minority-owned businesses to be included in all procurements
4 and construction projects.

5 This act would take effect upon passage.

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