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TITLE 855 – RHODE ISLAND TURNPIKE AND BRIDGE AUTHORITY

CHAPTER 00 – GENERAL ADMINISTRATION

SUBCHAPTER 00 - N/A

PART 1 – Rules and Regulations Governing Procurement

1.1 Authorization and Purpose

1.1.1 Authorization for Regulations

The following rules and regulations concerning procurement by the Rhode Island Turnpike and Bridge Authority ("Authority") are promulgated in accordance with R.I. Gen. Laws §§ 37-2-9 and 37-2-13 ("Rules and Regulations").

1.1.2 Purpose

- A. The purpose of these Rules and Regulations are to set forth the general principles that will govern the conduct of procurement activities by the Authority, a body corporate and politic, and by Authority personnel engaged in those activities, including to:
1. Provide for public confidence in the procurement procedures of the Authority;
 2. Ensure fair and equitable treatment of all persons who participate in the procurement process;
 3. Provide economy in procurement transactions by fostering effective competition;
 4. Provide safeguards for a procurement process of quality, integrity, and the highest ethical standards;
 5. Provide for clearly defined accountability and responsibility for procurement transactions; and
 6. Ensure that the Authority, as a body corporate and politic of the State of Rhode Island, adheres to the general principles, policies, and practices of the State Purchases Act, R.I. Gen. Laws §§ 37-2-1 *et seq.*, and the rules

and regulations pursuant to the State Purchases Act (collectively, all as in effect from time to time, the "Act").

1.1.3 Applicability

These Rules and Regulations apply to all contracts for services, construction, equipment, and supplies, including without limitation, awards, purchase orders, and leases.

1.1.4 Definitions

- A. In addition to the provisions set forth in R.I. Gen. Laws §§ 37-2-7 and 37-2-15, the following definitions shall be applicable to procurements pursuant to these Rules and Regulations and procurement activities by the Authority:
1. "Responsible bidder" means a person who is financially stable, dependable, professional, and honest, who has the capability in all material respects to perform fully the contract requirements, and who has the integrity and reliability to assure good faith performance.
 2. "Responsive bidder" means a person who has submitted a bid, proposal or quotation one that conforms in all material respects to a solicitation.

1.2 Source Selection

1.2.1 Contracting Methods

- A. In addition to the provisions set forth in R.I. Gen. Laws § 37-2-17, the Authority recognizes the following four basic contracting methods in procuring services, construction, equipment, and supplies, in both locally funded and federally assisted projects and programs:
1. competitive sealed bids;
 2. competitive negotiation;
 3. small purchases; and
 4. noncompetitive procurements.

1.2.2 Competitive Sealed Bids

In addition to the provisions set forth in R.I. Gen. Laws § 37-2-18, the Authority shall award contracts that exceed \$5,000 (\$10,000 for construction contracts) by competitive sealed bidding whenever this method is practicable under the circumstances.

1.2.3 Competitive Negotiation

- A. In addition to the provisions set forth in R.I. Gen. Laws § 37-2-19, the Authority may utilize competitive negotiation under the following circumstances:
 - 1. When the Chief Purchasing Officer determines, in writing, that the use of competitive sealed bidding is not practicable.
 - 2. When the Chief Purchasing Officer determines, in writing, that the bid proposal prices received by the competitive sealed bidding method either are greater than the funds available or were not independently reached in open competition, and the best interests of the Authority would not be served by delay.

1.2.4 Small Purchases

- A. Purchases not exceeding \$5,000 (\$10,000 for construction) are considered "Small Purchases."
- B. Procurement requirements may not be divided in an artificial manner in order to qualify as a small purchase.
- C. In addition to the provisions set forth in R.I. Gen. Laws § 37-2-22,
 - 1. Small purchases that do not exceed \$250.00 may be accomplished without competitive solicitation if the prices are considered by the Purchasing Agent to be fair and reasonable.
 - a. If practicable under the circumstances, the Purchasing Agent will obtain informal quotes and distribute purchase orders equitably among vendors.
 - 2. Small purchases in excess of \$250 require obtaining written bid proposals from a minimum of three (3) qualified vendors who are willing and able to compete effectively.

1.2.5 Noncompetitive Procurements

- A. In addition to the provisions set forth in R.I. Gen. Laws § 37-2-21, when it is determined that there is only one source for the services, construction, equipment, or supplies required (sole source procurement), or when there exists a threat to public health, welfare, or safety under emergency conditions (emergency conditions), contracts may be awarded by noncompetitive procurements.
 - 1. Sole Source Procurement

- a. Contracts may be awarded for a supply, service, equipment, or construction by noncompetitive procurements when there is only one source.
- b. Sole source procurement will be allowed only on an extreme exception basis and must be documented and approved in writing by the Purchasing Agent (for contracts up to \$5,000) and the Chief Purchasing Officer, based on a written recommendation by the Purchasing Agent (for contracts in excess of \$5,000).
- c. Sole source procurements that will result in multiyear contracts require the prior approval of the members of the Authority.
- d. Examples of sole source exceptions include, without limitation, circumstances in which:
 - (1) there is only one responsible source and no other supplier, such as a utility company;
 - (2) the source demonstrates a unique and innovative concept not otherwise available to the Authority;
 - (3) specialized replacement or repairs parts are necessary to maintain the integrity or function of a system.
- e. Each noncompetitive procurement over \$5,000 must be supported by documentation that justifies the selection of the vendor.
 - (1) Such documentation shall include, without limitation,
 - (AA) a statement of the relevant circumstances and detailed information to support that statement;
 - (BB) cost and price analysis;
 - (CC) summary of the negotiations with the vendor; and
 - (DD) basis for determining that the price is fair and reasonable.
 - (2) A general conclusion that a certain source is uniquely qualified, has personal know-how or experience, or is the only source that can meet certain delivery requirements, does not qualify as sufficient justification to utilize a single source.

- f. The availability of this sole source procurement exception from competitive bidding does not diminish the responsibility of the Purchasing Agent to evaluate the market continuously to research product alternatives and develop additional sources.
- g. In attempting to achieve the goal of maximizing competition to the greatest extent possible, alternative vendors will be pursued for sole source items by using compatible replacement parts as long as warranties and operational cost effectiveness are not affected by substitution.

2. Emergency Conditions Procurement

- a. The Chief Purchasing Officer or the Purchasing Agent (in his or her absence) may make, or authorize others to make, emergency procurements when there exists a threat to public health, welfare, or safety under emergency conditions; provided that emergency procurements shall be made with such competition as is practicable under the circumstances.
- b. The determination of the basis for emergency and for the selection of the vendor must be in writing.
- c. An emergency means a situation to which an urgent response is required because of immediate dangers to health and safety, threats to property and necessary functions, or failures of critical equipment. Inadequate anticipation of need is not considered justification for "emergency" procurement. Commitments that extend beyond the immediate response to the emergency conditions are prohibited.
- d. The Purchasing Agent will establish and maintain, through competitive bidding, a list of emergency response vendors.
 - (1) When practicable, the required services, construction, equipment, or supplies will be obtained from a list of vendors selected by competitive process to provide specialized trade in emergencies.
 - (2) If an emergency cannot be addressed by a designated vendor, the Purchasing Agent shall obtain names and telephone numbers of responsible vendors.

1.3 Requests for Proposals

- A. Requests for Proposals are utilized to solicit competitive offers in all cases where:
 - 1. lowest price is not the sole or primary consideration to be used in determining an award;
 - 2. performance is neither specific nor objective, and open to the vendor's interpretation;
 - 3. it is otherwise anticipated that bid proposals may be substantially different and there is insufficient common ground for objective comparison; or
 - 4. it is anticipated that changes will be made after bid proposals are opened and the nature of the bid proposals and/or prices offered will be negotiated prior to award.
- B. Wherever possible, Request for Proposals shall define the performance or benefit required and shall set forth specific criteria to be utilized in evaluation of offers.
- C. Bid proposals will be evaluated by a committee comprised of representatives of the Authority on the basis of:
 - 1. the qualifications of the vendors, established by professional accomplishment and previous experience;
 - 2. aspects of bid proposals that provide benefit, other than those based on cost; and
 - 3. other provisions of bid proposals that are determined to serve the best interests of the Authority.
- D. The evaluation of offers, including the weight assigned to various aspects of the bid proposals, and all award determinations, including the reasons for a selection recommendation, must be fully documented.
- E. Nothing herein shall be construed to preclude the possibility of determining an award solely on the basis of cost.

1.4 Public Records

- A. In accordance with the provisions set forth in R.I. Gen. Laws § 37-2-18, bid proposals from vendors are public records pursuant to R.I. Gen. Laws §§ 38-2-1 *et seq.*
- B. Each bid proposal must include a "public copy" to be available for public inspection.
 - 1. Bidders may redact in the public copy any trade secrets or commercial or financial information which is of a privileged or confidential nature pursuant to the Access to Public Records Act.
- C. Bid proposals will be opened publicly at the time and place specified in the solicitation.

1.5 Bid Security

- A. In addition to the provisions set forth in R.I. Gen. Laws § 37-2-40, bidders must furnish, with their bid proposals, either a bid bond from a surety licensed to conduct business in the State of Rhode Island or a certified check in the amount of five (5%) percent of the bid proposal for construction contracts valued at greater than \$50,000.
- B. The Purchasing Agent may require surety, if appropriate, for any other contracts regardless of value.

1.6 Minority, Women, and Disadvantaged Business Enterprises

- A. The Authority will take all steps to ensure that minority, women, and disadvantaged business enterprises certified by the Minority Business Enterprise Compliance Office of the Rhode Island Department of Administration ("MBEs") have an opportunity to participate in contracts for services, construction, equipment, and supplies wherever possible.
- B. Affirmative steps shall include:
 - 1. placing MBEs on solicitations lists;
 - 2. ensuring that MBEs are solicited whenever they are potential sources; and
 - 3. when economically feasible, dividing requirements into smaller tasks or quantities to permit maximum participation by MBEs.

1.7 Prequalification

The Authority has determined that it will not use a procedure to prequalify contractors in connection with any projects or construction contracts proposed by the Authority.

1.8 Reservation of Rights

- A. The Authority reserves the right, at any time, for any reason, in its sole discretion, to:
1. revoke, suspend, or terminate any solicitation;
 2. accept or reject any and all bid proposals, in whole or in part;
 3. waive any technical defects, irregularities, or omissions in any bid proposals; and/or
 4. terminate any contract, with or without cause.
- B. The continuation of any contract is contingent at all times upon the availability of funds.

1.9 Compliance with Terms of Contract

Failure of a vendor to comply with the terms and conditions of any contract may result in nonpayment, suspension or termination of the contract, suspension or debarment of the vendor, or any other necessary or appropriate remedy.

1.10 Code of Ethics

- A. It is the policy of the State of Rhode Island that public officials (both elected and appointed) and employees must adhere to the highest standard of ethical conduct, respect the public trust and the rights of all persons, be open, accountable, and responsive, avoid the appearance of impropriety, and not use their positions for private gain or advantage.
- B. All officials and employees of the Authority are subject to the provisions of R.I. Gen. Laws §§ 36-14-4 through 36-14-7, as amended from time to time, and the regulations promulgated thereunder (collectively, all as in effect from time to time, the "Rhode Island Code of Ethics").
- C. All members of the Authority and its employees will adhere to the Rhode Island Code of Ethics in their procurement conduct on behalf of the Authority at all times

and will also adhere to the special provisions of the supplemental State Code of Procurement Ethics promulgated pursuant to the Act.

1.11 Implementation

- A. The policies herein set forth shall be implemented by the Chief Purchasing Officer.
- B. Violations of the provisions of this Procurement Policy, or any of the Authority's procurement policies and procedures, or any applicable state or federal laws or regulations shall be immediately reported to the Executive Director.
- C. The Executive Director shall have the authority to apply appropriate sanctions.

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