

2013 -- H 5784

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LC01647
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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2013

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A N A C T

RELATING TO PUBLIC PROPERTIES AND WORKS -- STATE PURCHASES

Introduced By: Representatives Valencia, and Amore

Date Introduced: February 28, 2013

Referred To: House Judiciary

(Administration)

It is enacted by the General Assembly as follows:

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

3 **37-2-18. Competitive sealed bidding.** -- (a) Contracts exceeding the amount provided by
4 section 37-2-22 shall be awarded by competitive sealed bidding unless it is determined in writing
5 that this method is not practicable or that the best value for the state may be obtained by using an
6 electronic reverse auction as set forth in section 37-2-18.1. Factors to be considered in
7 determining whether competitive sealed bidding is practicable shall include whether:

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

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

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

15 All documents submitted in response to the bid proposal are public pursuant to chapter 38-2 ~~upon~~
16 ~~opening of the bids.~~

17 (c) The invitation for bids for public works projects shall state that each bidder must
18 submit a copy of their bid proposal to be available for public inspection upon the opening of the
19 bids. The burden to identify and withhold from the public copy that is released at the bid opening

1 any trade secrets, commercial or financial information, or other information the bidder deems not
2 subject to public disclosure pursuant to chapter 38-2, the Access to Public Records Act, shall rest
3 with the bidder submitting the bid proposal. Immediately subsequent to the opening of the bids,
4 the public copies of bid documents submitted shall be made available for inspection by the public.

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

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

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

19 ~~(f)~~(g) ~~Immediately subsequent to the opening of the bids, the copies of bid documents~~
20 ~~submitted pursuant to subsection 37-2-18(b) shall be made available for inspection by the public.~~

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

32 ~~(g)~~(h) Subsequent to the awarding of the bid, all bid documents and documents pertinent
33 to the selection and ~~awarding of the bid~~ award of a contract to the lowest, responsive and
34 responsible bidder that were not made public pursuant to subsection 37-2-18~~(e)~~(c) shall be made

1 available and open to public inspection, pursuant to chapter 38-2, the Access to Public Records
2 Act, and retained in the bid file. The public copy of the bid proposal provided pursuant to
3 subsection 37-2-18~~(b)~~(c) shall be retained until the bid is awarded.

4 ~~(h)~~(i) The contract shall be awarded with reasonable promptness by written notice to the
5 responsive and responsible bidder whose bid is either the lowest bid price, lowest evaluated, or
6 responsive bid price.

7 ~~(j)~~(l) Correction or withdrawal of bids may be allowed only to the extent permitted by
8 regulations issued by the chief purchasing officer.

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

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

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

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1 This act would provide that bidders for state public works contracts valued at more than
2 five hundred thousand dollars (\$500,000) be required to provide a copy of all bid documents for
3 immediate public inspection.

4 This act would take effect upon passage.

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