

**BOARD OF GOVERNORS FOR HIGHER  
EDUCATION**

**PROCUREMENT REGULATIONS**

**(2006)**

**PURSUANT TO CHAPTER {37-2-7(16)}  
OF THE GENERAL LAWS OF RHODE ISLAND**

**BOARD OF GOVERNORS FOR HIGHER EDUCATION  
PROCUREMENT REGULATIONS  
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**SECTION 1            GENERAL PROVISIONS**

**1.1 PURPOSES AND POLICIES**

1.1.1 The underlying purposes and policies of these regulations are:

- a. To simplify, clarify, and modernize purchasing activities undertaken by the user agencies under the Board of Governors for Higher Education;
- b. To permit the continuous development of purchasing policies and practices;
- c. To provide for increased public confidence in the procedures followed in public procurement;
- d. To ensure fair and equitable treatment of all persons who deal with the procurement systems of the Board of Governors.
- e. To provide increased economy in user agency procurement activities by fostering effective competition;
- f. To the fullest extent practical, the three institutions shall purchase all items cooperatively. This Board policy applies to all items that are common to the operation of the institutions. If one institution has developed purchasing expertise or has an advantageous position for acquisition of a common commodity, then the other institutions should consider having that institution procure for the combined needs.
- g. To provide safeguards for the maintenance of a procurement system of quality, integrity and the highest ethical standards; and
- h. To provide for clearly defined accountability and responsibility for procurement actions.

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1.1.2 Administrative Practices and Policies

- a. The Board of Governors will operate an effective procurement system by obtaining goods and services within a competitive environment whenever possible.
- b. "Contract" shall mean all types of agreements, purchase orders, including grants and orders, for the purchase or disposal of supplies, services, construction, or any other items. With respect to the procurement regulations set forth herein, "contract" shall not apply to labor contracts with employees of the Board.

- c. The primary method of assuring that the procurement system is effective is through the use of competitive bidding procedures.
- d. Contract awards shall be made to the most responsive and responsible bidder, taking into consideration the reliability of the bidder, the qualities of the materials, equipment or supplies to be furnished, their conformity to specifications, the suitability to the purpose for which acquired, terms of delivery, price and the best interests of the Board.
- e. The Board of Governors will operate an effective procurement system through the promulgation and oversight of rules, regulations, policies and procedures relating to purchasing activities.
- f. The Board of Governors will oversee the procurement process by monitoring and auditing procurement activities and procedures to insure that the user agencies are attaining the most advantageous procurements possible within approved laws and regulations.
- g. The Associate Commissioner for Finance and Management shall determine courses of action when the policies and procedures outlined herein require interpretation or when procurement disputes arise or conflicts occur.
- h. The user agencies will provide purchasing support services to each other, as necessary, to assure that professional expertise is employed in the purchase of goods and services.
- i. User agency officials shall be responsible for compliance with the purchasing related statute enacted by the General Assembly and with all related policies, rules, regulations, procedures and codes promulgated by the Board and the State.

## **1.2 APPLICATION**

1.2.1 In accordance with Section [37-2-4], Chapter 37-2, RIGL, shall apply to every expenditure of public funds except for public agency rules for the Board of Governors for Higher Education under Section [37-2-7(16)], or as otherwise provided by law, by the State of Rhode Island. It shall also apply to the disposal of state supplies. Nothing in Chapter 37-2 or in these regulations shall prevent any user agency from complying with the terms and conditions of any grant, gift, bequest or cooperative agreement.

1.2.2 For procurement not covered under Section [37-2-7(16)] user agencies may utilize the services of the State Division of Purchases.

## **1.3 DOCUMENTATION AND REPORTS**

1.3.1 Documentation. Adequate written records shall be maintained in contract files to document procurement activities, reason for selection of the vendor and justification of price.

a. The procurement file shall include adequate justification of source selection and pricing.

b. Procurement shall require an audit trail for every purchase. Such documentation shall be recorded and maintained for the purpose of: background information to assure that informed decisions are made at each step of the procurement process; rationale for the action taken; providing information for reviews and audits conducted by user agency purchasing management, Board of Governors Department of Internal Audit, and audit agencies; and to furnish facts in the event of litigation.

1.3.2 Purchasing documentation shall be signed or initialed (as appropriate) by duly authorized officials. Such signature or initialing shall constitute certification by the official that the action documented meets the administrative requirements for which he/she is responsible.

a. Annually the Board shall submit to the State Chief Purchasing Officer a list of user agency officials who shall have the authority to act on behalf of the agency.

b. All authorizations shall be specific as to: maximum levels of expenditure commitment, and program account; persons authorized to call to obtain information or provide clarification on requisitions; and officials who will have the authority to decide whether a situation requires an emergency purchasing action and who will be responsible for following emergency purchasing procedures.

c. Purchase Orders shall be authorized by the user agency purchasing officer, or his designee.

d. Requisitions shall require the original signature of an official designated by the user agency as an agent authorized to act on its behalf for procurement transactions.

e. Requisitions submitted to the user agency purchasing office shall be authorized by an official designated by the user agency as responsible for certifying the availability of funds for purchasing actions.

f. Documentation records may be in the form of copies, microfilms, computer files or other means permitted or shall be original documents as required by law.



1.3.3 Audit of contractors records for procurements

a. The Board may cause to be audited the books and records of any person who has submitted cost or pricing data for certain negotiated contracts or change orders, under public agency rules in accordance with Section [37-2-7(16)], at any time until after three (3) years of final payment. The right to audit hereunder shall only extend to those books and records reasonably connected with cost or pricing data submitted in accordance with RISP 37-2-28. "Certain negotiated contracts or change orders" shall mean negotiated contracts exceeding fifty thousand dollars (\$50,000) and negotiated change orders exceeding twenty five thousand dollars (\$25,000).

b. Books and Records shall be maintained by the contractor for a period of three (3) years from the date of final payment under the prime contract and by the subcontractor for a period of three (3) years from the date of final payment under the subcontract.

1.3.4 Each bid together with the name of the bidder, shall be recorded as an abstract and made available for public inspection.

a. "Bid Abstract" shall mean a summary of responsive bids to a solicitation.

b. All documentation records shall be subject to public disclosure with the following exceptions: proprietary information submitted by vendors and information furnished by a bidder in connection with an inquiry related to responsibility.

c. The user agency purchasing officer shall ensure that information not subject to public disclosure is not divulged.

d. Bids shall not be available for public inspection at the bid opening. Abstracts of bid information shall be available for public inspection, upon written request and signed by the applicant, at the user agency purchasing office no later than ten (10) working days after an award has been made.

e. Requests for access to records of the user agency other than bid abstracts shall be made in writing and signed by the applicant.

f. The user agency purchasing agent shall have a reasonable time to respond to requests for access to records. Reviews of document records shall be permitted by appointment only and shall be conducted under the supervision of a user agency purchasing office official.

g. No documentation shall be removed from the premises of the user agency purchasing office without the written consent of the user agency purchasing officer. The applicant requesting copies of records may be charged a nominal copying fee established by the user agency purchasing office.

#### **1.4 BREACH OF CONTRACT DISPUTES**

1.4.1 Authority to resolve contract and breach of contract controversies in procurement activities under Section [37-2-7(16)] is vested in the user agency by the Board of Governors for Higher Education. -Prior to the institution of arbitration or litigation concerning any contract, claim, or controversy, the user agency is authorized, subject to any limitations or conditions imposed by regulations, to settle, compromise, pay, or otherwise adjust the claim by or against or controversy with, a contractor relating to a contract entered into by the user agency, including a claim or controversy based on a contract, mistake, misrepresentation, or other cause for contract modification or rescission, but excluding any claim or controversy involving penalties or forfeitures prescribed by statute or regulation where an official other than the user agency is specifically authorized to settle or determine such controversy.

a. "Contract dispute" shall mean a circumstance whereby a contractor and the user agency are unable to arrive at a mutual interpretation of the requirements, limitations, or compensation for the performance of a contract.

b. The Associate Commissioner for Finance and Management is authorized to resolve contract disputes upon the user agency's indication of impasse. Submission shall be required by the Associate Commissioner of a request in writing from either party, which request shall provide:

(1) a description of the problem, including all appropriate citations and references from the contract in question,

(2) a clear statement by the party requesting the decision of his interpretation of the contract, and

(3) proposed course of action to resolve the dispute.

c. The Associate Commissioner for Finance and Management shall determine whether: the interpretation provided is appropriate; the proposed solution is feasible; or another solution may be negotiable.

d. Timely decisions. This section shall apply to a claim or controversy arising under contracts between the user agency and its contractors. If such a claim or controversy is not resolved by mutual agreement, the Associate Commissioner for Finance and Management or his designee, shall promptly issue a decision in writing. A copy of the decision shall be mailed or otherwise furnished to the contractor. If the Associate Commissioner 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 contractor may proceed as if an adverse decision had been received.

e. Public Works Contracts: Procurement disputes under Section [37-2-7(16)] and in accordance with [37-2-48], that cannot be resolved by the user agency or the Associate Commissioner for Finance and Management, involving public works contracts shall be resolved in accordance with the provisions for arbitration set forth in Chapter 37-16 of the General Laws of Rhode Island.

## **1.5 RESOLUTION OF PROTESTS**

1.5.1 Presumption of Correct Decision. The decision of any official, agent, or other person appointed by the Associate Commissioner for Finance and Management concerning any controversy arising under, or in connection with, the solicitation or award of a contract, shall be entitled to a presumption of correctness and shall not be disturbed unless the decision was procured by fraud; in violation of constitutional or statutory provisions; in excess of the statutory authority of the agency; made upon unlawful procedure; affected by other error or law; clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or arbitrary or capricious or characterized by the abuse of discretion or clearly unwarranted exercise of discretion.

### 1.5.2 Authority to resolve protests

a. The user agency or its designee shall have authority to determine protests and other controversies of actual or prospective bidders or offerors in connection with the solicitation or selection for award of a contract.

b. Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation or selection for award of a contract may file a protest with the user agency purchasing officer. 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.

c. The user agency shall promptly issue a decision in writing. A copy of that decision shall be mailed or otherwise furnished to the aggrieved party and shall state the reasons for the action taken.

d. In the event of a protest timely filed under RISP Section 37-2-52(2) the user agency shall not proceed further with the solicitation or award involved, until the user agency or the Associate Commissioner for Finance and Management makes a written and adequately supported determination that continuation of the procurement is necessary to protect the substantial interests of the user agency, the Board, and the State.

#### **1.6 ADMINISTRATIVE RESPONSIBILITY FOR CONTRACTUAL AND OTHER EXPENDITURES THAT ARE NOT PROCUREMENTS**

1.6.1 “Concession” shall be defined as the granting of a license to a commercial entity for the conduct of a commercial enterprise on Board premises, in consideration of which the user agency receives a regular rent and/or a percentage or other share in net proceeds.

a. Concessions: In general, awards on concession agreements shall be made to the offeror whose proposal represents the greatest service and/or cash benefit to the user agency. The user agency purchasing office shall be responsible for the issuance of publicly advertised solicitations for such opportunities; the user agency shall refer responses to the State Properties Committee for review, selection, endorsement, and execution of a concession agreement.

b. Contracts for concessions (cafeteria services, vending machines, recreational programs, transportation services, etc.) are not procurements. Except for contracts for grants-in-aid, award of nonprocurement contracts may be subject to the same open, competitive procedures which apply to procurements.

## **SECTION 2            AUTHORITY AND RESPONSIBILITIES**

### **2.1 AUTHORITY**

2.1.1 The Board of Governors for Higher Education, in accordance with RIGL 37-2, has “public agency” procurement authority for: purchases which are funded by restricted, sponsored or auxiliary monies, as provided for in section 37-2-7(16).

### **2.2 RESPONSIBILITIES**

2.2.1 The Associate Commissioner for Finance and Management, on behalf of the Board, shall be responsible for:

- a. Defining and promulgating procurement regulations in accordance with 37-2-7(16);
- b. Evaluating and auditing user agency purchasing activity to ensure that the Board and the State are attaining the most advantageous procurements possible and to ensure compliance with applicable rules and regulations;
- c. Determining courses of action when the policies and procedures outlined herein require interpretation and/or when situations arise where conflicts exist or occur.

2.2.2 The User Agency Purchasing Agent, on behalf of the user agency shall be responsible for:

- a. assuring adherence to procurement laws, regulations, rules, codes and procedures; and that the use of delegated State purchasing authority available to the user agency is exercised properly;
- b. promoting standardization of requirements and processes to increase opportunities for the economic advantages of combined user agency purchasing within the system of higher education;
- c. establishing and maintaining good relations with suppliers and potential suppliers without conflicts of interest;
- d. assuring that a pool of responsible, qualified suppliers is developed, maintained and utilized;
- e. assuring that procurements are made in a context which supports to the greatest extent possible: competitive purchases, opportunities for minority and women owned/operated businesses;

f. assuring compliance with appropriate competitive bidding procedures throughout the procurement system; and

g. implementation of administrative control systems with respect to all procurement actions, including, but not limited to, standards of quality, verification of contract deliverables and contractor responsibilities, maintenance of records, and all other activities relating to contract administration.

2.2.3 Relationship with the State Office of Purchases. The Associate Commissioner for Finance and Management and the User Agency shall maintain a close and cooperative relationship with the State Division of Purchases.

### **2.3 VIOLATIONS OF PURCHASING LAWS AND REGULATIONS**

2.3.1 Deliberate disregard for regulations, policies and procedures shall be subject to disciplinary action, including dismissal of employees and debarment of vendors doing business with the Board.

2.3.2 Violations of the purchasing code of ethics set forth herein shall be subject to appropriate sanctions including: censure, dismissal, suspension, and debarment.

2.3.3 Suspected violations of state conflict of interest laws and regulations regarding procurement or the state procurement code of ethics set forth herein shall be reported in confidence, by any knowledgeable party, including agency employees and vendors, to the Associate Commissioner for Finance and Management and in accordance with the rules and regulations established by the State Ethics Commission.

2.3.4 Violations of purchasing laws, regulations, policies, and procedures shall be reported, by any knowledgeable party, including agency employees and vendors, to the user agency purchasing agent and the Associate Commissioner for Finance and Management who shall have authority to apply sanctions.

2.3.5 Suspected violations of State conflict of interest laws regarding procurement shall be reported, by any knowledgeable party, including agency employees and vendors, to the Associate Commissioner. Violations of RISPA or these Regulations shall be reported to the Associate Commissioner and to the Attorney General.

2.3.6 When for any reason collusion is suspected among any bidders or offerors, a written notice of the facts giving rise to such suspicion shall be transmitted to the Associate Commissioner and the Attorney General.

2.3.7 Suspected falsification of certifications shall be referred to the Attorney General for investigation and prosecution.

## **SECTION 3**

### **CODE OF ETHICS AND PROFESSIONAL BEHAVIOR**

3.1 All Board of Governors employees shall be subject to the provisions of Chapter 36-14 of the General Laws of Rhode Island and all regulations promulgated by the Rhode Island Ethics Commission, and any special provisions of this section.

3.2 Board of Governors 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.

3.3 Prohibited Activities under the Rhode Island Conflict of Interest Statutes.

3.3.1 No person subject to the code of ethics shall have any interest, financial or otherwise, direct or indirect, or engage in any business, employment, transaction or professional activity, or incur any obligation of any nature, which is in substantial conflict with the proper discharge of his duties or employment in the public interest and of his responsibilities as prescribed in the laws of this state.

3.3.2 No person subject to the code of ethics shall accept other employment which will either impair his independence of judgment as to his official duties or employment or require him, or induce him, to disclose confidential information acquired by him in the course and by reason of his official duties.

3.3.3 No person subject to the code of ethics shall willfully and knowingly disclose, for pecuniary gain, to any other person, confidential information acquired by him in the course of and by reason of his official duties or employment or use any such information for the purpose of pecuniary gain.

3.3.4 No person subject to the code of ethics shall use in any way his public office or confidential information received through his holding any public office to obtain financial gain, other than that provided by law, for himself or spouse (if not estranged) or any dependent child or business associate or any business by which said person is employed or which said person represents.

3.3.5 No person subject to this code of ethics or spouse (if not estranged) or dependent child or business associate of such person or any business by which said person is employed or which such person represents, shall solicit or accept any gift, loan, political contribution, reward, or promise of future employment based on any understanding that the vote, official action or judgment of said person would be influenced thereby.

3.3.6 No person shall give or offer to any person covered by this code of ethics, or to any candidate for public office, or to any spouse (if not estranged) or dependent child or business associate of such person, or any business by which said person is employed or which such person represents, any gift, loan, political contribution,



reward, or promise of future employment based on any understanding that the vote, official action or judgment of said person would be influenced thereby.

3.4 In accordance with the provisions of Chapter 37-2-9(2)(o), RIGL, the following supplemental State Code of Procurement Ethics shall be adopted.

3.4.1 Universal Code of Ethics applicable to all Board of Governors employees involved in the procurement process:

- a. To consider, first, the interests of the user agency, the Board of Governors, and the state in all transactions;
- b. To support and carry out Board of Governors, its user agencies and state policies;
- c. To buy without prejudice;
- d. To avoid any conflict of interest with respect to procurement, or the appearance thereof;
- e. To obtain the maximum ultimate value for each dollar of expenditure;
- f. To subscribe to and work for honesty and truth in buying and selling, and to denounce all forms and manifestations of commercial bribery; and
- g. To respect obligations and to require that obligations to the State be respected, consistent with good business practice.

3.4.2 Relations With Suppliers – A primary responsibility of purchasing personnel shall be to maintain good relations with suppliers and potential suppliers. Relationships shall be maintained in a manner which assures that no conflict of interest situations arise.

- a. All potential suppliers shall be afforded the courtesy of a fair opportunity to present their capabilities and products.
- b. Reasonable effort shall be made to provide fair bidding opportunities to all qualified and interested suppliers.
- c. Board of Governors employees and officials shall observe a commitment to maintain the confidentiality of information submitted by suppliers and potential suppliers.

(1) Supplier proposals shall be treated in confidence with regard to technical approach and terms and conditions.

(2) Distribution of information contained in supplier proposals shall be limited to those having a “need to know” as determined by the user agency purchasing agent.

(3) Under no circumstances shall confidential information be made available to other vendors.

d. Personnel are prohibited from engaging in any conduct which may tend to cause any existing or prospective supplier of goods or services to believe that his relationship with the Board will be affected by his purchasing or failing to purchase goods or services from any representative of the state.

e. Under no circumstances may a vendor provide to a procurement official nor may a purchasing agent (any person authorized by a state agency in accordance with procedures prescribed herein acting within the limits of authority to commit Board and State funds to obtain goods and services) accept any goods or services, regardless of monetary value, for personal use for less than fair market value.

f. Personnel are prohibited from accepting gifts or gratuities in any form for themselves or their families (spouses, parents, children, sisters, brothers, in-laws, etc.) from contractors, subcontractors or suppliers now furnishing or desiring to furnish supplies or services to the user agency.

(1) Gifts or gratuities shall mean, but are not limited to money, merchandise, gift certificates, trips (individually or in groups), cocktail parties, dinners, evening entertainment, sporting events, etc.

g. Social interaction between personnel involved in the procurement process and any present or prospective contractors, subcontractors or suppliers and their representatives creating the impression of favoritism shall be avoided.

(1) However, this regulation does not prohibit social interactions between Board of Governors employees and representatives of suppliers which are clearly of a personal nature, in which the parties involved would normally be expected to reciprocate, and in which no reimbursement from the state is sought by the employee. For example, the supplier’s representative may be an acquaintance, neighbor, relative or former state employee. The responsibility rests on the individual employee to regulate his/her own actions and to seek advice from Purchasing Management or the Ethics Commission if concerned about an apparent conflict of interest.

3.4.3 It shall be the obligation of all Board of Governors employees to avoid conflicts of interest with respect to procurement, and to report promptly to the user agency purchasing officer and the Associate Commissioner for Finance and Management all instances where a conflict exists or is suspected to exist.

a. Conditions under which a conflict of interest may be held to exist include, but are not limited to the following:

(1) Where a procurement official with a principal responsibility for a category of goods or services; or

(a) receives personal enrichment as a result of an award, or

(b) holds a secured financial interest in a firm offering such goods or services, or

(c) receives indirect or subsequent income, by way of employment, retainer, consultancy, or other remuneration from a firm offering such goods or services, or

(d) has an immediate family member or blood relative holding an equity interest, or a management or directorial position in a firm offering such goods or services, or

(2) Where any Board of Governors employee divulges or withholds information (including, but not limited to, price, design, or requirement information) with the intent or result that one vendor is competitively advantaged over another, or

(3) Under any circumstances described in Code of Ethics Chapter 36-14 of the General Laws of Rhode Island.

3.4.4 The Associate Commissioner for Finance and Management shall have the responsibility to investigate all claims with respect to conflicts of interest in procurement, to issue determinations which define whether or not conflict, in fact, existed, and to take action to resolve such conflict.

a. Resolution of conflict may include, but shall not be limited to, the following measures: reassignment of the procurement official or other Board of Governors employee involved; termination of employment of the procurement official or other Board of Governors employee involved; and debarment of any and all vendors who may be involved.

3.4.5 Membership and active participation in the meetings and activities of local purchasing organizations are encouraged.

3.4.6 Purchasing personnel shall not make purchases for personal use in the name of the Board of Governors or the State or through the use of any procurement forms.

**SECTION 4 VENDOR QUALIFICATION, PREQUALIFICATION AND SOLICITATION**

**4.1 RESPONSIBILITIES OF BIDDERS AND OFFERORS**

4.1.1 A reasonable inquiry to determine the responsibility of a bidder or offeror may be conducted. A written determination of responsibility of a bidder or offeror may be made. The failure of a bidder or offeror to supply information promptly in connection with an inquiry related to responsibility may be grounds for a determination of non-responsibility

- a. "Prompt" shall mean five (5) working days unless otherwise specified by the user agency purchasing agent.
- b. Information furnished by a bidder or offeror pursuant to this Section may not be disclosed outside of the user agency office of purchasing without prior written consent of the bidder or offeror.
- c. The user agency purchasing agent may utilize factors such as financial capability, reputation, management, etc. to evaluate the responsibility and qualifications of potential suppliers in order to develop a list of prospective bidders qualified to be sent invitations to bid.
- d. Ability to meet performance bond requirements set forth for public works contracts not exceeding fifty thousand dollars (\$50,000), shall be valid criteria for determination of responsibility, provided that the user agency in consultation with the Associate Commissioner may waive such requirement for good cause.
  - (1) "Public Works Contractor" shall mean a contractor, in accordance with Chapter 37-12-1 of the General Laws of Rhode Island, every person (including co-partnerships, joint enterprises and corporations) being awarded contracts by the user agency, for construction, improvement, completion or repair of any public building, or portion thereof.
- e. The user agency purchasing agent may instruct interested suppliers, not currently on the bidder list, to submit completed State Bidder Registration Forms to the State Office of Purchases for consideration by the State Purchasing Agent.

(1) As a prerequisite condition for contract award, the user agency purchasing agent may require any bidder to complete a Bidder

Registration Form and/or submit current certifications of financial responsibility, affirmative action compliance, drug-free and barrier free environment, and status as small, women-owned and/or disadvantaged businesses.

**4.2 BIDDERS LISTS.** The user agency shall have access to the Bidders Lists maintained by the State Purchasing Agent consisting of the names and addresses of suppliers of various goods and services from whom bids, proposals, and quotations can be solicited.

4.2.1 Bidders Lists are formatted in a manner which identifies those suppliers certified as small disadvantaged businesses by the Minority Business Enterprise Program or the Handicapped Products Committee.

4.2.2 Bidders Lists may consist of:

a. Registered Suppliers - the names of interested suppliers who have submitted completed Bidder Registration Forms to the State Office of Purchases which have been reviewed and approved by the State Purchasing Agent.

b. Unregistered Suppliers - suppliers which have not expressed interest in selling to the state by submitting a Bidder Registration Form, but who have been determined by the State Purchasing Agent, due to the nature of the firm's status in the market, to be responsible and qualified with regard to particular commodities. Inclusion of any firm on the Bidders List without a supporting registration form shall be permitted with the written approval of the State Purchasing Agent.

4.2.3 Firms bidding on construction or building renovation must demonstrate an ability to perform a substantial portion of the subject work using their own forces. Bidders who do not maintain permanent workforces, or who propose to subcontract a disproportionate percentage of project work may be considered unqualified, and the user agency reserves the right to reject their offers.

4.2.4 The user agency may use prequalified contractors by the State under [37-2-25]. Inclusion of a supplier on the State's Bidders Lists shall not constitute a prequalification determination for a specific procurement.

4.2.5 User agencies may develop and maintain their own Bidder Lists in addition to the Bidders Lists maintained by the R. I. State Purchasing Agent.

#### **4.3 VENDOR DISQUALIFICATION**

4.3.1 The Associate Commissioner for Finance and Management may disqualify a supplier, contractor, or subcontractor from participating in Board procurements. Disqualification may result from any of the following actions being taken:

- a. Debarment - permanent removal from State Bidders Lists and exclusion from all subsequent procurements, and termination of all outstanding contracts; or
- b. Suspension - temporary removal from State Bidders Lists and exclusion from subsequent procurements, and termination of outstanding contracts (at the discretion of the State Purchasing Agent) for a specified period of time; or
- c. Removal - deletion from State Bidders Lists (only), without interruption of outstanding contracts or the ability to participate in subsequent procurements; or
- d. Rejection - lack of inclusion on the User Agency or State Bidders Lists or non-consideration by the user agency of an offer submitted for a particular procurement, based on lack of demonstrated responsibility or competency.

#### **4.4 REJECTION AND REMOVAL**

4.4.1 A vendor's offer for a specific procurement may be rejected where, in the judgment of the user agency purchasing agent the vendor does not possess the capacity, capability, or integrity requisite for the procurement. Such judgment shall be adequately documented.

4.4.2 Failure to respond to consecutive bid solicitations for products or services which a vendor has indicated an interest or ability in supplying, or a demonstrated lack of success in receiving awards shall constitute grounds for the user agency purchasing agent to eliminate said vendor from subsequent bid solicitations and ultimately from the respective Bidders List(s).

## 4.5 DEBARMENT AND SUSPENSION

### 4.5.1 Applicability:

a. A debarment or suspension judgment against a part of a corporate entity constitutes debarment or suspension of all of its divisions and all other organizational elements, except where the action has been specifically limited in scope and application, and may include all known corporate affiliates of a contractor, when such offense or act occurred in connection with the affiliate's performance of duties for or on behalf of the contractor, or with the knowledge, approval, or acquiescence of the contractor or one or more of its principals or directors, or where the contractor otherwise participated in, knew of, or had reason to know of the acts.

b. The fraudulent, criminal or other serious improper conduct of any officer, director, shareholder, partner, employee, or any other individual associated with a contractor may be imputed to the contractor when the conduct occurred in connection with the individual's performance of duties for or on behalf of the contractor, or with the contractor's knowledge, approval, or acquiescence. The contractor's acceptance of benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

c. Reliance on other Agency Debarment List: Whenever the Board of Governors participates in any program financed, issued or guaranteed by any department, agency or instrumentality of the State of Rhode Island and or the United States Government, it may rely on distributed lists of Bidders suspended or debarred by such agencies, department or instrumentality and prevent the listed bidder from participating in that program.

## 4.6 NOTIFICATION

4.6.1 No notice shall be required where the user agency purchasing agent rejects the offer of a bidder for an individual procurement, or removes a bidder from the Bidders List(s).



**SECTION 5                    COMPETITIVE REVIEW AND SOURCE SELECTION**

5.1 **COMPETITION** - A competitive environment shall be considered to exist when the following conditions are met:

5.1.1 Two or more items or offers can be compared to determine relative merit;

5.1.2 Objective standards of comparison are fairly and impartially applied;

5.1.3 Offers are evaluated within a market context:

a. The lowest price offered may not be considered to be a competitive price when not supported by an evaluation of the market or market conditions within which the offer was rendered;

b. Market evaluation must be conducted using objective standards to assure fairness and to encourage participation;

5.1.4 An equal opportunity for participation in any procurement applies to all prospective offerors, and affirmative action to achieve participation in the procurement process as a means of achieving social objectives is accomplished without violation of these general principles.

5.2 **GOODS AND SERVICES** - The following goods and services may be procured by user agencies in accordance with [37-2-7(16)]:

5.2.1 Items exempted from competition by law, regulation or by the determination of the RISPA Chief Purchasing Officer.

5.2.2 Items purchased through Master Price Agreements (MPA) and Term Price Agreements (TPA) - Schedule/Term Contract Purchases.

5.2.3 Grants in the form of general subsidies or assistance shall be administered by Board user agencies in accordance with legal mandates restricting or defining the use of such funds.

5.2.4 All delegated purchasing authorities granted to the Board of Governors by the Chief Purchasing Officer are appended to this section as "Board of Governors for Higher Education Delegated Purchasing Authority".

5.2.5 Procurements reasonably expected not to exceed the aggregate amount of \$5,000 utilizing "State" funds and not covered under Board of Governors delegated purchasing authority.

5.2.6 When the majority of purchases in specific commodity codes, appended to this section, are procured with "third party funds", in accordance with RIGL [37-2-

7(16)], then all purchases for that commodity group will be conducted by the user agency.

5.2.7 Violation of these regulations may result in withdrawal of delegated purchasing authority by the RISPA Chief Purchasing Officer.

5.2.8 All bids and contract awards made under these provisions shall be documented in a central location within the user agency's purchasing office.

### **5.3 STANDARDS AND SPECIFICATIONS**

5.3.1 Issuance of specifications: The user agency shall have the authority to issue and maintain standard specifications for supplies, services, and construction as required/necessary. They shall when practicable:

- a. Prepare and issue standard specifications that, when feasible and practical, can be used to promote and enhance combined purchasing by the user agencies.
- b. Prepare and issue standard specifications for supplies, services, and construction.
- c. Update standard specifications to conform to technical and scientific advances pertaining to the supplies, services, and construction described in those specifications.
- d. Specifications shall be drafted so as to maximize, to the extent practicable, the interests of the user agency, the Board and the State.

5.3.2 [37-2-38.1] Certification by building commissioner-- The user agency shall order no payment to any person on account of any contract for any construction which is subject to the state building code, unless and until the state building commissioner has certified in writing that: (i) All permits required under Sections 23-27-3 - 113.1 for the construction for which such payment has been requested have been issued and are valid; and (ii) The state building commissioner has, pursuant to Sections 23-27-3 - 113.3.1, verified that all construction work for which payment has been requested and which state law requires to be performed by licensed persons has been performed by persons so licensed.

5.3.3 Solicitations shall be prepared in a manner and form which enables suppliers to submit fully responsive and knowledgeable offers, and which clearly define the criteria to be used in evaluating responses.

5.3.4 All material submitted by user agency for action shall be in sufficient detail and shall contain adequate supportive information to:

- a. adequately describe the purpose, use, or desired performance level of the requirement; and
- b. identify measurable criteria for evaluation of offers including, but not limited to, acceptance testing.

5.3.5 Wherever possible, solicitations shall incorporate a standard specification, describing the level of performance required, and measurable criteria which define acceptance.

- a. In certain cases, following detailed evaluation, brand name or other designations may be defined as standard items, where it is determined to be in the best interest of the Board of Governors and the State with regard to economies of scale, or cost or value analysis.

5.3.6 Selection and evaluation criteria shall be clearly defined in all solicitations.

- a. The invitation for bids shall state whether award shall be made on the basis of the lowest price or the lowest evaluated or responsive bid price. If the latter basis is used, the objective measurable criteria to be utilized shall be set forth in the invitation for bids.

- b. Unless alternate offers are clearly requested or allowed, only those offers which are responsive, in all material respects, to the terms of the solicitation shall be considered.

- (1) Alternate specifications may be considered only where it has been determined that the alternate satisfies all objective performance characteristics of the procurement, and represents a reduction in expenditure;

- (2) Alternate terms and conditions may be considered only where consideration is determined to be in the best interest of the user agency to do so, and where they constitute a reduction in expenditure.

- c. Used Items may be purchased to achieve financial benefit if the manufacturer will provide warranties for maintenance requirements and for the replacement of parts. Such certification/warranties should be for the most part as that provided for new equipment. When certification/warranties do not meet these requirements, the approval of the user agency purchasing agent is required prior to procurement.

- d. Prohibition against the use of lead based paints-- -- When purchasing paint products or contracting or subcontracting for painting, construction, improvement, completion, or repair of any Board building, any public

road, any public bridge, or any public construction, all user agencies shall be prohibited from the use of lead based paint.

#### **5.4 GENERAL PROVISIONS**

Except as otherwise authorized by law, or as specifically exempted herein, user agency contracts shall be awarded as the result of:

- a. competitive/sealed bidding; or
- b. competitive negotiation; or
- c. non-competitive negotiation; or
- d. small purchase procedures; or
- e. requests for proposal; or
- f. where permitted by law, grants.

#### **5.5 RULES FOR SOLICITATION**

5.5.1 In general, solicitations will be sent to those suppliers who have formally expressed a desire to bid on the particular types of items which are the subject of the bid solicitation; however, the user agency purchasing agent may determine that competition would be enhanced by soliciting bidders who are not on the established Bidders List.

5.5.2 Small and small disadvantaged businesses shall be solicited where practicable.

- a. A concerted effort should be made to solicit from at least one responsible supplier certified by the Minority Business Enterprise Program as a small disadvantaged business, where suppliers have been identified for the product or service in question.

##### **5.5.3 Notification and Advertising**

- a. Notices shall be published in sufficient time to afford suppliers a fair opportunity to respond prior to the bid opening date and time.

- b. Advertisements may be utilized in conjunction with requests for quotations or proposals for products or services at any estimated level of expenditure if the user agency purchasing agent so determines that:

- (1) the commodity or service is of such special nature that opportunities for competition will be enhanced by extending invitations to other than known suppliers;

- (2) a purchase will be of interest to supportive industries, e.g., construction projects;

(3) a purchase is unusually large or infrequent.

c. The user agency purchasing agent may advertise in widely circulated newspapers and/or trade journals to promote effective competition.

d. The user agency purchasing agent may place advertisements in publications directed to minority communities and/or women to enhance opportunities for disadvantaged businesses to participate in the bidding process.

5.5.4 The user agency purchasing agent may solicit offers from prospective suppliers who are not registered bidders where such solicitation is judged to be necessary in order to expand the field of competition.

5.5.5 The user agency shall be under no obligation to consider an offer which has been submitted without solicitation.

## **5.6 BIDDER SECURITY**

5.6.1 Bidder's security shall be a bond provided by a surety company authorized to do business in the State of Rhode Island, or the equivalent in a form satisfactory to the Board user agency.

a. The bidder may submit a certified check, bank check (cashier's check or treasurer's check), or money order as surety instead of a bond.

b. All such sureties must be dated within 30 days of the bid opening date and shall be valid for no less than 60 days from the bid opening dates.

c. All such sureties shall be made payable to the Board user agency.

d. All sureties shall contain an identification of the bid number for which the surety is intended.

5.6.2 Bidder security shall be required for all competitive sealed bidding for construction contracts when the estimated price exceeds fifty thousand dollars (\$50,000). Nothing herein prevents the requirement of such bonds on construction contracts under fifty thousand dollars (\$50,000) when circumstances warrant.

a. The user agency purchasing agent may require bidder security for any procurement that s/he judges to be substantial, or where in her/his opinion the potential of capricious or artificial bidding exists, or where there is a risk of withdrawal of offers prior to an award being made, or where the interests of the user agency otherwise require protection.

b. Bidder's security shall be in an amount equal to at least five percent (5%) of the amount bid.

5.6.3 When the invitation for bids requires that bid security be provided, noncompliance requires that the bid be rejected, provided, however, that the user agency purchasing agent may set forth exceptions to this requirement in the event of substantial compliance.

5.6.4 After the bids are opened, they shall be irrevocable for the period specified in the invitation for bids, provided that if a bidder is permitted to withdraw his bid before award because of a mistake in the bid as allowed by law or regulation, no action shall be taken against the bidder or the bidder's surety.

5.6.5 After the bid opening the purchasing agent shall return the sureties of all but the three (3) apparent lowest bidders. When the evaluation of the bid has been completed, the user agency purchasing agent shall return all but the lowest bidder's surety.

5.6.6 After the low bidder has been notified of the user agency's intent to proceed with a contract, the selected bidder's bid surety shall be returned. When performance, labor and/or material bonds are required, the bid surety shall be returned upon receipt of the appropriate bond(s).

5.7 **CANCELLATION OF INVITATION FOR BIDS AND REQUESTS FOR PROPOSALS** - An invitation for bids, a request for proposals, and other solicitation may be canceled, or all bids or proposals may be rejected, if it is determined that the action is taken in the best interest of the Board and its user agencies.

5.7.1 If a solicitation results in none of the proposals being reasonably close to expectations, the user agency may declare all bids unacceptable and resolicit the procurement.

5.7.2 If a solicitation results in only one proposal, the price of which is not reasonably close to expectations, the user agency may declare the bid unacceptable and either resolicit the procurement or ask that the price be negotiated with the vendor.

5.7.3 The user agency may eliminate bidders whose offers are clearly noncompetitive prior to resolicitation.

#### 5.8 **CORRECTION OR WITHDRAWAL OF BIDS**

5.8.1 Correction or withdrawal of bids may be allowed only to the extent permitted by regulations.

5.8.2 The user agency or its designee shall be the sole determiner of whether correction or withdrawal of bids may be made without penalty.

5.8.3 The user agency purchasing agent shall respond to requests for correction or withdrawal within ten (10) working days, notifying the bidder of the status of his bid, and bid surety.

5.8.4 Correction of a bid.

a. Correction of a bid at any time prior to bid opening may be permitted without penalty when a bidder requests that his bid be returned and he resubmits a corrected bid prior to the bid opening.

b. A vendor who fails to resubmit a corrected bid before the bid opening shall be considered nonresponsive.

c. Requests by the apparent low bidder for correction of bids identifying all error(s) and specifying corrective action shall be submitted in writing to the user agency purchasing agent and shall be re-evaluated with all other offers within five (5) working days after the bid opening.

5.8.5 Withdrawal of bids.

a. Requests for withdrawal of bids shall be submitted in writing to the user agency purchasing agent, providing an explanation for the action.

b. Withdrawal of bids without the written consent of the user agency purchasing agent may result in forfeiture of bid sureties, depending upon the severity of the violation.

## **5.9 SOLICITATION CRITERIA**

5.9.1 Small Purchases

a. Procurements not to exceed an aggregate amount of five thousand dollars (\$5,000) for general purchases and (\$10,000) for construction may be made in accordance with small purchase regulations promulgated herein.

b. Competitive offers shall be solicited for all procurements with a value greater than \$1,000 except under specifically prescribed circumstances set forth herein or when deemed not practicable by the user agency purchasing agent.

c. Small construction purchases shall include building, altering, repairing, improving or demolishing buildings or other improvements to real property. Small construction purchases shall not include routine maintenance or repair of existing structures, buildings, or real property performed by salaried employees of the Board in the usual course of their job.

#### 5.9.2 Competitive Bids

Competitive bids shall be obtained from a sufficient number of suppliers to be considered representative of the industry cited. Whenever possible, one of the three bids must be obtained from a certified Minority Business Enterprise (MBE). Although three bids shall be considered the minimum, the user agency purchasing agent may in some instances declare the existence of two bids to be considered to provide adequate price competition

### 5.10 SOLICITATION METHODOLOGY

#### 5.10.1 Public Competitive Bids

a. Sealed written competitive bids shall be required for purchases exceeding five thousand dollars (\$5,000) unless such method is not practicable or is exempt as an exception to competitive bidding as set forth herein.

b. Factors to be considered in determining if competitive sealed bidding is practicable shall include whether specifications can be prepared that permit award on the basis of either the bid price or the lowest evaluated bid price, the available sources, the time and place of performance, and other relevant circumstances appropriate for the use of competitive sealed bidding.

c. Adequate public notice of the invitation for bids shall be given a sufficient time prior to the date set forth therein for the opening of bids. Such notice may consist of a written invitation soliciting quotations from suppliers on vendor bidders lists. Such notice may include publication in a newspaper of general circulation in the state or the State Purchasing Office Website for not less than seven (7) days nor more than twenty-one (21) days before the date set for the opening of the bids. The user agency may make a determination that there is a need to waive the twenty-one (21) day limitation.

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



Subsequent to the awarding of the bid, all documents pertinent to the awarding of the bid shall be made available and open to public inspection and retained in the bid file.

#### 5.10.2 Informal Competitive Bids

- a. for general procurements up to five hundred dollars (\$500) quotations are not required, however, they are encouraged.
- b. three telephone quotes required. For general procurements from five hundred and one dollars (\$501) per transaction to two thousand five hundred dollars (\$2,500) three telephone quotes are required.
- c. three written quotations required. For general procurements above two thousand five hundred dollars (\$2,500) per transaction to five thousand dollars (\$5,000) (\$10,000 for construction) at least three written quotes should be obtained through normal mail, personal deliver, e-mail, fax or web quote.

It is important that the person obtaining the quotes set a deadline by which all written quotes must be received or the process may not have closure. This also ensures that the vendors have equal opportunity to participate. Whenever possible, one of three quotes must be obtained from a certified Minority or Woman-owned Business Enterprise (MBE/WBE).

d. An informal bid shall be distinguished by:

- (1) lack of sealed written bids;
- (2) lack of an opening and reading of bids;
- (3) the solicitation of selected registered or unregistered bidders who are potential suppliers for the commodity or service to be procured and/or vendors suggested for consideration by the user agency.

e. Informal bids should be solicited from three suppliers, when possible.

f. All informal bid invitations shall be conducted in such fashion as to maximize the opportunity for participation of all responsible suppliers.

g. For those purchases not affected by regional considerations, requests for quotations (RFQ's) may be distributed equitably among various responsible suppliers.

h. When informal competitive bids are received in accordance with the provisions contained herein and award is not made to the low bidder, the

user agency purchase order file shall be annotated with statements of how the supplier was selected and why the price is fair and reasonable.

#### 5.10.3 Requests for Proposal

a. Requests for Proposal (RFP) may be utilized to solicit competitive offers in all cases where:

(1) Price is not the sole or primary consideration to be used in determining an award; or

(2) Performance is neither specific nor objective, and open to the offeror's interpretation; or

(3) It is otherwise anticipated that offers may be substantially different and that there is insufficient common ground for objective comparison; or

(4) It is anticipated that changes will be made after proposals are opened and that the nature of the proposals and/or prices offered will be negotiated prior to award.

b. Wherever possible, the Request for Proposal shall define the performance or benefit required and shall set forth specific criteria to be utilized in evaluation of offers.

c. Offers may be evaluated by a user agency committee, and other appropriate parties on the basis of:

(1) The qualifications of the offerors, established by professional accomplishment and previous experience;

(2) Aspects of offers which provide benefit, other than those based on cost; and

(3) Other provisions of offers which are determined to serve the best interests of the Board user agencies.

d. The evaluation of offers, including the weight assigned to various aspects of the offerors, and all award determinations, including the reasons for a selection recommendation, shall be fully documented.

## 5.11 SOURCE SELECTION AND CONTRACT AWARD

5.11.1 The contract shall be awarded with reasonable promptness by written notice to the responsive and responsible bidder whose bid is either the lowest bid price or lowest evaluated or responsive bid price.

a. Awards shall be made within sixty (60) days of the bid opening unless expressly provided for to the contrary in the solicitation. Bids may not be withdrawn during this period without penalty without the express permission of the user agency.

b. The user agency may, after considering the overall cost, prior to making a final determination of award, apply special consideration to the offers of minority business enterprises when:

(1) the solicitation provides for such consideration;

(2) the offer is fully responsive to the terms and conditions of the solicitation; and

(3) the price offer made by the MBE is determined to be within a competitive range (not to exceed five percent (5%) higher than the lowest responsive price offer) for the product or service; and

(4) the firm making the offer conforms to the required certification by the MBE Program of a minority business enterprise.

5.11.2 In accordance with the provisions of Chapter 37-14.1-7 ten percent (10%) of the dollar value of the work performed against contracts for construction exceeding five thousand dollars (\$5,000) shall be performed by Minority Business Enterprises where it has been determined that subcontracting opportunities exist, and where certified MBE contractors are available.

5.12 DELEGATED PURCHASING AUTHORITY- The table below lists the delegated purchasing authority limits, regardless of funding, for the Board, effective December 5, 2005.

| <u>Purchase Category</u>  | <u>Limits</u> |
|---|---------------|
| Maintenance contracts & licensing agreements with original equipment manufacturers (OEM) or source nominated by OEM.                        | \$10,000      |
| Live animals  | Unlimited     |
| Busses  | Unlimited     |
| Fresh fruits, vegetables & poultry, weekly bid  | Unlimited     |
| Liquor-W. Alton Jones Campus  | Unlimited     |
| Library & text books, periodicals & media subscriptions   | Unlimited     |
| Champion athletic uniforms  | Unlimited     |
| Remote location research & ship support   | Unlimited     |
| Printing  | \$10,000      |
| State funds-all purchases not covered by 37-2-7(16) or specified delegated authority  | \$5,000       |
| Emergency purchases for dangers to health, safety and property to provide immediate reaction to remedy situations (MPA vendors if possible) | Unlimited     |
| Architectural, Engineering and Consultant Services Selection - All Funds (not to exceed)  | \$20,000      |
| Construction - All Funds - (not to exceed)  | \$25,000      |
| Advertising- print media  | Unlimited     |
| Advertising- over the air   | \$10,000      |

**5.13 COMMODITIES- The Board has unlimited delegated purchasing authority for the commodities listed below:**

| <u>No.</u> | <u>Category</u>                                     |
|------------|---|
| 040        | Animals   |
| 045        | Appliances & Equip, Household                       |
| 070-12     | Motorcycles, Accessories & Parts                    |
| 070-25     |   |
| 070-26     |   |
| 120        | Boats, Motors, Marine & Wildlife Supplies           |
| 160        | Butcher Shop, Meat Processing Equipment             |
| 165        | Cafeterias & Kitchen Equip. Commercial              |
| 193        | Clinical Lab- Reagents & Tests (Blood Group)        |
| 206        | Concession Operations                               |
| 260        | Dental Equipment & Supplies                         |
| 270        | Drugs, Pharmaceuticals, Biologicals                 |
| 300-35     | Diplomas  |
| 325        | Feed, Bedding, Vitamins & Supplements for Animals   |
| 375        | Food: Bakery Products                               |
| 380        | Food: Dairy Products                                |
| 385        | Food: Freeze dried, Frozen, & Prepared Ready-to-Eat |
| 390        | Food: Perishable                                    |
| 393        | Foods: Staple Grocery & misc.                       |
| 410        | Furniture: Health Care & Hosp.                      |
| 415        | Furniture: Laboratory                               |
| 420        | Furniture: Cafeteria, Dormitory                     |
| 465        | Hospital & Surgical Equipment & Instruments         |
| 475        | Hosp. Surgical, Med. Accessories                    |
| 493        | Lab Equipment & Accessories: Biochemistry           |
| 495        | Lab and Field Equipment Supplies: Biology           |
| 500        | Laundry & Dry Cleaning Equipment & Accessories      |
| 640        | Paper & Plastic Products, Disposable                |
| 740        | Refrigeration Equipment & Accessories               |
| 780        | Scales & Weighing Apparatus                         |
| 845        | Testing Apparatus & Instruments                     |
| 850-12     | Domestics (Linens)                                  |
| 850-52     | Mattress Pads- Covers                               |
| 850-76     | Tablecloths- Napkins                                |
| 924        | Educational Services                                |
| 929        | Shipyard/dry-dock repairs                           |
| 948        | Health- Related Services                            |
| 954        | Laundry & Dry Cleaning                              |
| 961-54     | Medical Lab Tests                                   |
| 961-61     | Researchers- Health                                 |
| 961-73     | Health Surveys                                      |

## **SECTION 6            NEGOTIATION**

### **6.1 GENERAL PROVISIONS**

6.1.1 These sections refer to competitive negotiation, noncompetitive negotiation, and sole source and emergency procurements.

a. "Negotiation" shall mean the process of establishing contractual provisions and of gaining contractual acceptance, other than solely as the result of normal competitive bidding (described elsewhere herein). For the purpose of this definition, two distinct categories of negotiation shall be recognized:

b. "Competitive negotiation" shall mean a specialized bidding procedure characterized by modifications to the offers of at least two vendors and/or alteration of the specifications for which, or the terms and conditions under which, the user agencies have solicited offers.

c. "Noncompetitive negotiation" shall mean the establishment of contractual terms and conditions, including but not limited to contract price, by discussions with a single vendor, outside of the procedures established for competitive bidding.

6.1.2 The objective of negotiation shall be to secure advantageous terms and conditions, and/or to exact improvements in terms and conditions offered and to reduce potential cost to the Board/user agency.

6.1.3 Negotiation may be used to establish or modify contractual provisions in cases where:

a. Responsive firm, fixed pricing is not the sole determinant for award;

b. Responses to competitive bidding suggest that lower pricing, or other improvements in offers, are achievable;

c. Single or sole source procurements are made;

d. Responses to Requests for Proposal do not permit effective comparison, due to the differing nature of the responses;

e. The scope of a contract changes during the performance period, such that modification of price, or of other provisions, may be called for; or

f. The user agency purchasing agent has determined in writing that a product, or the market in which a product is sold, is noncompetitive in nature.

## **6.2 COMPETITIVE NEGOTIATION**

6.2.1 When, the user agency determines that the use of competitive sealed bidding is not practicable, a contract may be awarded by competitive negotiation.

6.2.2 Contracts may be competitively negotiated when it is determined by the user agency that the bid prices received by competitive sealed bidding either are unreasonable as to all or part of the requirements, or were not independently reached in open competition, and for which:

- (a) Each competitive bidder has been notified of the intention to negotiate and is given reasonable opportunity to negotiate; and
- (b) The negotiated price is lower than the lowest rejected bid by any competitive bidder; and
- (c) The negotiated price is the lowest negotiated price offered by a competitive offeror.
  - (1) "Competitive bidder/offeror" shall mean responsible bidder or offeror.

6.2.3 Competitive negotiation may be used in any case where the scope, term, or other requirements of the procurement has not been determined at the time that a requisition is issued, or where optional offers are desired and encouraged, or where the value of the procurement has not been definitively established.

## **6.3 PROCEDURES**

### **6.3.1 Request for Proposal**

- a. Adequate public notice of the request for proposals shall be given in a manner that maximizes competition and benefit to the user agency.
- b. Requests shall describe and enumerate the item(s) covered, their specification(s), contract terms(s), and any other special provisions or requirements.
  - (1) The request for proposals shall indicate the relative importance of price and other evaluation factors.
- c. At a public opening of responses to RFPs, the user agency purchasing agent shall not be required to reveal other than the names of those

responding. The nature of responses shall not be subject to public disclosure until a contract has been awarded.

#### 6.3.2 Review and Discussion

a. Written or oral discussion shall be conducted with all responsible offerors who submit proposals determined in writing to be reasonably susceptible of being selected for award. Discussions shall not disclose any information derived from proposals submitted by competing offerors. Discussions need not be conducted:

(1) With respect to prices, where such prices are fixed by law or regulation, except that consideration shall be given to competitive terms and conditions; or

(2) Where time of delivery or performance will not permit discussions; or

(3) Where it can be clearly demonstrated and documented from the existence of adequate competition or accurate prior cost experience with the particular supply, service, or construction item, that acceptance of an initial offer without discussion would result in fair and reasonable prices, and the request for proposals notifies all offerors of the possibility that award may be made on the basis of the initial offers.

b. Responses to the Request for Proposal shall be evaluated:

(1) To determine nonresponsive offers that will be eliminated from further consideration,

(2) To determine the lowest-cost combination of options, terms, and conditions, establishing a base-line, whenever deemed practicable.

(3) To determine which offers serve the best interests of the Board user agency and meet the requirements of the RFP.

c. Where there is more than one bidder, competitive negotiations shall be conducted with the three (two if there are only two) bidders determined to be the lowest responsive and responsible bidders to the competitive bid invitation. Such competitive negotiations shall be conducted under the following restrictions:

(1) If discussions pertaining to the revision of the specifications or quantities are held with any potential offeror, all other potential



offerors shall be afforded an opportunity to take part in such discussions.

(2) A request for proposals, based upon revised specifications or quantities, shall be issued as promptly as possible, shall provide an expeditious response to the revised requirements, and shall be awarded upon the basis of the lowest evaluated bid price taking into consideration all established criteria, submitted by any responsive and responsible offeror.

(3) The provisions of 37-2-20(2) may be waived in any case where the lowest-cost response is ten percent (10%) or more lower than the next lowest cost offered.

6.3.3 The user agency purchasing agent is not prohibited from negotiating with vendors who maintain a General Service Administration (GSA) price agreement with the United States of America or any agency thereof, provided, however, that no contract executed under this provision shall authorize a price higher than is contained in the contract between General Service Administration and the vendor affected.

#### 6.3.4 Request for Best and Final Offer

a. On the basis of discussions with offerors, a request for Best and Final Offer, which describes the requirements of the procurement in the final form, shall be issued to all offerors still under consideration.

b. Each offeror shall submit a Best and Final Offer, which defines their best price, and other terms, for the procurement.

c. Best and Final Offers shall be evaluated in the same fashion as a normal competitive bid.

(1) Award shall be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to the Board user agencies taking into consideration price and the evaluation factors set forth in the request for proposals.

### 6.4 NONCOMPETITIVE NEGOTIATION

6.4.1 In the event that all sealed bids submitted through a formal solicitation result in bid prices in excess of the funds available for the purchase, and the

user agency determines in writing that there are no additional funds available from any source so as to permit an award to the lowest responsive and responsible bidder and the best interest of the user agency will not permit the delay attendant to a resolicitation under revised specification, or for revised quantities, under competitive sealed bidding, then a negotiated award may be made as set forth in this Section.

6.4.2 Noncompetitive negotiation may be used to improve the price offered of the evaluated lowest-cost response to any competitive bid.

6.4.3 The user agency may award a contract on the basis of noncompetitive negotiation, where the user agency purchasing agent has determined that:

- a. A single or sole source procurement is involved, or
- b. The product, or market in which a product is sold, is noncompetitive in nature, or
- c. Collusive or exclusionary selling practices are in evidence.

6.4.4 Noncompetitive negotiation may be used to modify a contract during its performance, provided that no attempt is made to reduce the contractual obligations of the supplier, vendor, or contractor, or the contract term is not extended except in response to a request by the supplier, vendor, or contractor in consideration for other substantive changes, and where such extension of term of contract is determined by the user agency to be in the best interest of the user agency.

6.4.5 In all negotiations, the conduct of noncompetitive negotiation including, but not limited to, issues discussed, options considered, the rationale applied to decisions made and agreements reached shall be documented and placed in the purchase order file.

## **6.5 TRUTH IN NEGOTIATIONS REQUIREMENTS - COST OR PRICING DATA**

6.5.1 A contractor may be required to submit cost or pricing data and shall certify that, to the best of his knowledge and belief, the cost or pricing data submitted were accurate, complete, and current as of a mutually determined specified date prior to the date of:

- (a) The pricing of any negotiated contract where the total contract price is expected to exceed fifty thousand dollars (\$50,000);
- (b) The pricing of any change order or contract modification which is expected to exceed twenty-five thousand dollars (\$25,000) or such lesser amount in either instance as may be prescribed by the user agency.

### **6.5.2 Applicability**

- a. Purchase order supplements over \$25,000 incorporating an aggregate of changes equal to this value, e.g., an additive charge of \$20,000 and a deductive change of \$11,000 are equal to an aggregate change value of \$31,000 and thus are subject to the requirements of this section.
- b. The requirements of this section need not be applied to contracts where the price negotiated is based on adequate price competition, established catalogue or market prices of commercial items sold in substantial quantities to the general public, prices set by law or regulation, or in exceptional cases where it is determined in writing by the user agency that the requirements of this section may be waived, and the reasons for such waiver are stated in writing.

6.5.3 Cost or pricing data may include such verifiable factors as all vendor quotations, nonrecurring costs, changes in production methods and production or procurement volume, data in support of contractor projection of business prospects and objectives, together with related costs of operations, unit cost trends such as those associated with labor efficiency, make-or-buy decisions and estimated resources to attain business goals and any other management decisions which reasonably could be expected to have a significant bearing on costs under a proposed contract.

6.5.4 The requirement for submission of cost or pricing data is met when all data reasonably available to the contractor have been submitted or identified in writing at the time of agreement on price. The availability of books, records, and other documents without specific identification and explanation shall not be considered submission for the purposes of verification and agreement.

## **6.6 SUBCONTRACTING REQUIREMENTS**

6.6.1 Prime contractors shall require subcontractors to submit cost or pricing data for procurements in excess of fifty thousand dollars (\$50,000) unless exempted herein.

6.6.2 Certification - Prime contractors shall require subcontractors to certify that cost and pricing data submitted are accurate, complete, and current as of the date of agreement on price.

6.6.3 Any contract, change, or modification thereto under which a certificate is required shall contain a provision that the price to the user agency, including profit or fee, shall be adjusted to exclude any significant sums by which the user agency purchasing agent finds that such price was increased because the contractor furnished cost or pricing data, as of the date agreed upon between the parties, was inaccurate, incomplete, or not current.

6.6.4 Prime contractors must agree that the prime contract price shall be reduced in any significant amounts by which the prime contract price was overstated because a subcontractor did not submit accurate, complete, and current cost or pricing data when required by law.

## **6.7 GUIDELINES IN NEGOTIATIONS**

6.7.1 The user agency official responsible for the negotiation shall document at the conclusion of each negotiation phase setting forth the principal elements of the price negotiation.

a. Sufficient detail shall be recorded to reflect the most significant considerations controlling the establishment of the price.

6.7.2 Contracts shall contain an audit clause which provides that if, after award, the user agency purchasing agent obtains information that submitted data were inaccurate, incomplete or not current, or if the data were not adequately verified at the time of negotiation, then a post-award audit may be undertaken, at the discretion of the Board and user agency.

6.7.3 Contracts shall contain to the extent possible language which provides for unit pricing for potential change orders.

6.7.4 Contract settlement shall be made in accordance with terms specified in the purchase order.

6.7.5 In the absence of appropriate contract language, the vendor shall be paid for costs incurred.

6.7.6 Penalties due to the State in accordance with a contract may be deducted from any payment to which a vendor is entitled.

6.7.7 To determine the allowability of incurred costs for the purpose of reimbursing costs under contract provisions which provide for the reimbursement of costs, reimbursements shall be made only upon the presentation of documented, audible evidence to the user agency that the vendor has incurred an eligible expense.

## **SECTION 7                    SUPPLEMENTAL SERVICES**

### **7.1. DEFINITIONS:**

7.1.1 "Supplemental Services" shall mean all services performed in a capacity which supplements the basic staffing of user agencies.

7.1.2 In accordance with [37-2-7(26)] "Engineer", shall mean a person who, under the provisions of Chapter 5-8-2, by reason of his special knowledge and use of the mathematical, physical and engineering sciences and the principles and methods of engineering analysis and design, acquired by engineering education and engineering experience, is qualified to practice engineering, as hereinafter defined, and as attested by his registration as an engineer.

a. "Practice of Engineering", in accordance with Chapter 5-8-2, shall mean any service or creative work, the adequate performance of which requires engineering education, training and experience in the application of special knowledge of the mathematical, physical and engineering sciences to such services or creative work as consultation, investigation, evaluation surveys, planning and design of engineering systems, and the supervision of construction for the purpose of assuring compliance with specifications; and embracing those services or work in connection with any public or private utilities, structures, buildings, machines, equipment, processes, work, or projects wherein the public welfare or the safeguarding of life, health, or property is involved or concerned, and including such architectural work as is incidental to the practice of engineering.

b. "Professional Engineer" shall mean a person who has been duly registered and licensed by the State Board of Registration for Professional Engineers.

7.1.3 In accordance with [37-2-7(26)] Architect" shall mean a person who, under the provisions of Chapter 5-1-2, by reason of his knowledge of the mathematical and physical sciences, and the principles of architecture and architectural design, acquired by professional education, practical experience, or both, is qualified to engage in the practice of architecture as attested by his licensing as an architect in this state.

a. "Practice of architecture" shall mean rendering or offering to render any of those services normally provided by practicing architects. The services normally provided may include any of the following practices or professional services: advice, consultation, evaluation, site planning, aesthetic design, structural design, and the administration of construction contracts which require expert knowledge and skill in connection with the erection, enlargement, or alteration of any building

or buildings, or the provision of equipment or utilities therefore, or accessories thereto, wherein the safeguarding of life, health or property is concerned or involved also constitutes the practice of architecture.

b. "Licensure" as an architect shall mean the possession of an "architect's stamp" in accordance with Chapter 5-1-1, which indicates professional certification by the Board of Examination and Registration of Architects.

7.1.4 "A Professional Service Provider" shall mean an independent contractor who is a specialist and/or has the expertise, as demonstrated by professional licensing or certification and experience, necessary to carry out tasks regarding that particular field of expertise.

a. "Professional service products" shall mean activities that directly implement programs established by Board/user agency.

b. Professional services shall be characterized by specific activities and/or the attainment of measurable outcomes.

c. Examples of professional services include: (1) client services (medical treatments, health staff coverage, counseling, therapy, individual rehabilitation plans), (2) legal representation in litigation and administrative advice (interpretation of law, contracts, etc.), (3) computer programming, (4) education (training, teaching), (5) construction management, construction clerk, and arbitration.

d. "Special services" shall mean services which the user agency deems necessary or desirable to purchase provided by individuals or firms possessing special knowledge or skills for which formal licensing or certification is not necessarily required. Examples of special services include: (1) expert witness testimony, (2) art, music, and dance, (3) interpretation (languages, deaf), (4) public information (drug and alcohol abuse), and (5) training.

e. "Personal services" shall mean services provided by persons who are paid directly by the state but are not on the state payroll. Personal services may consist of the following relationships:

(1) "Employee" shall mean an individual drawing a salary from a governmental body or public agency, whether elected or not, and any non-salaried individual performing personal services for any governmental body or public agency.

(2) A "leased employee" shall mean a person hired through a contract with an agency which is responsible for paying all salary

and benefits compensation to which the individual is entitled. Leased employees would usually be temporary replacements for, or supplements to, the existing workforce provided on an as needed basis.

(3) An "employee contractor" shall mean a person on a state or public agency payroll who has been employed by a state agency in an advisory capacity. (An example of such employment would be: URI professors employed by MHRH to develop policy analyses.)

(4) An "employee service contractor" shall mean a person on a state or public agency payroll who has been employed by a state agency in a service capacity. (An example of such employment would be: RIC professors hired by DCYF to provide social worker training.)

7.1.5 "Consultant", shall mean any person with whom the state and/or a public agency has a contract which contract provides for the person to give direction or information as regards a particular area of knowledge in which the person is a specialist and/or has expertise.

a. "A Professional Consultant" shall mean an individual or a firm which is a specialist and/or has the expertise, as demonstrated by the possession of appropriate professional licensing, certification, and/or experience, necessary to give advice, direction or information regarding that particular area of knowledge.

b. "Professional consultant products" shall mean advisory opinions expressed as reports, written or oral, used by user agency officials to render policy decisions.

c. Consultant services shall be characterized by research and analysis, recommended courses of action, identification of priorities, and unspecified outcomes.

(1) Examples of professional consultations include: (1) systems analysis (computer, personnel, management review), (2) program analysis (medical program planning) and (3) policy recommendations (abandonment or adoption of programs, establishment of decision criteria).



## **7.2 GENERAL PROVISIONS UNDER RIGL 37-2-7(16)**

7.2.1 The User Agency Vice President for Finance shall recommend the final selection of providers of legal, medical, and dental services to the Associate Commissioner for Finance and Management. User agencies shall not commit funds for the proposed services prior to receiving approval of the recommended provider.

7.2.2 The user agency Human Resources/Personnel Department shall have the responsibility for evaluation of the need for supplemental services and for verification/validation of qualifications of proposed service providers.

7.2.3 The user agency purchasing agent shall review proposed change orders to professional consultant contracts (other than medical, dental, and legal) which are reasonably estimated to exceed twenty thousand dollars (\$20,000) and shall determine whether such changes constitute a scope of service requiring open competition.

7.2.4 To the extent practicable, selection of supplemental service providers shall be based upon competition. The user agency purchasing agent may require that, whenever possible, a scope of services be defined in terms for which a bid or a response to a request for proposals may be solicited.

7.2.5 Except for legal, medical, dental and special services (as defined herein), when a determination is made in writing by the user agency purchasing agent that the scope of work for a professional services contract does not permit selection based upon competitive bidding or request for proposal procedures, the service shall be deemed to be of a consulting nature and subject to all requirements set forth for the selection of consultants.

7.2.6 Requirements for the selection of construction management contractors shall be the same as those for the selection of architects and engineers.

## **7.3 ARCHITECTURAL, ENGINEERING AND CONSULTANT SERVICES SELECTION PROCESS FOR SERVICES (Not to exceed \$20,000)**

7.3.1 Selection Process: Engineering, Architectural, and Consultant Services. The user agency shall establish a technical review committee to evaluate the qualifications of potential suppliers. Membership on the committee shall be determined on a case-by-case basis. The user agency committee may utilize the services of the Associate Commissioner for Finance and Management or such other persons it deems necessary to provide technical advice in evaluating consultant proposals.

- a. Such technical advisors shall not be considered members of the committee and shall not be entitled to vote on the selection of candidates.

#### **7.4 EVALUATION FOR SELECTION**

7.4.1 Criteria for evaluation of candidates for supplemental services shall include, but shall not be limited to:

- a. Competence to perform the services as reflected by technical training and education, general experience, experience in providing the required services, and the qualifications and competence of persons who would be assigned to perform the services;
- b. Ability to perform the services as reflected by workload and availability of adequate personnel, equipment, and facilities to perform the services expeditiously;
- c. Past performance as reflected by the evaluation of private persons and officials of other governmental entities which have retained the services of the firm with respect to such factors as control of costs, quality of work, and ability to meet deadlines; and
- d. In the case of consultant services, the vendor's proposed approach to the project/assignment shall be an additional criterion.

#### **7.5 SELECTION:**

7.5.1 A selection rationale shall be documented by the user agency which may include a summary of the score sheet of the evaluation criteria. The user agency Vice President for Finance or his/her designee shall make the user agency selection recommendation to the Associate Commissioner for Finance and Management. In accordance with [37-2-69(b)] the Commissioner for Higher Education shall make the final selection and notify the Chief Purchasing Officer, the State Divisions of Purchasing and Budget.

## **7.6 NEGOTIATION:**

7.6.1 The user agency or their designee shall negotiate with the highest qualified firm for a contract for architectural, engineering, or consultant services for compensation which is determined to be fair and reasonable. In making such determination, the user agency, shall take into account the following: professional competence, technical merits and price.

## **7.7 ARCHITECTURAL, ENGINEERING AND CONSULTANT SERVICES SELECTION PROCESS FOR SERVICES EXCEEDING \$20,000**

7.7.1 User agency requests for architectural, engineering and consultant services in excess of twenty thousand (\$20,000) shall be pursued in accordance with RISPA Chapter 37-2.

## **7.8 REQUIREMENTS FOR OTHER SUPPLEMENTAL SERVICES**

### **7.8.1 Legal, Medical and Dental Services**

a. Prior to procuring the services of an attorney, physician or dentist, the user agency purchasing office shall ensure the following:

(1) Justifications for need - which may include, but need not be limited to, consideration of: legal mandates/court orders or consent decrees; licensing/certification requirements; health and safety concerns; and minimum standards of services.

(2) The scope of services shall describe the time period for the proposed contract and services or outcomes (tasks, reports, or other products).

(3) Indication of whether the proposed contracted work involves supplemental functions or is for temporary staff coverage.

(4) Demonstration that professionals meet minimum requirements may be accomplished by the user agency using the following: obtain annual verification of the status of an attorney(s) from the Supreme Court listing of members of the Rhode Island Bar; obtain annual verification of the status of medical doctors and medical professionals from the Department of Health.

b. For medical/dental services, or for temporary services, generally definable over a definite period of time but on an as needed basis to provide coverage for full-time Board employees (doctors, dentists, nurses, etc.) during their absence. Such procurements for those services

may be obtained through the use of a blanket-type contract arrangement, subject to the following:

- (1) documented rationale that such services are required; and
- (2) certification that medical/dental personnel to be employed possess the appropriate state license or certification, competence to perform such services as reflected by formal training, education and experience in providing the required service.

## **SECTION 8            CONTRACTS**

### **8.1 FUNDAMENTAL REQUIREMENTS AND PRINCIPLES FOR USER AGENCY CONTRACTS -**

8.1.1 A contract shall mean a promise or a set of promises, for breach of which the law gives a remedy, and the performance of which the law recognizes as a duty.

a. The terms and conditions of a valid Purchase Order and its supplements, as issued by the user agency purchasing office, shall constitute the primary contractual instrument.

b. Unless specifically established by law, regulation or procedures no other instrument shall constitute a user agency purchasing contract.

c. Oral Agreements - Any alleged oral agreement or arrangements made by a bidder or contractor with any employee of the user agency or an employee of the agency's purchasing office may be disregarded and shall not be binding on the user agency.

8.1.2 "Purchasing Contract Authority" shall mean the authority to act on behalf of the user agency to commit funds, enter into binding agreements or contracts, dispose of property, or in any other manner control procurement or obligate the user agency.

a. No user agency official shall have the right (capacity) to exercise purchasing contract authority through written or oral agreements or contracts or, in any other way, financially or otherwise, without the express consent or delegated authority of the user agency purchasing office.

8.1.3 These purchasing regulations shall be considered to be incorporated by operation of law in all Board user agency contracts.

8.1.4 Contract provisions and contracts entered into in violation of state and Board purchasing regulations shall be void "ab initio" [from inception].

8.1.5 Supplemental Principles of Law - Obligation of Good Faith.

a. The principles of law and equity, including the uniform commercial code, the law merchant, and the law of contracts, including, but not limited to, agency, fraud, misrepresentation, duress, coercion, mistake, and bankruptcy, shall supplement these provisions.

b. Every contract or duty under this chapter shall impose upon both parts the obligation of good faith in its performance and/or enforcement. "Good faith" shall mean honesty in fact in the conduct or transaction concerned and the observance of reasonable commercial standards of fair dealing.

8.1.6 In accordance with Chapter 37-2-9(p), contractors must comply with state and federal Equal Opportunity requirements for all contracts for supplies and services exceeding ten thousand dollars (\$10,000). Failure to comply will be considered a substantial breach of contract subject to penalties prescribed in regulations issued and administered by the State Equal Opportunity Office.

8.1.7 Contractor's Bonds. - The provisions of chapter 37-12 of the general laws shall apply to all construction contracts awarded under this chapter.

a. "Performance Bond" shall mean a contract of guaranty executed subsequent to award by a successful bidder to protect the user agency from loss due to contractor inability to complete a contract.

b. Chapter 37-12 requires that every person awarded a public works contract shall furnish to the user agency good and sufficient surety (performance bond) not less than fifty percent (50%) and not more than one hundred percent (100%) of the contract price conditioned that the contractor, principal in said bond, the person's executors, administrators or successors, shall keep and perform the covenants, conditions and agreements in the contract. However, provided that good cause is shown, the Associate Commissioner for Finance and Management upon request by the user agency may waive the surety requirements for contracts not in excess of twenty-five thousand dollars (\$25,000).

c. In accordance with Chapter 37-13-14 a contractor's performance bond must be furnished by a surety company authorized to do business in the state of Rhode Island.

## **8.2 GENERAL CHARACTERISTICS OF USER AGENCY CONTRACTS**

8.2.1 General Terms and Conditions - The General Terms and Conditions shall (1) be referenced and made a part of all solicitations for proposals and quotations; all user agency purchase orders, contracts, and letters of authorization; and bidder registration documentation and (2) provide notice to bidders that contract award may be subject to the bidder signing an affirmation (certification) regarding certain legal requirements or restrictions relating to foreign corporations, disadvantaged business enterprises, labor rates, local product preference, etc., as required by the user agency purchasing agent.

8.2.2 When a contract has been entered into between the user agency and another party, neither party shall have the legal right to add new terms or conditions without the consent of the other, unless the contract so specifies.

8.2.3 All contract pricing shall be firm and fixed unless contract language provides for reconsideration.

8.2.4 Issuance of purchase orders shall not be made on the basis of "advise pricing" (or "pricing to be determined") agreements. All commitments shall be on the basis of estimated prices with a "not to exceed" maximum authorization when firm, fixed pricing agreements are not possible.

8.2.5 Changes in scope, price, and length of contract period shall require contract amendments which are specified in writing.

a. Unanticipated changes may be considered with the express consent of both parties.

b. The issuance of a Purchase Change Order in accordance with the provisions of the contract and other requirements specified herein shall be considered a binding contract.

8.2.6 Termination - As appropriate, user agency contracts shall include clauses which address special conditions/procedures for termination of contract not contained in the General Terms and Conditions; e.g., provisions for penalties or forfeitures for contract noncompliance may be included; a convenience termination clause which permits the user agency to terminate, at its own discretion, the performance of work in whole or in part, and to make a settlement of the vendor's claims in accordance with appropriate regulations and applicable contractual conditions.

8.2.7 Mutual Agreement - The agreement shall consist of an offer by one party, called the offeror, and an acceptance by the other party, called the user agency.

a. When a purchase order is issued which does not differ from the bid submitted by an offeror, mutuality shall be assumed.

b. In accordance with the General Terms and Conditions which notify offerors that the user agency purchasing agent reserves the right to make partial bid awards, mutuality shall be assumed when a purchase order does not differ from the elements of a bid submitted by an offeror.

c. Any offer, whether in response to a solicitation for proposals or bids, or made without a solicitation, which is accepted in the form of an order made by the user agency purchasing agent, or a user agency official with purchasing authority shall be considered a binding contract.

8.2.8 Consideration - Although consideration to support a contract may assume other forms, generally it shall mean the agreement to pay a sum of money for the delivery of the desired item or services rendered. It shall not be essential that the consideration be of a substantial consequence, but shall have some value. Compensation shall be specified and shall include but not be limited to: (a) terms of payment for partial delivery or completion; (b) unit of cost (hourly rate, per report rate), if appropriate; (c) frequency/conditions for payment - weekly, monthly, upon completion of percentage of work, etc.; and (d) retainage, when appropriate.

8.2.9 Capacity of Parties - The contracting parties shall have the legal authority to enter into contracts.

8.2.10 Competence of Parties - The contracting parties shall be of legal age and of sound mind.

8.2.11 Length of contract period shall be specified.

8.2.12 A user agency official (or position) from whom the contractor shall obtain direction shall be named and/or a format for written authorization to deliver (e.g., Request for Delivery Form, Master Price/Term Price Agreement) shall be specified.

8.2.13 Public Works/Construction Contracts shall provide for the following additional considerations:

- a. Certificates of insurance to protect the general public or user agency property from injury or loss arising from actions or inaction of the contractor during the progress of a contract.
- b. Each contractor shall be responsible for providing satisfactory evidence of complete coverage of all insurance, permits, and licenses required by state, city or town statutes, ordinances, and/or regulations.



### **8.3 THE PURCHASE ORDER CONTRACT**

8.3.1 "Purchase Order" means a document issued by the user agency to formalize a purchase transaction with a vendor. The purchase order shall contain statements as to the quantity, description, and price of the goods or services ordered, applicable terms as to payment, discounts, date of performance, transportation, and other factors or suitable references pertinent to the purchase and execution by the vendor. Purchase orders shall include but are not limited to blanket orders, miscellaneous encumbrance advices, direct purchase orders and limited value purchase order-vouchers.

8.3.2 The entire agreement with the supplier shall, at all times, reside solely in the purchase order and its referenced supplements.

8.3.3 Purchase Order Supplements shall consist of all of the following documents:

- a. The Board's General Terms and Conditions;
- b. The user agency's request for quotations or proposals, including specifications;
- c. The contractor's offer which is responsive to the solicitation; and/or
- d. As appropriate, additional contract provisions.

### **8.4 MULTI-YEAR CONTRACTS**

8.4.1 Multi-year contracts for supplies and services may be entered into for periods not extending beyond the end of the biennium in which the contract was made, if funds for the first fiscal year of the contemplated contract are available at the time of contracting. Payment and performance obligations for succeeding fiscal years shall be subject to the availability of funds therefor.

- a. Multi-year contracts which extend beyond a biennium shall be permitted provided that:
  - (1) funds for the first year of the biennium are available; and
  - (2) contracts shall contain a standard clause which states that implementation of the contract beyond the first fiscal year shall be subject to the availability of funds.
- b. Multi-year contracts shall specify the annual costs and total value of each contract.

8.4.2 When funds are not available to support continuation of performance in a subsequent year of a [multi-year] contract, the contract for such subsequent year may be canceled.

## **8.5 LETTER OF AUTHORIZATION**

8.5.1 When a user agency determines, in writing, that it is absolutely essential that the vendor be given a binding commitment so that work can be commenced immediately and that negotiation of a definitive contract cannot be accomplished in sufficient time, the user agency purchasing agent may issue a Letter of Authorization.

- a. A "Letter of Authorization (LA)" shall mean a written instrument, binding only when signed by the user agency purchasing agent, which authorizes immediate commencement of implementation of the delivery of supplies or the performance of services.

## **8.6 CHANGES TO PURCHASE ORDERS**

8.6.1 Agreements and changes to scope of work, price, or other terms shall be incorporated into purchase orders via "change order" documents incorporating contract amendments.

8.6.2 Change Orders written or verbally issued by the user agency purchasing office shall be the only binding documents which may create a change in a purchase order.

8.6.3 Personnel shall not commit the user agency to technical/contractual changes to purchase orders without first securing all necessary approvals.

8.6.4 All discussions of potential changes (oral or written) may be disclaimed as not being binding on the supplier or the user agency until formally incorporated in the purchase order.

8.6.5 Change orders shall be issued by the user agency purchasing office following receipt of quotations and discussions of price and delivery with the supplier. If circumstances preclude immediate issuance of a formal change order, interim direction to the supplier may be made via a letter of authorization signed by the user agency purchasing agent.

## 8.7 TERMINATION OF CONTRACT

8.7.1 If required bidder certifications are determined to be invalid, the user agency purchasing agent shall declare the purchase order void.

8.7.2 Notice of termination by either party shall be submitted in writing to the other party in accordance with the termination clause of the contract.

8.7.3 Cancellation of a Contract by the user agency

a. A contract may be canceled or annulled at the contractor's expense upon determination by the user agency purchasing agent that a condition of nonperformance exists.

b. "Nonperformance" shall mean lack of compliance with the contract specifications and/or terms and conditions.

c. Cancellation by the user agency purchasing agent for non-performance shall be subject to the following rules:

(1) A formal complaint of nonperformance or unsatisfactory performance shall be submitted by an authorized user agency official to the user agency purchasing agent. Such complaint shall provide a description of and justification for the complaint.

(2) The user agency purchasing agent shall attempt to resolve the problem.

(3) If the problem has not been resolved, the user agency purchasing agent shall notify the contractor in writing that s/he is not in compliance with the contract. Such notice of nonperformance shall: specify the nature of the complaint; direct the contractor to take corrective action; direct the contractor to respond in writing to the notice of nonperformance within a specified time period; and notify the contractor that failure to respond as directed may result in cancellation of the order.

d. If a contractor fails to take corrective action and/or respond to a notice of nonperformance, the user agency purchasing agent may issue a change order canceling the contract.

e. If, after reviewing the contractor's response, the user agency purchasing agent determines that the contractor is not out of compliance with the contract requirements, s/he shall so notify the complaining user

agency official and the contractor in writing, providing a rationale for his decision.

f. If the user agency purchasing agent determines that valid extenuating circumstances out of the control of the contractor have prevented compliance with the contract requirements, s/he shall so inform the complaining user agency official and may amend the contract to provide for a reasonable opportunity for the vendor to perform the contract, if necessary.

g. If the user agency purchasing agent believes that a contractor's action or lack thereof presents a clear and immediate danger to the public interest, s/he may request in writing immediate termination of the contractual relationship.

h. Copies of all communications with a contractor regarding nonperformance shall be sent to the contractor's bonding company, power of attorney and the user agency's legal counsel.

i. If the contractor is unwilling or unable to perform a contract, the user agency shall:

(1) direct the contractor's bonding company to assume responsibility for the performance of the contract if a performance bond has been issued; and

(2) so notify the contractor; and

(3) notify the contractor that suspension and/or debarment procedures may be initiated and that the contractor shall be responsible for any costs incurred by the user agency in the completion of the contract.

8.7.4 If a contract dispute is involved, the user agency, in accordance with, Section 1.4.1 pg. 1-4, may refer the issue to the Associate Commissioner for Finance and Management.

## **8.8 PRINCIPLES FOR SELECTION OF TYPE OF PURCHASE ORDER CONTRACT**

8.8.1 The selection of the appropriate type of contract is a matter which requires the exercise of judgment in order to obtain fair and reasonable prices in accordance with the circumstances of the procurement.

a. In determining the type of contract to be used, consideration should be given but not limited to such factors as:

- (1) Type and complexity of the item or scope of work to be performed;
- (2) Urgency of the requirement;
- (3) Prospective period of contract performance;
- (4) Degree of competition present;
- (5) Extent of completion of baseline and detail design; which in turn may influence other considerations such as the adequacy and firmness of specifications, and the availability of relevant historical pricing data and prior experience;
- (6) Availability of comparative price data, or lack of firm market prices or wage levels;
- (7) Prior experience with the supplier;
- (8) Extent and nature of subcontracting contemplated;
- (9) Assumption of business risk;
- (10) Supplier technical capability and financial responsibility;
- (11) Administrative costs;
- (12) Adequacy of the supplier's accounting system; and
- (13) Other concurrent contracts.

## 8.9 TYPES OF CONTRACTS

8.9.1 The user agency may enter into any type of contract which will promote the best interests of the user agency, the Board, and the State subject to the following rules:

- a. "Cost plus a percentage of cost contracts" shall not be awarded;
- b. "To Be Determined" contracts shall not be awarded;
- c. Contract providing for the reimbursement of the vendor's cost plus a fixed fee shall not be awarded.
- d. A Time and Materials (T/M) contract shall include the establishment of a cost limitation which the seller may not exceed (except at his/her own risk). A T/M contract shall be used only in situations when:
  - (1) It is not possible at the time of placing the order to estimate the extent of the work or to anticipate final costs with any reasonable degree of accuracy such as: (1) engineering and design services, (2) certain repair, maintenance or overhaul work, (3) emergencies.
  - (2) Provisions are made for appropriate surveillance by user agency personnel during performance and subject to audit by the user agency and the Board's Internal Audit Department.
- e. Labor/Hour (L/H) contracts based solely on labor hours shall be considered a subcategory of T/M contracts, subject to the same restrictions as the T/M contract and shall be used only after the user agency purchasing agent has determined that this type of contract is most suitable for meeting the needs of the requisitioner
- f. Considerations for use of a Board Term Price Agreement (TPA) contract. A TPA shall mean a pricing agreement which has been established on behalf of one or more than one Board of Governors user agencies:
  - (1) The Board TPA shall specifically state the term, price and unit of issue of items covered in the agreement.
  - (2) The seller shall be authorized to ship to the user agency only those items specified by a delivery request (on a form to be provided) issued under the authority of the Term Price Agreement. The user agency is obligated for payment only to the extent of the specific quantities set forth in the delivery request or for express considerations applicable to the contract itself.

(3) The specific category of items to be purchased may be listed in a catalog prepared specifically for the agreement, a catalog of items offered for sale by a supplier, a national catalog published by a catalog publishing firm, or such other lists of items as may, from time to time, be determined as being a legally sufficient description of the item or items being purchased.

g. For public works projects under twenty five thousand (\$25,000) dollars the generally preferred method of construction contracting management for all projects shall be a general contractor selected as the lowest responsive bidder based on a lump-sum, fixed-fee contract type, and projects utilizing this method shall not require individual written determination of such preference. The use of any other method must be justified in writing to the Associate Commissioner by the requesting user agency, stating the reasons why the preferred method may not be used, and the Associate Commissioner may approve or reject such requests at his/her discretion.

## SECTION 9

### EXCEPTIONS TO COMPETITIVE BIDDING REQUIREMENTS

#### **9.1 AUTHORITY TO MAKE EXCEPTIONS TO THE REQUIREMENT FOR COMPETITION.**

9.1.1 In certain circumstances competitive bidding for purchases may not be the most cost-effective approach to procurement. The user agency may waive requirements for competitive bidding.

#### **9.2 CIRCUMSTANCES**

9.2.1 The following are exceptions to competitive bidding; however, the user agency may require competitive bidding in any circumstance where it is deemed that competition may enhance the user agency's ability to attain cost savings:

- a. Contractual services where no competition exists, such as electrical energy, and other public utility services;
- b. When, in the judgment of the user agency, food, clothing, equipment, supplies, or other materials to be used in laboratory and experimental studies can be purchased otherwise to the best advantage of the user agency;
- c. Instructional materials such as books, testing materials, etc., which are available from only one source;
- d. Where rates are fixed by law or ordinance;
- e. Library books; periodicals, magazines, newspapers;
- f. Commercial items purchased for resale, including user agency Bookstore items;
- g. Professional, technical, or artistic services including: guest artists, honorariums, guest speakers;
- h. Interests in real property.

**9.3 GOODS AND SERVICES OBTAINED BY ONE STATE AGENCY FROM ANOTHER:** such as printing, furniture, moving and painting services from Correctional Industries shall be exempt from competition.

NOTE: The fact that PO's, MPA's, TPA's for goods and services are in place with specific vendors does not prohibit the user agency to



obtain said goods and services from other state agencies when available and practicable.

**9.4 SMALL PURCHASES NOT EXCEEDING \$500:** Competitive bids shall not be required for purchase orders up to \$500 in value if the prices are considered to be reasonable; however, user agency officials may obtain informal quotes when practicable.

9.4.1 It shall be the responsibility of agency personnel to exercise good judgment as to what is a fair and reasonable price.

9.4.2 Specific action to verify the reasonableness of a price may be taken when it is suspected that the price may not be reasonable, e.g., comparison to previous price paid or personal knowledge of the item involved.

9.4.3 User agencies may establish guidelines to evaluate periodically the reasonableness of pricing for purchase orders up to \$500.

9.4.4 Under no circumstance shall purchases exceeding \$500 be artificially divided into component parts to circumvent the competitive process.

**9.5 SOLE SOURCE.** A contract may be awarded for a supply, service, or construction item without competition when the user agency determines there is only one source for the required supply, service, or construction item.

9.5.1 Sole source categories may include:

- a. items of a unique nature which are unavailable from other sources due to patents or proprietary processes;
- b. books, maps, periodicals, and technical pamphlets, films, video and audio cassettes obtained from publishers;
- c. certain computer software;
- d. licenses - computer software, electronic transmittal;
- e. specialized replacement/repair parts or expansion parts necessary to maintain the integrity of system or function, e.g. scientific research;
- f. works of art for museum or public display;
- g. specialized services for which there is only one documented accepted source, such as transactions involving unique professional services and/or educational institutions, e.g., visiting speakers or professors, and

performing artists; repair/maintenance agreements with manufacturers or area distributors;

h. advertisements, public notices in magazines, trade journals, newspapers, television; radio;

9.5.2 Excepting sole source procurements from competitive bidding shall not be interpreted to reduce the responsibility of the user agencies to evaluate the market continuously to research product alternatives and develop additional sources (distributors).

9.5.3 In attempting to achieve the goal of maximizing competition to the greatest extent possible, alternative distributors and manufacturers may be pursued to sole source items by using compatible replacement parts as long as warranties are not affected by substitution.

9.5.4 The user agency may make a documented determination that a category of profit and non-profit providers constitutes a sole source supplier for certain types of services, e.g. grant/contract subcontractors, collaborators.

9.6 **EMERGENCIES.** User agency may make emergency procurements when there exists a threat to public health, welfare or safety under emergency conditions as defined in regulations; provided that such emergency procurements shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the contractor shall be included in the contract file.

9.6.1 Authorized officials in Board user agencies shall be permitted to react quickly to critical situations when the cost for a remedy or repair is in excess of \$500 and there is not sufficient time to undertake a public, formal, or informal bidding process.

9.6.2 An emergency shall mean a situation to which an urgent response is required. Immediate dangers to health and safety, threats to property, research and necessary functions, and failures of critical equipment constitute emergencies.

9.6.3 Inadequate anticipation of need shall not be considered justification for "emergency" purchases.

9.6.4 Commitments which extend beyond the immediate response to the dysfunctional emergency shall be prohibited, i.e. prevention of future problems by corrective measures other than the immediate restoration of function must be pursued through the user agency purchasing office competitive purchasing process.

9.6.5 If the emergency occurs outside of business hours for the user agency's purchasing office, the user agency shall be authorized to proceed in accordance with the principles and policies of sound procurement practices.

9.6.6 All emergency purchases shall be documented. All emergency documentation forms shall be signed by either a duly authorized user agency official or the designated emergency response official.

9.7 **SPOT PURCHASES** of certain items (e.g., food, heating oil, gas) sold on the basis of posted market prices may be exempted from competition when market analysis indicates that such procurements are in the best interest of the user agency. Opportunities to take advantage of seasonal and supply/demand influences shall be taken into account when determining whether to pursue formal competitive procedures.

9.7.1 User agency purchasing agent may establish user agency operational guidelines to provide flexibility in spot purchases for commodities that are special (e.g., food), and are subject to price volatility.

## **SECTION 10**

### **EXPENDITURES THAT ARE NOT PROCUREMENTS**

#### **10.1 GENERAL**

10.1.1 Contracts for concessions (cafeteria services, vending machines, recreational programs, transportation services, etc.) are not procurements. Except for contracts for grants-in-aid, award of nonprocurement contracts/subcontracts shall be subject to the same open, competitive procedures which apply to procurements.

10.1.2 Except for contracts for grants-in-aid and sponsored research and the sub-grantees/sub-contractors named therein, award of non-procurement contracts shall be subject to the same open, competitive procedures which apply to procurements.

10.1.3 Grants for the provision of programs, services, and facility improvements shall not be authorized without agreements or contracts which: specify the purpose for the grant; method and terms of payment; define service or product; outline any legal limitations on the funding; set a time limit for distribution of funds; require maintenance of records for a specified period of time; provide for auditing; and provide for termination of the agreement/contract.

#### **10.2 RESPONSIBILITY TO PROMOTE COMPETITION IN AWARDING CONTRACTS**

10.2.1 Concessions. In general, awards on concession agreements shall be made to the offeror whose proposal represents the greatest service and/or cash benefit to the user agency. When appropriate the user agency shall refer concession response to the State Properties Committee for review.

10.2.2 Grants. User agency may obtain services or provide programs on behalf of clients through grants to nonprofit or other entities named in the grant; however, when the payment of "grant" funds is subject to the provision of services or programs, determination of contract award may be obtained by a request for proposal procedure to obtain the advantages of competition.

- a. Nonprofit status or being named as a sub-grantee/sub-contractor in a grant may exempt organizations from being subject to competitive purchasing principles.
- b. User agency may undertake Request for Proposal procedures; establish evaluation criteria, review; and evaluate responses to the RFP.
- c. Grant contracts may be subject to an audit of competitive practices.

d. Grants in the form of subsidies or general assistance shall be administered by user agency in accordance with legal mandates restricting or defining the use of such funds.

### 10.3 EXCEPTIONS TO COMPETITION.

10.3.1 The following types of expenditures shall not be subject to the provisions of competitive procurement:

a. Reimbursement to local governments (e.g., for educational expenses or public works projects).

b. Reimbursements of third parties for client-demand services, e.g., payments for medical services when the client selects the physician shall be considered benefits for which competitive solicitation is not required.

c. Entitlements for specific recipients or categories of recipients as prescribed by legislative mandate (including federal programs).

d. Grants, subsidies, entitlements or benefits purchased.

e. Grants in the form of subsidies or general assistance shall be administered by the user agency in accordance with legal mandates restricting or defining the use of such funds.

f. Grants, subsidies, entitlements or benefits purchased on behalf of, or paid directly to individuals. Examples include but shall not be limited to:

(1) transportation services - public bus, taxicab, ferry;

(2) education and recreation benefits;

(3) fees - tuition costs, registration; and

(4) medical, dental, food stamps, etc.

g. Employee expenses, subsidies and benefits. Examples include but shall not be limited to:

(1) meals, parking, mileage and travel not covered by user agency or state contract;

(2) allowances (e.g., tools, clothing) per union contract;

(3) fees - dues/membership, tuition costs, conference registration/lodging.

(4) tuition; and

(5) tests/examinations/certifications.

h. Claims - reimbursement for damages. Vouchers for tort claims authorized by the Board and/or the R.I. General Assembly, accompanied by a copy of the appropriate legal decision.

#### **10.4 PROVISIONS AND REQUIREMENTS FOR GRANTS**

10.4.1 Grants for the provision of programs, services, and facility improvements shall contain agreements or contracts that:

- a. specify the purpose of the grant;
- b. specify the method and terms of payment;
- c. define the service or product, if required;
- d. outline any legal limitations on the funding;
- e. set a time limit for the distribution of funds;
- f. require maintenance of records for a specified period of time;
- g. provide for auditing; and
- h. provide for the termination of the agreement/contract.

## Section 11                    DEFINITIONS

**"Associate Commissioner for Finance and Management"** shall mean the Associate Commissioner for Finance and Management of the Office of Higher Education in accordance with 16-59-7 of the RIGL.

**"Auxiliary"** is an entity that exists to furnish goods or services to students, faculty, or staff and that charges a fee directly related to the costs of goods or services and are considered "restricted funds." Auxiliary enterprises are managed as essentially self supporting activities. Examples include but are not limited to: residence halls, dining services, and student health services.

**"Benefits"** shall mean monies or gifts provided by the state to or on behalf of individuals or entities (clients, patients, inmates, employees, non-profit service providers) the distribution of which may not be prescribed by statute, regulation, or program provisions.

**"Bid Abstract"** shall mean a summary of responsive bids to a solicitation.

**"Bid Bond"** shall mean an insurance agreement in which a third party agrees to be liable to pay a certain amount of money in the event that a specific bidder, if his bid is accepted, failed to accept the contract as bid.

**"Bid Deposit"** or "Bid Security" or "Bid Surety" shall mean a sum of money or check deposited with and as instructed by the prospective purchaser to guarantee the bidder (depositor) will, if selected, accept the contract.

**"Bid Opening"** shall mean the process through which bids are opened and the contents revealed for the first time to the Board, user agency, other bidders and to the public.

**"Bid Sample"** shall mean a sample required of a bidder for examination, comparison, testing, and evaluation for the prospective purchaser.

**"Bid"** shall mean an executed document submitted by a bidder in response to an Invitation for Bids or a Request for Quotation.

**"Bidder"** shall mean any person submitting a competitive bid in response to a solicitation.

**"Bidders Lists"** shall mean lists maintained by the Board and the State Purchasing Agent containing the names and addresses of suppliers of various goods and services from whom bids, proposals, and quotations may be solicited.

**"Biennium"** shall mean a period of time equal to two fiscal years.

**"Blanket Order"** shall mean an arrangement under which a purchaser contracts with a vendor to provide the purchaser's requirements for an item(s) or a service, on an as-required and often over-the-counter basis.

**"Board of Governors"** shall mean the Board of Governors for Higher Education according to RIGL 16-59-1.

**"Term Price Agreement (BTPA)"** shall mean a pricing agreement which has been established on behalf of one or more than one user agency. The BTPA shall specifically state the term, price and unit of issue of items covered in the agreement. The specific category of items to be purchased may be listed in a catalog prepared specifically for the agreement, a catalog of items offered for sale by a supplier, a national catalog published by a catalog publishing firm, or such other lists of items as may, from time to time, be determined as being a legally sufficient description of the item or items being purchased.

**"Business"** shall mean any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or other legal entity through which business is conducted.

**"Change order"** shall mean a written order signed by the user agency purchasing agent, or the contractor directing or allowing the contractor to make "changes which the changes clause of the contract authorizes the purchasing agent or contractor to order without the consent of the contractor or purchasing agent.

**"Collusive Bidding or Corrupt Combination"** shall mean the response to bid invitations by two or more vendors who have secretly agreed to circumvent laws and rules regarding independent and competitive bidding.

**"Commissioner"** shall mean the Commissioner of Higher Education in accordance with RIGL 16-59-6.

**"Commodity"** shall mean an article of trade, a movable article of value, something that is bought or sold; any movable or tangible thing that is produced or used as the subject of barter or sale.

**"Competition"** shall mean the process by which two or more vendors vie to secure the business of a purchaser by offering the most favorable terms as to price, quality, delivery and/or service.

**"Competitive bidder/offeror"** shall mean responsible bidder or offeror.

**"Competitive negotiation"** shall mean a specialized bidding procedure characterized by modifications to the offers of at least two vendors and/or alteration of the specifications for which, or the terms and conditions under which, the user agencies have solicited offers.

**"Concession"** shall be defined as the granting of a license to a commercial entity for the conduct of a commercial enterprise on Board premises, in consideration of which the Board user agency receives a regular rent and/or a percentage or other share in net proceeds.



**"Consultant"**, shall mean any person with whom the state and/or a public agency has a contract which contract provides for the person to give direction or information as regards a particular area of knowledge in which the person is a specialist and/or has expertise.

**"Construction"** shall mean the process of building, altering, repairing, improving or demolishing any public structures or building, or other public improvements of any kind to any public real property.

**"Contract Addendum"** shall mean an alteration in the terms and/or scope of an agreement accomplished by mutual action of the parties, permissible under emergency purchases, construction work, sole source procurement, and otherwise where competition is not required.

**"Contract dispute"** shall mean a circumstance whereby a contractor and the user agency are unable to arrive at a mutual interpretation of the requirements, limitations, or compensation for the performance of a contract.

**"Contract file"** shall mean the file the user agency maintains pertaining to each procurement activity and contains written documentation.

**"Contract Modification"** shall mean any written alteration in the specifications, delivery point, rate of delivery, contract period, price, quantity, or other contract provisions of any existing contract, whether accomplished by unilateral action in accordance with a contract provision, or by mutual action of the parties to the contract. It shall include bilateral actions, such as change orders, administrative changes, notices of termination, and notices of the exercise of a contract option.

**"Contract"** shall mean all types of agreements, purchase orders, including grants and orders, for the purchase or disposal of supplies, services, construction, or any other items. With respect to the procurement regulations set forth herein, "contract" shall not apply to labor contracts with employees of the Board.

**"Contractor"** shall mean any person having a contract with a Board user agency.

**"Cost No Fee (CNF)"** contract shall mean one under which the seller receives no fee.

**"Cost Plus Fixed Fee (CPFF)"** contract shall mean one which provides for the payment of a fixed fee to the seller.

**"Cost Plus Incentive Fee (CPIF)"** contract shall mean one which provides for a fee which is adjusted by formula in accordance with the relationship which total allowable costs bear to target costs, a target fee, a minimum and maximum fee, and a fee adjustment formula.

**"Cost Plus Percentage of Cost (CPPC)"** contract shall mean one which provides for a fee which is adjusted by percentage formula in accordance with the relationship to total cost. Such contracts are explicitly prohibited.

**“Cost-Reimbursement Contract”** shall mean a contract under which the user agency reimburses the contractor for those contract costs, within stated ceiling and a fixed fee.

**"Cost Sharing (CS)"** contract shall mean one under which the seller not only receives no fee but is reimbursed for only an agreed upon portion of its allowable costs.

**"Data"** shall mean recorded information, regardless of form or characteristic.

**“Delegated Purchasing Authority”** shall mean the transfer of purchasing authority from the RISPA Chief Purchasing Agent to another state official in accordance with the provisions and limitations of Chapter 37-2 of the RIGS and regulations.

**"Designee"** shall mean a duly authorized representative of a person holding a superior position.

**“Emergency”** shall mean a situation to which an urgent response is required. Immediate dangers to health and safety, threats to property, research and necessary functions, and failures of critical equipment constitute emergencies.

**"Employee"** shall mean an individual drawing a salary from a governmental body or public agency, whether elected or not, and any non-salaried individual performing personal services for any governmental body or public agency.

**"Employee contractor"** shall mean a person on a state or public agency payroll who has been employed by a state agency in an advisory capacity. (An example of such employment would be URI professors employed by MHRH to develop policy analyses.)

**"Employee service contractor"** shall mean a person on a state or public agency payroll who has been employed by a state agency in a service capacity. (An example of such employment would be RIC professors hired by DCYF to provide social worker training.)

**"Entitlements"** shall mean monies or gifts provided by the state as part of subsidy programs for which the distribution of funds is determined in accordance with specific eligibility criteria or by formula.

**"Established catalog price"** shall mean the price included in the most current catalog, price schedule or other form that:(a) is regularly maintained by a manufacturer or vendor of an item; (b) is either published or otherwise available for inspection by customers; (c) states prices at which sales are currently or were last made to a significant number of any category of buyers, or to the general buying public for that item; and (d) states prices which are obtained from the most recent industry wide publications and informational journals if any.

**"Evaluated bid price"** shall mean the dollar amount of a bid after bid price adjustments are made pursuant to objective measurable criteria, set forth in the invitation for bids, which

affect the economy and effectiveness in the operation or use of the product, such as reliability, maintainability, useful life, and residual value.

**"Evaluation of Bid"** shall mean the process of examining a bid after opening to determine the bidder's responsibility, responsiveness to requirements, and to ascertain other characteristics of the bid that relate to determination of the successful bidder.

**"Firm Bid"** shall mean a bid that binds the bidder until a stipulated time of expiration.

**"Firm Fixed Price (FFP)"** contract shall mean one which provides for a price which is not subject to any adjustment by reason of the seller's cost experience in the performance of the contract.

**"Fiscal year"** shall mean a period of time beginning on the first day of July in one calendar year and ending on the last day of June of the subsequent calendar year.

**"Fixed Price Incentive (FPI)"** contract shall mean one which provides for the adjustment of profit (fee) and price according to a sharing arrangement based on the relationship which final negotiated total cost bears to the negotiated target cost.

**"Fixed Price Redeterminable (FPR)"** contract shall mean one which permits reconsideration of price at a stated time after contract initiation when the only supplier capable of performing a job cannot quote a fixed price with full assurance that it will be fair and reasonable.

**"Fixed Price with Economic Price Adjustment (FP W/EPA)"** contract shall mean one which provides for the upward or downward revision of the stated price upon the occurrence of certain economic conditions which are specifically defined in the contract.

**"Governmental body"** shall mean any department, commission, council, board, bureau, committee, institution, legislative body, agency, or government corporation.

**"Grants"** shall mean monies provided by the state or Board user agency to or on behalf of individuals or entities to underwrite specific costs of services or programs. Although grants may be distributed for specific purposes, payment is not based upon supply of specific units of service or products.

**"Handicapped Business Enterprise"**, HBE, shall mean a small business concern, owned and controlled by one or more handicapped persons certified by the Rhode Island Handicapped Products Committee to meet the definition established by Chapter 37-2.2-2 of the General Laws of Rhode Island.

**"Independent contractor"** shall mean a person (individual or firm) who, in various degrees and/or combinations: is available to the general public on a regular and consistent basis; is free to work when and for whom he/she pleases; is employed by more than one person or

company at a time; makes a significant investment in facilities not typically maintained by an employee; and can realize a profit or loss as a result of providing services or products.

**"Informal Competitive Bids"**, Oral quotations (including telephone) in addition to written quotations may be solicited for purchases with a value not to exceed five thousand dollars (\$5,000).

**"Invitation for Bids"** shall mean all documents, whether attached or incorporated by reference, utilized for soliciting proposals

**"Leased employee"** shall mean a person hired through a contract with an agency which is responsible for paying all salary and benefits compensation to which the individual is entitled. Leased employees would usually be temporary replacements for, or supplements to, the existing workforce provided on an as needed basis.

**"Letter of Authorization (LA)"** shall mean a written instrument, binding only when signed by the user agency purchasing agent, which authorizes immediate commencement of implementation of the delivery of supplies or the performance of services.

**"Master Price Agreement (MPA)"** shall mean a pricing agreement which has been established on behalf of one or more than one user agency for certain commodities or services.

**"May"** shall mean permissive.

**"Minority Business Enterprise"** or MBE shall mean a small business concern, owned and controlled by one or more minorities or women, WBE, certified by the Rhode Island Department of Administration to meet the definition established by Chapter 37-14.1 of the General Laws of Rhode Island. A "small disadvantaged business" or DBE shall mean a minority business enterprise.

**"Negotiation"** shall mean the process of establishing contractual provisions and of gaining contractual acceptance, other than solely as the result of normal competitive bidding.

**"Noncompetitive negotiation"** shall mean the establishment of contractual terms and conditions, including but not limited to contract price, by discussions with a single vendor, outside of the procedures established for competitive bidding.

**"Nonperformance"** shall mean lack of compliance with the contract specifications and/or terms and conditions.

**"Offeror"** shall mean an individual who proposes a specific offer to sell goods and services to the state, whether in response to a bid or request for proposals or unsolicited.

**"Office paper products"** shall mean any paper used for the purpose of writing, printing, copying, and/or typing, including, but not limited to, computer, bond, xerographic, forms

and/or duplicator paper, envelopes, business cards, index cards, and writing pads, either white or colored.

**"Performance Bond"** shall mean a contract of guaranty executed subsequent to award by a successful bidder to protect the user agency from loss due to contractor inability to complete a contract.

**"Person"** shall mean any business, individual, organization, or group of individuals.

**"Personal services"** shall mean services provided by persons who are paid directly by the state but are not on the state payroll. Personal services may consist of the following relationships: employee, leased employee, employee contractor, and employee service contractor.

**"Post-consumer content"** shall mean those materials generated by a business or consumer which have served their intended end uses and which have been separated or diverted from solid waste. Printer's waste, lathe wastes, and other wastes generated during production of an end product and undistributed finished products are not "post-consumer content."

**"Pre-consumer content"** shall mean any material generated during any steps in the production of an end product, but does not include any waste material or by-product that can be reused or has been normally reused within the same plant or another plant of the same parent company.

**"Prime contractor"** shall mean a contractor who engages subcontractors in the course of satisfying the requirements of fulfilling a contract.

**"Procurement"** shall mean the purchasing, buying, renting, leasing or otherwise obtaining of any supplies, services, or construction.

**"Professional Consultant"** shall mean an individual or a firm which is a specialist and/or has the expertise, as demonstrated by the possession of appropriate professional licensing, certification, and/or experience, necessary to give advice, direction or information regarding that particular area of knowledge.

**"Professional consultant products"** shall mean advisory opinions expressed as reports, written or oral, used by user agency officials to render policy decisions.

**"Professional Service Provider"** shall mean an independent contractor who is a specialist and/or has the expertise, as demonstrated by professional licensing or certification and experience, necessary to carry out tasks regarding that particular field of expertise.

**"Professional service products"** shall mean activities that directly implement programs established by Board user agencies.

**"Prompt"** shall mean five (5) working days unless otherwise specified by the user agency purchasing agent.

**"Proposal Evaluation Criteria"** shall mean factors, usually weighted, relating to management capability, technical capability, manner of meeting performance requirements, price and other important considerations used to evaluate which proposer in a competitive negotiation has made the most advantageous offer.

**"Proposer"** shall mean a person submitting a proposal in response to a Request for Proposal.

**"Proprietary Information"** shall mean information or data describing technical processes, mechanisms, or operational factors that a business wishes to keep from general public view.

**"Protest"** shall mean a complaint about a procurement action or decision brought by a prospective bidder, a bidder, a contractor, or other interested party to the appropriate administrative section of the user agency with the intention of achieving a remedial result.

**"Public agency"** in accordance with 37-2-7(16) of the RIGL shall be defined as a body corporate and politic established within the state excepting cities and towns.

**"Public Competitive Bids"**. Sealed written competitive bids shall be required for purchases exceeding five thousand dollars (\$5,000) unless such method is not practicable.

**"Public works contract"** shall mean a contract for grading, clearing, demolition, improvement, completion, repair, alteration or construction of any public road or any bridge, or portion thereof, or any public building or portion thereof, or any heavy constructions, or any public works projects of any nature or kind whatsoever.

**"Public Works Contractor"** shall mean a contractor, in accordance with Chapter 37-12-1 of the General Laws of Rhode Island.

**"Punitive Termination"** shall mean termination at the discretion of the user agency purchasing agent for failure of the contractor to perform with no liability on the part of the Board, user agency, or state.

**"Purchase of Services"** shall mean monies expended for the provision of specific units of time and effort rather than an end product.

**"Purchase Order"** shall mean a document to formalize a purchase transaction with a vendor.

**"Purchasing Agent for user agency"** shall mean the authorized individual, designated by the user agency, to act on its behalf to enter into and administer contracts and make written determinations and findings with respect thereto.

**"Purchasing Contract Authority"** shall mean the authority to act on behalf of the user agency to commit funds, enter into binding agreements or contracts.

**"Qualified Bidder"** shall mean a bidder determined by the user agency purchasing agent to meet standards of business competence, reputation, financial ability, and product quality.

**"Recycled product"** shall mean a product containing pre-consumer content and post-consumer content.

**"Registered Suppliers"** - the names of interested suppliers who have submitted completed Bidder Registration Forms to the State Office of Purchases or the Board user agency.

**"Reimbursement"** shall mean monies paid to a beneficiary, client, or claimant to make restoration for expenses such person has undertaken.

**"Renegotiation"** shall mean deliberation, discussion, or conference to change or amend the terms of an existing agreement.

**"Request for Bids"** shall mean a solicitation which consists of a specific description of the goods and services, to which necessary blueprints, specifications, and special conditions are appended.

**"Request for Information (RFI)"** shall mean a document used in informal, uncompetitive solicitation of information, data, comments, or reaction from possible suppliers preceding the issuance of a Request for Proposals or a multi-step bidding process.

**"Request for Proposal (RFP)"** shall mean all documents, whether attached or incorporated by reference, utilized for soliciting (competitive) proposals.

**"Request for Quotation (RFQ)"** shall mean a document or oral solicitation used for seeking competition on small purchases or on any purchase lower than the amount that requires competitive bidding.

**"Requisition"** or a purchase request shall mean a document that requests that a contract be entered into to obtain goods and/or services for a specified need. A "requisition" may also mean an internal document which initiates a procurement. The request may include, but is not limited to, a performance or technical description of the requested item, delivery schedule, transportation mode, criteria for evaluation, suggested sources of supply, and information related to the making of any written determination required by policy or procedure.

**"Responsible Bidder"** shall mean a qualified bidder who has the capability in all respects including financial responsibility to perform fully the contract requirements, and the integrity and reliability which will assure good faith performance.

**"Responsive Bidder"** shall mean a person who has submitted a bid which conforms in all material respects to the invitation for bids.

**“Restricted Funds and Sponsored Funds”** consists of those funds expendable for operating purposes but restricted by donors or other outside agencies as to the specific purpose for which they may be expended (e.g., endowment funds, gifts, scholarships, governmental grants, private grants, auxiliary enterprises, restricted operational purposes with use-restrictions designated by the appropriating body).

**"Restrictive Specification"** shall mean a specification or purchase description that unnecessarily limits competition by precluding items that would be capable of satisfying the intended need.

**“Request for Best and Final Offer”** describes the requirements of the procurement in the final form, shall be issued to all offerors still under consideration. Each offeror shall submit a Best and Final Offer, which defines their best price, and other terms, for the procurement. Best and Final Offers shall be evaluated in the same fashion as a normal competitive bid.

**"RISPA"** shall mean the Rhode Island State Purchases Act, Chapter Two of Title 37 of the Rhode Island General Laws.

**"Sealed Bid"** shall mean a bid which has been submitted in a sealed envelope to prevent its contents being revealed.

**"Services"** shall mean the rendering, by a contractor, of its time and effort rather than the furnishing of a specific end product, other than reports which are merely incidental to the required performance of services.

**"Shall"** shall mean imperative.

**"Small Disadvantaged Business"** shall refer to either a minority business enterprise", DBE, or a "handicapped business enterprise" as defined.

**“Small Purchases”**: 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 in accordance with small purchase regulations: competitive offers shall be solicited for all procurements with a value greater than \$500; and small construction purchases shall not include routine maintenance or repair of existing structures, buildings, or real property performed by salaried employees of the Board user agency in the usual course of their job.

**"Solicitation"** shall mean the process of notifying prospective bidders or offerors that the Board user agency wishes to receive bids for furnishing goods and services. The process may consist of public advertising, mailing Invitations to Bid, posting notices, and/or telephone, fax or telegraph messages to prospective bidders.

**"Source Selection"** shall mean the technique of appropriate selection by solicitation, i.e., competitive sealed bidding, multi-step competitive sealed bidding, competitive negotiation, small purchase procedure, sole source or emergency purchase.



"**Special services**" shall mean services which the user agency deems necessary or desirable to purchase provided by individuals or firms possessing special knowledge or skills for which formal licensing or certification is not necessarily required.

"**Specification**" shall mean a description of what the purchaser seeks to buy, and consequently, what a bidder must be responsive to in order to be considered for award of a contract.

"**Spot Purchase**" shall mean a one-time purchase occasioned by a small requirement, an unusual circumstance, or to take advantage of a favorable market condition.

"**Standard**" shall mean a characteristic or set of characteristics for an item that, for reasons of performance level, compatibility or interchangeability with other products, etc., is generally accepted by producers and by users of the item as a required characteristic of all items for the designed purpose.

"**Standardization (of Specifications)**" shall mean the process of examining characteristics and needs for items of similar end usage and developing a single specification that will satisfy the need for most or all purchases for the purpose.

"**State agency**" shall mean any state governmental body other than the General Assembly or public body.

"**State**" shall mean the State of Rhode Island and any of its departments.

"**Subcontractor**" shall mean any person undertaking part of the work under the terms of the contract, by virtue of an agreement with the prime contractor.

"**Subsidies**" shall mean monies provided by the state to or on behalf of individuals or entities to assist in defraying general expenses.

"**Supplemental Agreement**" shall mean any contract modification which is accomplished by the mutual action of the parties.

"**Supplemental Services**" shall mean all services performed in a capacity which supplements the basic staffing of Board user agencies.

"**Supplier**" shall mean an actual or potential contractor; a vendor.

"**Supplies**" shall mean all property, including but not limited to leases of real property, printing and insurance, except land or permanent interest in land

"**Third Party Funds**" shall mean all non-state resources as defined in RIGL 37-2-7(16): restricted, sponsored, or auxiliary monies.

**"Time and Materials (T/M)"** contract shall mean one which provides for the purchase of supplies or services on the basis of (1) direct labor hours at specified fixed hourly rates (which rates include direct and indirect labor, overhead and profit) and (2) material at cost.

**"Trade Secret"** shall mean any aspect of a business or its operation not made available to competitors.

**"Unregistered Suppliers"** - suppliers which have not expressed interest in selling to the state by submitting a Bidder Registration Form.

**"User Agency"** shall mean agencies under the Board: the Office of Higher Education, the Community College of Rhode Island, Rhode Island College, and the University of Rhode Island in accordance with 16-59-1 and 16-59-4.

**"Vendor"** shall mean a supplier or contractor.

**SECTION 12                    BOARD OF GOVERNORS FOR HIGHER EDUCATION**  
**GENERAL TERMS AND CONDITIONS OF PURCHASE**

All user agency Purchase Orders, Contracts, Solicitations, Delivery Orders and Service Requests shall incorporate and be subject to the provisions of [37-2-7(16)] of the General Laws of the State of Rhode Island, the Regulations adopted pursuant thereto, all other applicable provisions of the Rhode Island General Laws, specific requirements described in the Request or Contract, and the following General Conditions of Purchase:

**12.1. DEFINITIONS** - "Board" shall apply to the Board of Governors for Higher Education, in accordance with 16-59-1 of the RIGL, and "user agency" shall apply to the Community College of Rhode Island, Rhode Island College, the University of Rhode Island and the Office of Higher Education.

**12.2. GENERAL** - All purchase orders, contracts, solicitations, delivery orders, and service requests are for specified goods and services, in accordance with express terms and conditions of purchase, as defined herein. For the purposes of this document, the terms "bidder" and "contractor" refer to any individual, firm, corporation, or other entity presenting a proposal indicating a desire to enter into contracts with the user agency, or with whom a contract is executed by the user agency's purchasing agent, and the term "contractor" shall have the same meaning as "vendor".

**12.3. ENTIRE AGREEMENT** - The user agency's Purchase Order, or other contract shall constitute the entire and exclusive agreement between the user agency and any contractor receiving an award. In the event of any conflict between the bidder's standard terms of sale, these conditions or more specific provisions contained in the solicitation shall govern. All communication between the user agency and any contractor pertaining to any award or contract shall be accomplished in writing.

a. Each proposal will be received with the understanding that the acceptance, in writing, by contract or Purchase Order by the user agency purchasing agent of the offer to do work or to furnish any or all the materials, equipment, supplies or services described therein shall constitute a contract between the bidder and the user agency. This shall bind the bidder on his part to furnish and deliver at the prices and in accordance with the conditions of said accepted proposal and detailed specifications and the user agency on its part to order from such contractor (except in case of emergency) and to pay for at the agreed prices, all materials, equipment, supplies or services specified and delivered. A contract shall be deemed executory only to the extent of funds available for payment of the amounts shown on Purchase Orders issued by the user agency to the contractors.

b. No alterations or variations of the terms of the contract shall be valid or binding upon the user agency unless submitted in writing and accepted by the user agency purchasing agent. All orders and changes thereof must emanate from the user agency purchasing office: no oral agreement or arrangement made by a contractor with an agency or employee will be considered to be binding on the user agency purchasing agent, and may be disregarded.

c. Contracts will remain in force for the contract period specified or until all articles or services ordered before date of termination shall have been satisfactorily delivered or rendered and accepted and, thereafter, until all terms and conditions have been met, unless

1) terminated prior to expiration date by satisfactory delivery against orders of entire quantities, or

2) extended upon written authorization of the user agency purchasing agent and accepted by the contractor, to permit ordering of the unordered balances or additional quantities at the contract price and in accordance with the contract terms, or

3) canceled by the user agency in accordance with other provisions stated herein.

d. It is mutually understood and agreed that the contractor shall not assign, transfer, convey, sublet or otherwise dispose of this contract or his right, title or interest therein, or his power to execute such contract, to any other person, company or corporation, without the previous consent, in writing, of the user agency purchasing agent.

e. If, subsequent to the submission of an offer or issuance of a purchase order or execution of a contract, the bidder or contractor shall merge with or be acquired by another entity, the contract may be terminated, except as a corporate resolution prepared by the contractor and the new entity ratifying acceptance of the original bid or contract terms, condition, and pricing is submitted to the user agency purchasing office, and expressly accepted.

f. The contractor or bidder further warrants by submission of an offer or acceptance of a purchase order or other contract that he has no knowledge at the time of such action of any outstanding and delinquent or otherwise unsettled debt owed by him to the State and or the user agency, and agrees that later discovery by the user agency purchasing agent that this warranty was given in spite of such knowledge, except where the matter is pending in hearing or from any appeal therefrom, shall form reasonable grounds for termination of the contract.

**12.4. SUBCONTRACTS** - No subcontracts or collateral agreements shall be permitted, except with the user agency's express consent. Upon request, contractors must submit to the user agency purchasing office a list of all subcontractors to be employed in the performance of any Purchase Order or other contract arising from this Request.

**12.5. RELATIONSHIP OF PARTIES** - The contractor or bidder warrants, by submission of an offer or acceptance of a purchase order or other contract, that he is not an employee, agent, or servant of the Board, and that he is fully qualified and capable in all material regards to provide the specified goods and services. Nothing herein shall be construed as creating any contractual relationship or obligation between the user agency and any sub-bidder, subcontractor, supplier, or employee of the contractor or offeror.

**12.6. COSTS OF PREPARATION** - All costs associated with the preparation, development, or submission of bids or other offers will be borne by the offeror. The user agency will not reimburse any offeror for such costs.

**12.7. SPECIFIED QUANTITY REQUIREMENT** - Except where expressly specified to the contrary, all solicitations and contracts are predicated on a specified quantity of goods or services, or for a specified level of funding.

a. The user agency reserves the right to modify the quantity, scope of service, or funding of any contract, with no penalty or charge, by written notice to the contractor, except where alternate terms have been expressly made a part of the contract.

b. The user agency shall not accept overruns of printed material in excess of 5% of specified quantity, or in excess of the specified quantity where the item is normally sold by weight (where sold by weight, the user agency will not accept quantities greater than ten per cent [10%] of the specified quantity), or where the Request or Contract provides for awards for other than exact quantities.

c. Purchase Orders or other contracts may be increased in quantity or extended in term without subsequent solicitation with the mutual consent of the contractor and the user agency, where determined by the user agency purchasing agent to be in the user agency's best interest.

**12.8. TERM AND RENEWAL** - Where offers have been requested or contracts awarded for terms exceeding periods of twelve (12) months, it is mutually understood and agreed that the user agency's commitment is limited to a base term not to exceed twelve (12) months, subject to renewal annually at the user agency's option for successive terms as otherwise described, except where expressly specified to the contrary. Purchase orders appearing to commit to obligations of funding or terms of performance may be executed for administrative convenience, but are otherwise subject to this provision, and in such cases the user agency's renewal shall be deemed to be automatic, conditional on the continued availability of funds for the purpose and determination of continued need by the user agency, except as written notice of the user agency's intent not to renew is served.

**12.9. DELIVERY** - Delivery must be made as ordered and in accordance with the proposal. If delivery qualifications do not appear on the bidder's proposal, it will be interpreted to mean that goods are in stock and that shipment will be made within seven (7) calendar days. The decision of the user agency purchasing agent, as to reasonable compliance with the delivery terms, shall be final. Burden of proof of delay in receipt of order shall rest with the vendor. No delivery charges shall be added to invoices except when authorized on the Purchase Order, or when approved, in advance, by the user agency purchasing agent.

**12.10. FOREIGN CORPORATIONS** - In accordance with Title 7 Chapter 1.1 of the General Laws of Rhode Island, no foreign corporation shall have the right to transact business in this state until it shall have procured a certificate of authority so to do from the Secretary of State.

**12.11. PRICING** - All pricing offered or extended to the user agency is considered to be firm and fixed unless expressly provided for to the contrary. All prices shall be quoted F.O.B. Destination with freight costs included in the unit cost to be paid by the user agency, except, where the Request or Contract permits, offers reflecting F.O.B. Shipping Point will be considered, and freight costs may then be prepaid and added to the invoice.

**12.12. COLLUSION** - Bidder or contractor warrants that he has not, directly or indirectly, entered into any agreement, participated in any collusion or otherwise taken any action in restraint of full competitive bidding. In special circumstances, an executed affidavit will be required as a part of the bid.

**12.13. PROHIBITION AGAINST CONTINGENT FEES AND GRATUITIES** - Bidder or contractor warrants that he has not paid, and agrees not to pay, any bonus, commission, fee, or gratuity to any employee or official of the Board for the purpose of obtaining any contract or award issued by the Board and user agencies. Bidder or contractor further warrants that no commission or other payment has been or will be

received from or paid to any third party contingent on the award of any contract by the Board and user agencies. Subsequent discovery by the Board and/or State of non-compliance with these provisions shall constitute sufficient cause for immediate termination of all outstanding contracts and suspension or debarment of the bidder(s) or contractor(s) involved.

**12.14. AWARDS** - Awards will be made with reasonable promptness and by written notice to the successful bidder (only); bids are considered to be irrevocable for a period of sixty (60) days following the bid opening unless expressly provided for to the contrary in the Request, and may not be withdrawn during this period without the express permission of the user agency purchasing agent.

a. Awards shall be made to the bidder(s) whose offer(s) constitutes the lowest responsive price offer (or lowest responsive price offer on an evaluated basis) for the item(s) in question or for the Request as a whole, at the option of the user agency. The user agency reserves the right to determine those offers which are responsive to the Request, or which otherwise serve its best interests.

b. The user agency reserves the right, before making award, to initiate investigations as to whether or not the materials, equipment, supplies, qualifications or facilities offered by the bidder meet the requirements set forth in the proposal and specification, and are ample and sufficient to insure the proper performance of the contract in the event of award. If upon such examination it is found that the conditions of the proposal are not complied with or that articles or equipment proposed to be furnished do not meet the requirements called for, or that the qualifications or facilities are not satisfactory, the user agency may reject such a bid. It is distinctly understood, however, that nothing in the foregoing shall mean or imply that it is obligatory upon the user agency to make any examinations before awarding a contract; and it is further understood that if such examination is made, it in no way relieves the contractor from fulfilling all requirements and conditions of the contract.

c. Qualified or conditional offers which impose limitations of the bidder's liability or modify the requirements of the bid, offers for alternate specifications, or which are made subject to different terms and conditions than those specified by the Board may, at the option of the user agency, be:

1) rejected as being non-responsive, or

2) set aside in favor of the Board of Governors for Higher Education's terms and conditions (with the consent of the bidder), or

3) accepted, where the user agency determines that such acceptance best serves the interests of the user agency and the Board. Acceptance or rejection of alternate or counter-offers by the user agency shall not constitute a precedent which shall be considered to be binding on successive solicitations or procurements.

- d. Bids submitted in pencil, or in ink which do not bear an original signature and date, by an authorized agent of the vendor, may be rejected.
- e. Bids must be extended in the unit of measure specified in the Request. In the event of any discrepancy between unit prices and their extensions, the unit price will govern.
- f. The user agency reserves the right to determine the responsibility of any bidder for a particular procurement.
- g. The user agency purchasing agent reserves the right to reject any and all bids in whole or in part, to waive technical defects, irregularities, and omissions, and to give consideration to past performance of the offerors where, in his judgment the best interests of the user agency will be served by so doing.
- h. The user agency purchasing agent reserves the right to make awards by items, group of items or on the total low bid for all the items specified as indicated in the detailed specification, unless the bidder specifically indicates otherwise in his bid.
- i. Preference may be given to bids on products raised or manufactured in the State, other things being equal.
- j. The impact of discounted payment terms shall not be considered in evaluating responses to any Request.
- k. The user agency purchasing agent reserves the right to act in the user agency's best interests regarding awards caused by clerical errors by the user agency purchasing office.

**12.15. SUSPENSION AND DEBARMENT** - The user agency may initiate suspension or debarment procedures against any vendor or potential bidder, for good cause shown:

- a. A debarment or suspension against a part of a corporate entity constitutes debarment or suspension of all of its divisions and all other organizational elements, except where the action has been specifically limited in scope and application, and may include all known corporate affiliates of a contractor, when such offense or act occurred in connection with the affiliate's performance of duties for or on behalf of the contractor, or with the knowledge, approval, or acquiescence of the contractor or one or more of its principals or directors (or where the contractor otherwise participated in, knew of, or had reason to know of the acts)
- b. The fraudulent, criminal or other serious improper conduct of any officer, director, shareholder, partner, employee, or any other individual associated with a contractor may be imputed to the contractor when the conduct occurred in connection with the individual's performance of duties for or on behalf of the contractor, or with the contractor's knowledge, approval or acquiescence. The contractor's acceptance of

benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

c. A vendor or contractor who knowingly engages as a subcontractor for a contract awarded by the user agency to a vendor or contractor then under a ruling of suspension or debarment by the Board and or State shall be subject to disallowance of cost, annulment or termination of award, issuance of a stop work order, or debarment or suspension as may be judged to be appropriate by the user agency purchasing agent.

**12.16. PUBLIC RECORDS** - Contractors and bidders are advised that all documents, correspondence, and other submissions to the user agency purchasing office may be accessible as public records, pursuant to Title 38, Chapter 2 of the General Laws, absent specific notice that portions of such submittals may contain confidential or proprietary information, such that public access to those items should be withheld.

**12.17. PRODUCT EVALUATION** - In all specifications, the words "or equal" are understood after each article when manufacturer's name or catalog are referenced. If bidding on items other than those specified, the bidder must, in every instance, give the trade designation of the article, manufacturer's name and detailed specifications of the item the bidder proposes to furnish; otherwise, the bid will be construed as submitted on the identical commodity described in the detailed specifications. The user agency purchasing agent reserves the right to determine whether or not the item submitted is the approved equal of the detailed specifications.

a. Any objections to specifications must be filed by a bidder, in writing, with the user agency purchasing agent at least 96 hours before the time of bid opening to enable the user agency purchasing office to properly investigate the objections.

b. All standards are minimum standards except as otherwise provided for in the request or contract.

c. Samples when required must be submitted to the user agency purchasing office in accordance with the terms of the proposals and detailed specifications. Samples must be furnished free of charge and must be accompanied by descriptive memorandum invoices indicating whether or not the bidder desires their return and specifying the address to which they are to be returned (at the bidder's risk and expense), provided they have not been used or made useless by tests; and absent such instructions, the samples shall be considered to be abandoned. Award samples may be held for comparison with deliveries.

d. All samples submitted are subject to test by any laboratory the user agency purchasing agent may designate.

**12.18. PRODUCT ACCEPTANCE** - All merchandise offered or otherwise provided shall be new, of prime manufacture, and of first quality unless otherwise specified by the user agency. The user agency reserves the right to reject all non-conforming goods, and to



cause their return for credit or replacement, at the user agency's option. Contract deliverables specified for procurements of services shall be construed to be work products, and subject to the provisions of this section.

- a. Failure by the user agency to discover latent defect(s) or concealed damage or non-conformance shall not foreclose the user agency's right to subsequently reject the goods in question.
- b. Formal or informal acceptance by the user agency of non-conforming goods shall not constitute a precedent for successive receipts or procurements.
- c. Where the contractor fails to promptly cure the defect or replace the goods, the user agency reserves the right to cancel the Purchase Order, contract with a different contractor, and to invoice the original contractor for any differential in price over the original contract price.
- d. When materials, equipment or supplies are rejected, the same must be removed by the contractor from the premises of the user agency within forty-eight (48) hours of notification. Rejected items left longer than two days will be regarded as abandoned and the user agency shall have the right to dispose of them as its own property.

**12.19. PRODUCT WARRANTIES** - All product or service warranties normally offered by the contractor or bidder shall accrue to the user agency's benefit, in addition to any special requirements which may be imposed by the Board. Every unit delivered must be guaranteed against faulty material and workmanship for a period of one year unless otherwise specified, and the user agency may, in the event of failure, order its replacement, repair, or return for full credit, at its sole option.

**12.20. PAYMENT**- Unless otherwise provided for by the Request or Contract, payment shall not be made until delivery has been made, or services performed, in full, and accepted. Payment shall not be due prior to thirty (30) working days following the latest of completion, acceptance, or the rendering of a properly submitted invoice.

- a. Payment terms other than the foregoing may be rejected as being non-responsive.
- b. No partial shipments or payments will be accepted, unless provided for by the Request, Contract or approved by the user agency purchasing agent.
- c. Where a question of quality is involved, payment in whole or part against which to charge back any adjustment required, shall be withheld at the direction of the user agency purchasing agent. In the event a cash discount is stipulated, the withholding of payments, as herein described, will not deprive the user agency from taking such discount.
- d. Payments for used portion of inferior delivery will be made by the user agency on an adjusted price basis.

e. Payments on contracts under architectural or engineering supervision must be accompanied by a Certificate of Payment and Statement of Account signed by the architect or engineer and submitted to the user agency involved for approval.

**12.21. THIRD PARTY PAYMENTS** - The Board and its user agencies recognize no assigned or collateral rights to any purchase agreement except as may be expressly provided for in the bid or contract documents, and will not accede to any request for third party or joint payment(s), except as provided for in specific orders by a court of competent jurisdiction or by expressed written permission of the user agency purchasing agent. Where an offer is contingent upon such payment(s), the offeror is obligated to serve affirmative notice in his bid submission.

**12.22. SET-OFF AGAINST PAYMENTS** - Payments due the contractor may be subject to reduction equal to a verified amount of unpaid and delinquent state taxes (or other just debt owed to the State), except where notice of delinquency has not been served or while the matter is pending in hearing or from any appeal therefrom.

**12.23. CLAIMS** - Any documented claim against a contractor may be deducted by the user agency from any money due him in the same or other transactions. If no deduction is made in such fashion, the contractor shall pay the user agency the amount of such claim on demand. Submission of a voucher and payment, thereof, shall not preclude the user agency purchasing agent from demanding a price adjustment in any case when the commodity delivered is later found to deviate from the specifications and proposal.

a. The user agency may assess dollar damages against a vendor or contractor determined to be non-performing or otherwise in default of their contractual obligations equal to the cost of remedy incurred by the user agency, and make payment of such damages a condition for consideration for any subsequent award. Failure by the vendor or contractor to pay such damages shall constitute just cause for disqualification and rejection, suspension, or debarment.

**12.24. CERTIFICATION OF FUNDING** - Certification of funding as to the availability of funds to support the procurement is for the current fiscal year ending June 30th only. Where delivery or service requirements extend beyond the current fiscal year, such extensions are subject to both the availability of funds and a determination of continued need.

**12.25. BALANCES** - Unless otherwise specified, all unused Blanket Order quantities and/or unexpended funds shall be automatically canceled on the expiration of the specified term. Similarly, for orders encompassing more than one fiscal year, unexpended balances may be liquidated at the close of that fiscal year at the user agency's sole option.

**12.26. MINORITY BUSINESS ENTERPRISES** - Pursuant to the provisions of Title 37 Chapter 14.1 of the General Laws, the user agency reserves the right to apply additional

consideration to offers, and to direct awards to bidders other than the responsive bid representing the lowest price where:

- a. the offer is fully responsive to the terms and conditions of the Request, and
- b. the price offer is determined to be within a competitive range (not to exceed 5% higher than the lowest responsive price offer) for the product or service, and
- c. the firm making the offer has been certified by the Minority Business Enterprise Program to be a small business concern meeting the criteria established to be considered a Minority Business Enterprise.

Ten per cent [10%] of the dollar value of the work performed against contracts for construction exceeding \$5,000 shall be performed by Minority Business Enterprises where it has been determined that subcontract opportunities exist, and where certified Minority Business Enterprises are available. A contractor may count towards its MBE, DBE, or WBE goals 60% of its expenditures for materials and supplies required under a contract and obtained from an MBE, DBE, or WBE regular dealer, and 100% of such expenditures when obtained from an MBE, DBE, or WBE manufacturer.

**12.27. PREVAILING WAGE REQUIREMENT** - In accordance with Title 37 Chapter 13 of the General Laws of Rhode Island, payment of the general prevailing rate of per diem wages and the general prevailing rate for regular, overtime and other working conditions existing in the locality for each craft, mechanic, teamster, or type of workman needed to execute this work is a requirement for both contractors and subcontractors for all public works.

**12.28. EQUAL OPPORTUNITY COMPLIANCE AND AFFIRMATIVE ACTION** - Contractors of the user agency are required to demonstrate the same commitment to equal opportunity as prevails under federal contracts controlled by Federal Executive Orders 11246, 11625, and 11375, and Title 28 Chapter 5.1 of the General Laws of Rhode Island. Affirmative action plans shall be submitted by the contractor for review by the State Equal Opportunity Office. A contractor's failure to abide by the rules, regulations, contract terms and compliance reporting provisions as established shall be grounds for forfeiture and penalties as shall be established, including but not limited to suspension.

**12.29. DRUG-FREE WORKPLACE REQUIREMENT** - In accordance with Executive Order No. 91-14, Contractors and their employees who do business with the Board, the user agencies, and the State shall abide by the State's drug-free workplace policy and the contractor shall so attest by signing a certificate of compliance.

**12.30. TAXES** - The Board user agencies are exempt from payment of excise, transportation and sales tax imposed by the Federal or State Government. These taxes should not be included in the proposal price. Exemption Certificates will be furnished upon request.

**12.31. INSURANCE** - All construction contractors, independent tradesmen, or firms providing any type of maintenance, repair, or other type of service to be performed on user agency premises, buildings, or grounds are required to purchase and maintain coverage with a company or companies licensed to do business in the state as follows:

a. Comprehensive General Liability Insurance -

- |                    |   |
|--------------------|---|
| 1) Bodily Injury   | \$1,000,000 each occurrence<br>\$1,000,000 annual aggregate |
| 2) Property Damage | \$500,000 each occurrence<br>\$500,000 annual aggregate     |

- Independent Contractors
- Contractual - including construction hold harmless and other types of contracts or agreements in effect for insured operations
- Completed Operations
- Personal Injury (with employee exclusion deleted)

b. Automobile Liability Insurance - Combined Single Limit \$1,000,000 each occurrence

- Bodily Injury
- Property Damage, and in addition non-owned and/or hired vehicles and equipment

c. Workers' Compensation Insurance - Coverage B \$100,000

d. The user agency reserves the right to consider and accept alternate forms and plans of insurance or to require additional or more extensive coverage for any individual requirement. Successful bidders shall provide certificates of coverage, reflecting the user agency as an additional insured, to the user agency purchasing office, forty-eight (48) hours prior to the commencement of work, as a condition of award. Failure to comply with this provision shall result in rejection of the offeror's bid.

**12.32. BID SURETY** - When requested, a bidder must furnish a Bid Bond or Certified Check for 5% of his bid, or for the stated amount shown in the solicitation. Bid Bonds must be executed by a reliable Surety Company authorized to do business in the State of Rhode Island. Failure to provide Bid Surety with bid may be cause for rejection of bid. The Bid Surety of any three bidders in contention will be held until an award has been made according to the specifications of each proposal. All others will be returned by mail within 48 hours following the bid opening. Upon award of a contract, the remaining sureties will be returned by mail unless instructed to do otherwise.

**12.33. PERFORMANCE AND LABOR AND PAYMENT BONDS** - A performance bond and labor and payment bond of up to 100% of an award may be required by the user agency purchasing agent. Bonds must meet the following requirements:

- a. Corporation: The Bond must be signed by an official of the corporation above his official title and the corporate seal must be affixed over his signature.
- b. Firm or Partnership: The Bond must be signed by all of the partners and must indicate that they are "Doing Business As (name of firm)."
- c. Individual: The Bond must be signed by the individual owning the business and indicate "Owner."
- d. The Surety Company executing the Bond must be licensed to do business in the State of Rhode Island or Bond must be countersigned by a company so licensed.
- e. The Bond must be signed by an official of the Surety Company and the corporate seal must be affixed over his signature.
- f. Signatures of two witnesses for both the principal and the Surety must appear on the Bond.
- g. A Power of Attorney for the official signing of the Bond for the Surety Company must be submitted with the Bond.

**12.34. DEFAULT AND CANCELLATION** - A contract may be canceled or annulled at the contractor's expense upon non-performance of contract, or breach, by the contractor, of any of his obligations. Failure of contractor to cure such non-performance or breach within ten working days after the receipt of notice, shall be sufficient cause for the cancellation of the contract in question, the cancellation of all outstanding contracts or sub-contracts held by the contractor, and the suspension or debarment of the contractor from future procurements.

- a. Failure of a contractor to deliver or perform within the time specified, or within reasonable time as interpreted by the user agency purchasing agent or failure to make replacement of rejected articles, when so requested, immediately or as directed by the user agency purchasing agent, will cause the user agency purchasing agent to purchase in the open market to replace those rejected or not delivered. The user agency purchasing agent reserves the right to authorize immediate purchase in the open market against rejections on any contract when necessary. On all such purchases, the contractor, or his surety, agrees to promptly reimburse the user agency for excess costs occasioned by such default. Should the cost be less, the contractor shall have no claim to the difference.
- b. A contractor who fails to commence within the time specified or complete an award made for repairs, alterations, construction, or any other service will be considered in

default of contract. The user agency purchasing agent may contract for completion of the work with another contractor and seek recourse from the defaulting contractor or his surety.

c. If contractor consistently fails to deliver quantities or otherwise perform as specified, the user agency purchasing agent reserves the right to cancel the contract and purchase the balance in the open market at the contractor's expense.

**12.35. INDEMNITY** - The contractor guarantees:

a. To save the user agency, the Board, the State, its agents and employees, harmless from any liability arising from the negligence, either active or passive, of the contractor, as well as for the use of any copyrighted or uncopyrighted composition, secret process, patented or unpatented invention, article or appliance furnished or used in the performance of the contract of which the contractor is not the patentee, assignee or licensee.

b. To pay for all permits, licenses and fees and give all notices and comply with all laws, ordinances, rules and regulations of the city or town in which the installation is to be made and of the State of Rhode Island.

c. That the equipment offered is standard new equipment, latest model of regular stock product with all parts regularly used with the type of equipment offered; also, that no attachment or part has been substituted or applied contrary to manufacturer's recommendations and standard practice.

**12.36. CONTRACTOR'S OBLIGATIONS** - In addition to the specific requirements of the contract, construction and building repair contractors bear the following standard responsibilities:

a. To furnish adequate protection from damage for all work and to repair damages of any kind, for which he or his workmen are responsible, to the building or equipment, to his own work, or to the work of other contractors;

b. To clear and remove all debris and rubbish resulting from his work from time to time, as directed or required, and on completion of the work leave the premises in a neat unobstructed condition, broom clean, and in satisfactory order and repair;

c. To store equipment, supplies, and material at the site only upon approval by the user agency, and at his own risk;

d. To perform all work so as to cause the least inconvenience to the user agency, and with proper consideration for the rights of other contractors and workmen;

e. To acquaint themselves with conditions to be found at the site, and to assume responsibility for the appropriate dispatching of equipment and supervision of his employees during the conduct of the work; and

f. To ensure that his employees are instructed with respect to special regulations, policies, and procedures in effect for any user agency facility or site, and that they comply with such rules.

**12.37. FORCE MAJEURE** - All orders shall be filled by the contractor with reasonable promptness, but the contractor shall not be held responsible for any losses resulting if the fulfillment of the terms of the contract shall be delayed or prevented by wars, acts of public enemies, strikes, fires, floods, acts of God, or for any other acts not within the control of the contractor and which by the exercise of reasonable diligence, the contractor is unable to prevent.