

**820-RICR-00-00-3**

## **TITLE 820 – HEALTH AND EDUCATIONAL BUILDING CORPORATION**

### **CHAPTER 00 – N/A**

#### **SUBCHAPTER 00 – N/A**

PART 3 – Procurement of Supplies, Services, Bond Counsel and Legal Counsel

### **3.1 General Provisions**

#### **3.1.1 Introduction**

- A. The Rhode Island Health and Educational Building Corporation (the "Corporation") is authorized and empowered, among other things, to issue bonds and for those purposes to enter into contracts necessary or incidental to the execution of its powers.
- B. The purposes of these rules (Rules) is to comply with the requirements of R.I. Gen. Laws Chapter 37-2 (State Purchasing Statute).

#### **3.1.2 Definitions**

- A. For purposes of this Part, unless otherwise specified, all terms shall have the meanings ascribed in the State Procurement Law., R.I. Gen. Laws Chapter 37-2. The words defined in this subsection shall have the meanings set forth below wherever they appear in these Rules, unless the context in which they are used clearly requires a different meaning.
  - 1. "Vendor" means any person who provides supplies, services, or construction under a contract

#### **3.1.3 Application of Rules**

- A. These Rules shall apply to all the expenditures of funds by the Corporation under a contract, except contracts or like business arrangements between the Corporation and the State and contracts between the Corporation and political subdivision of the State or other governments.
- B. Nothing in these Rules shall prevent the Corporation from complying with the terms and conditions of any grant, gift, bequest or agreement.
- C. The provisions of these Rules shall be considered to be incorporated in all contracts of the Corporation to which it applies.

- D. Contracts entered into in violation of these Rules shall be void ab initio.
- E. Notwithstanding anything contained in § 3.1.3 of this Part, [Part 1 of this Subchapter](#) shall govern the selection of architects, engineers and consultants by the Corporation.

#### **3.1.4 Procurement Responsibilities of the Corporation**

Pursuant to R.I. Gen. Laws § 45-38.1-4(b), all of the powers of the Corporation are vested in the Board of Directors of the Corporation. Therefore, for purposes of these Rules, the Board of Directors shall have all of the authority of the chief purchasing officer of the Corporation. Provided, however, the Board of Directors may distribute certain procurement activities and functions to various members of the Board of Directors, the Executive Director, employees or the professional advisers of the Corporation, provided, however, that the Board of Directors retains ultimate decision making authority over procurements.

#### **3.1.5 Public Access to Procurement Records**

Except as otherwise provided for herein all procurement information of the Corporation shall be a public record to the extent provided in [Part 2 of this Subchapter](#) and shall be available to the public as provided in such Rules.

#### **3.1.6 Procurement Decisions of the Corporation**

Every determination required by these Rules shall be in writing and based upon written findings of fact by the Corporation. These determinations and written findings shall be retained in an official contract file in the offices of the Corporation.

### **3.2 Source Selection and Contract Formation.**

#### **3.2.1 Source Selection**

- A. Methods of Source Selection. Except as otherwise authorized by law, or by Rule of the Corporation, all contracts of the Corporation shall be awarded in accordance with R.I. Gen. Laws § 37-2-17.
- B. Competitive Sealed Bidding.
  - 1. Competitive Sealed Bidding shall be noticed and implemented in accordance with R.I. Gen. Laws § 37-2-18.
  - 2. Correction or withdrawal of bids will be allowed only in the following circumstances:

- a. A bidder will not be permitted to correct a bid mistake after bid opening that would cause such bidder to have the lowest bid unless the mistake is clearly evident from the bid document, for example, errors in addition; or
- b. An otherwise low bidder may be permitted to correct a material mistake of fact in its bid, including price, when the intended bid is obvious from the bid document or is otherwise supported by proof that has evidentiary value. A low bidder will not be permitted to correct a bid for mistakes or errors in judgment; or
- c. In lieu of bid correction, a low bidder alleging a material mistake of fact will be permitted to withdraw its bid when there is reasonable proof that a mistake was made and the intended bid cannot be ascertained with reasonable certainty; or
- d. After bid opening, an otherwise low bidder shall not be permitted to make exceptions to the bid conditions or specifications which affect price or substantive obligations; however, such bidder shall be permitted the opportunity to furnish other information called for by the invitation for bids and not supplied due to oversight, so long as it does not affect responsiveness.

C. Competitive Negotiations

1. Competitive Sealed Bidding shall be noticed and implemented in accordance with R.I. Gen. Laws § 37-2-19.

D. Negotiations After Unsuccessful Competitive Sealed Bidding.

1. Negotiations after unsuccessful competitive sealed bidding will be implemented pursuant to R.I. Gen. Laws § 37-2-20.

E. Sole Source Procurement and Emergency Procurements.

1. Sole Source Procurement and Emergency Procurements shall be implemented in accordance with R.I. Gen. Laws § 37-2-18.

F. Small Purchases and procurements, not to exceed an aggregate amount of ten thousand dollars (\$10,000) for construction and five thousand dollars (\$5,000) for all other purchases may be made by the purchasing agent at the established catalogue or market price of commercial items sold in substantial quantities to the general public. In the case of all other small purchases as defined in this section, the purchasing agent shall procure items in any manner it believes reasonable. When practicable, the purchasing agent shall make inquiries from at

least three (3) sources to determine what is a reasonable price. The inquiries may be made by telephone. No such inquiries are required when the price of the item or service is not expected to exceed one hundred dollars (\$100).

### **3.2.2 Cancellation of Invitation for Bids and Requests for Proposals**

The Corporation may cancel an invitation for bids, a request for proposal, or negotiations in accordance with R.I. Gen. Laws § 37-2-23.

### **3.2.3 Responsibility of Bidders and Offerors**

- A. Responsibilities of bidders and offerors shall be determined in accordance with R.I. Gen. Laws § 37-2-24.
- B. Cost or Pricing Data.
  - 1. A Vendor shall submit to the Corporation cost or pricing data in accordance with R.I. Gen. Laws § 37-2-28. Notwithstanding the foregoing,
  - 2. The Corporation may require Vendor certified cost or pricing data in connection with any bid, proposal or contract without regard to the price ceilings set forth in R.I. Gen. Laws § 37-2-28(a) if the Corporation determines that such cost or price data is necessary to ensure a fair and reasonable contract price to the Corporation.
  - 3. Where certified cost or pricing data must be submitted in connection with any contract, change or modification thereto, the price to the Corporation, including profit or fee, shall be adjusted to exclude any significant sums by which the Corporation finds that such price was increased because the Vendor furnished cost or pricing data, as of the date agreed upon between the parties, was inaccurate, incomplete or not current.

### **3.2.4 Contracts**

- A. Types of Contracts. The Corporation may enter into any type of contract which will promote the best interests of the Corporation subject to the following requirements:
  - 1. Cost plus percentage of cost type contracts shall not be awarded to any person.
  - 2. The requirements set forth in R.I. Gen. Laws § 37-2-30(a)
  - 3. The requirements set forth in R.I. Gen. Laws § 37-2-30(b).

- B. Approval of Accounting System. Approval of accounting system shall be implemented in accordance with R.I. Gen. Laws § 37-2-32.
- C. Partial, Progressive and Multiple Awards.
  - 1. A contract may provide for payments as work progresses under the contract, upon the basis of costs incurred, percentage of completion accomplished or of a particular stage of completion.
  - 2. A contract may provide for payments upon submission of proper invoices or vouchers for supplies delivered and accepted or services rendered and accepted where such supplies and services are only part of total contract requirements.
  - 3. The Corporation may reserve the right to split a contract between two (2) or more responsive and responsible bidders and to make an award for all or only part of the items, services or construction specified in the solicitation, if so stated in the invitation to bid or the request for proposal.

### **3.2.5 Inspection of Facilities and Audits of Records**

The Corporation may inspect the plant or place of business of a Vendor or any subcontractor under any contract pursuant to R.I. Gen. Laws § 37-2-34.

### **3.2.6 Reporting of Anti-Competitive Practices**

- A. If for any reason the Corporation suspects collusion among bidders or offerors, the Corporation shall send a written notice of the facts giving rise to such suspicion to the Attorney General of the State (the "Attorney General").
- B. All documents involved in any procurement in which collusion is expected shall be retained by the Corporation until the Attorney General notifies the Corporation that they may be released. All such documents shall be made available to the Attorney General or his or her designee upon request, notwithstanding any other Provision of this Rule.

## **3.3 Specifications**

- A. Specifications.
  - 1. The Corporation shall establish and maintain to the extent practicable standards and specifications approved by the Department of Administration of the State, the U.S. Government, and industry and professional associates, relating to the development and use of purchasing specifications and for the inspection, testing and acceptance of

supplies, services, and construction not inconsistent with the Rules of the Corporation.

2. The Corporation shall develop to the extent practicable "General Conditions" to be used in various types of contracts entered into by the Corporation.
3. The Corporation shall, from time to time, review those standards and specifications and "General Conditions" which it utilizes, with a view to conforming such standards, specifications and "General Conditions" to all technical and scientific advances and to reflect changes in the Corporation's requirements and to the extent practicable and maximize competition in the fulfillment of the Corporation's requirements.

### **3.4 Modification and Termination of Contracts**

- A. Modification Contract. The Corporation may require clauses in its contracts to which it is a party permitting changes or modifications by the Corporation.
- B. Termination of Contract - Default by Vendor. The Corporation may provide that a contract may be terminated for default by the vendor and may provide for liquidated damages.
- C. Termination of Contract - Convenience. The Corporation may provide that a contract may be terminated for the convenience of the Corporation or the vendor and in such cases shall provide for appropriate adjustments in price including, where applicable, reimbursement for the reasonable value of any nonrecurring costs incurred but not amortized in the price of any item, service of construction delivered under the contract.

### **3.5 Cost Principles**

- A. Cost and Pricing Principles. Except as otherwise provided by contract, the Corporation shall use generally accepted accounting principles:
  1. As guidelines in the negotiation of:
    - a. Estimated costs for contracts when the absence of open market competition precludes the use of competitive sealed bidding;
    - b. Adjustments for changes or modifications in contract performance requested by the Corporation; and
    - c. Settlements of contracts which have been terminated.

2. To determine the allowability of incurred costs for the purposes of reimbursing costs under contract provisions which provide for the reimbursement of costs; and
3. As appropriate in any other situation where determinations of the estimated or incurred costs of performing a contract may be required.

## **3.6 Dispute Resolution and Debarment**

### **3.6.1 Resolution of Protested Solicitation and Award**

- A. Any actual or prospective bidder, offeror, or Vendor who is aggrieved in connection with the solicitation or award of any contract may file a protest with the Corporation. A protest or notice of other controversy must be filed promptly and in any event within two (2) calendar weeks after such aggrieved person knows or should have known of the facts giving rise thereto. All protests or notices of other controversies must be in writing.
- B. The Corporation shall promptly issue a decision in writing regarding such protest. A copy of that decision shall be mailed or otherwise furnished to the aggrieved party and shall state the reasons for the action taken.
- C. In the event a protest is filed in a timely manner under this Section, the Corporation shall not proceed further with the solicitation or award which is the subject of the protest until it has issued a decision on the protest, or determined that continuation of the procurement is necessary to protect a substantial interest of the Corporation.

### **3.6.2 Debarment and Suspension**

- A. After reasonable notice to the person involved and reasonable opportunity for that person to be heard, the Corporation may debar a person for cause from consideration for award of contracts. The debarment shall not be for a period of more than three (3) years. The Corporation may suspend a person from consideration for award of contracts if there is probable cause for debarment. The suspension shall not be for a period exceeding three (3) months.
- B. Causes for debarment or suspension include the following:
  1. conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;
  2. conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, stolen property, or any other

offense indicating the lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a Vendor with the Corporation;

3. conviction under state or federal antitrust statutes arising out of the submission of bids or proposals;
  4. violation of contract provisions, as set forth below, of a character which is regarded by the Corporation to be so serious as to justify debarment action;
    - a. deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in a contract with the Corporation; or
    - b. a recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts with the Corporation; provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the Vendor shall not be considered to be a basis for debarment; or
  5. any other cause the Corporation determines to be so serious and compelling as to affect responsibility as a Vendor, including debarment by a governmental entity.
- C. The Corporation shall issue a written decision to debar or suspend. The decision shall:
1. state the reasons for the action taken; and
  2. inform the debarred or suspended person involved of its rights to judicial review.
- D. A copy of the decision under § 3.6.2(C) of this Part shall be mailed or otherwise furnished immediately to the debarred or suspended person.

### **3.6.3 Resolution of Contract Disputes**

- A. Prior to the commencement of arbitration or litigation concerning any contract claim or controversy, the Corporation will endeavor to settle or compromise such claim.
- B. If any claim or controversy is not resolved by mutual agreement, the Corporation shall promptly issue a written decision regarding the subject matter of such claim or controversy. A copy of that decision shall be mailed or otherwise furnished to



the Vendor. If the Corporation does not issue a written decision within thirty (30) days after written request for a final decision, or within such longer period as might be established by the parties to the contract in writing, then the Vendor may proceed as if an adverse decision had been received from the Corporation.

### **3.7 Additional Matters**

#### **3.7.1 Equal Employment Opportunity**

For all contracts for supplies and services exceeding ten thousand dollars (\$10,000), Vendors must comply with R.I. Gen. Laws § 28-5.1-10. Failure to comply will be considered a substantial breach of contract subject to penalties prescribed on regulations administered by the Department of Administration of the State.

#### **3.7.2 Conflict of Interest**

No member or employee of the Corporation shall have any interest, financial or otherwise, direct or indirect, or engage in any activity which is in substantial conflict with the proper discharge of his or her duties as a member or employee of the Corporation.

#### **3.7.3 Legal Counsel**

Before the Corporation arranges for the services of an attorney, it shall use the criteria set forth in R.I. Gen. Laws § 37-2-70.

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