

2024 -- H 8012

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2024

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A N A C T

RELATING TO PUBLIC PROPERTY AND WORKS -- STATE PURCHASES

Introduced By: Representatives Lima, Cardillo, and Costantino

Date Introduced: March 05, 2024

Referred To: House State Government & Elections

It is enacted by the General Assembly as follows:

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

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

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

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

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

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

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

1 ~~commercial or financial information, or other information the bidder deems not subject to public~~
2 ~~disclosure pursuant to chapter 38-2, the Access to Public Records Act, shall rest with the bidder~~
3 ~~submitting the bid proposal.~~ All documents, regardless of their content, submitted in response to
4 the bid proposal, shall be deemed to be a public record and shall be available for inspection and
5 review to any person making an access to public records request, subsequent to the opening of the
6 bids, and the award to the winning bidder, pursuant to chapter 2 of title 38.

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

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

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

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

33 (g) Subsequent to the awarding of the bid, all documents pertinent to the awarding of the
34 bid that were not made public pursuant to subsection 37-2-18(e) shall be made available and open

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

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

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

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

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO PUBLIC PROPERTY AND WORKS -- STATE PURCHASES

1 This act would make all documents and information related to any bid proposal relative to
2 state purchases public records and available for inspection and review by any person seeking the
3 records under chapter 2 of title 38 after the opening of the bids and award to the winning bidder.

4 This act would take effect upon passage.

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