



RHODE ISLAND TURNPIKE AND BRIDGE AUTHORITY
1 East Shore Road
P.O. Box 437
Jamestown, RI 02835

Public Notice of Proposed Rulemaking

AGENCY: Rhode Island Turnpike and Bridge Authority (RITBA)

RULE IDENTIFIER: 855-RICR-00-00-1; ERLID 8256

REGULATION TITLE: Rules and Regulations Governing Procurement

RULEMAKING ACTION: Direct Final Rule. RITBA does not expect this amendment to be controversial. If no formal objection is received on or before August 17, 2018, RITBA will file the amendment without opportunity for public comment.

TYPE OF FILING: Amendment.

TIMETABLE FOR ACTION ON THE PROPOSED RULE: Public Notice Date: July 18, 2018; Comment Period Ends: August 17, 2018.

SUMMARY OF PROPOSED RULE: The purpose of this action is to amend RITBA's Procurement Rules. The purpose of these amendments is to update and harmonize RITBA's procurement practices with the necessary requirements under the amended Administrative Procedures Act. Among other changes, the amendment would make non-technical modifications the Authorization and Purpose, Source Selection, and Prequalification sections of the rule.

COMMENTS INVITED: All interested parties are invited to submit written or oral comments concerning the proposed amendment by August 17, 2018 to the addresses listed below.

ADDRESSES FOR PUBLIC COMMENT SUBMISSIONS:

Mailing Address: Rhode Island Turnpike and Bridge Authority
c/o Marianne Durgin, Rulemaking Coordinator
1 East Shore Road, P.O. Box 437
Jamestown, Rhode Island 02835

Email Address: mdurgin@ritba.org

FOR FURTHER INFORMATION CONTACT:

Mailing Address: Rhode Island Turnpike and Bridge Authority
c/o Marianne Durgin, Rulemaking Coordinator
1 East Shore Road, P.O. Box 437
Jamestown, Rhode Island 02835

Email Address: mdurgin@ritba.org

Phone: (401) 423-1903

SUPPLEMENTARY INFORMATION:

Regulatory Analysis Summary and Supporting Documentation:

RITBA believes that amending its Procurement Rules will not have any impact on societal costs or benefits. A copy of the regulatory analysis follows this Public Notice of Proposed Rulemaking. For full regulatory analysis or supporting documentation, please contact RITBA's Rulemaking Coordinator identified above.

Authority for This Rulemaking: R.I. Gen. Laws § 24-12-9(22) and (23)

Regulatory Findings:

In the development of the proposed amendment, consideration was given to: (1) alternative approaches; (2) overlap or duplication with other statutory and regulatory provisions; and (3) significant economic impact on small business. No alternative approach, duplication, or overlap was identified based upon available information.

The Proposed Amendment:

RITBA proposes to amend ERLID 8256 (Procurement Rules). The effect of the proposed amendment is shown on the attachment to this Notice.



MEMORANDUM

Regulatory Analysis for Proposed Amendment to Procurement Rules

This memorandum sets forth the Regulatory Analysis of the Rhode Island Turnpike & Bridge Authority (RITBA) required by R.I. Gen. Laws §42-35-2.9 with respect to RITBA's proposed amendment of its Procurement Rules.

RITBA believes that amending its Procurement Rules is appropriate under the revised Administrative Procedures Act ("APA"). These amendments would update and harmonize RITBA's procurement practices to ensure they are in compliance with applicable law, including the APA. RITBA anticipates incurring no costs associated with amending its Procurement Rules. Accordingly, RITBA believes that this amendment is appropriate.

Redlined Procurement Rules

[See Next Page]

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TITLE 855 – RHODE ISLAND TURNPIKE AND BRIDGE AUTHORITY

CHAPTER 00 – GENERAL ADMINISTRATION

SUBCHAPTER 00 - N/A

PART 1 – Rules and Regulations Governing Procurement

1.1 Authorization and Purpose

1.1.1 Authorization for Regulations

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

1.1.2 Purpose

- A. The purpose of ~~this Procurement Policy is these Rules and Regulations are~~ to set forth the general ~~procurement~~ principles that will govern the conduct of procurement activities by the ~~Rhode Island Turnpike and Bridge~~ Authority, a body corporate and politic (~~"RITBA"~~), and by ~~RITBA Authority~~ personnel engaged in those activities. ~~This Procurement Policy applies to all contracts for services, construction, equipment, and supplies, including without limitation, awards, purchase orders, and leases to:~~ General Policy
- ~~The objectives of this Procurement Policy are to (i) provide~~ Provide for public confidence in the procurement procedures of ~~RITBA~~the Authority;
 - Ensure fair and equitable treatment of all persons who participate in the procurement process;
 - Provide economy in procurement transactions by fostering effective competition;
 - Provide safeguards for a procurement process of quality, integrity, and the highest ethical standards;
 - Provide for clearly defined accountability and responsibility for procurement transactions; and
 - Ensure that ~~RITBA~~the Authority, as a body corporate and politic of the State of Rhode Island, adheres to the general principles, policies, and practices of the State Purchases Act, R.I. Gen. Laws §§ 37-2-1 *et seq.*,

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

1.1.3 Applicability

~~The Executive Director is appointed as the Chief Purchasing Officer for all purposes under the Act and this Procurement Policy. The Chief Purchasing Officer may appoint a Purchasing Agent. Contracts These Rules and Regulations apply to all contracts for services, construction, equipment and supplies ~~with a value in excess of \$5,000.00 must be approved by the members of RITBA, upon recommendation of the Chief Purchasing Officer or Purchasing Agent.~~ Competition, including All procurement transactions, regardless of whether by sealed bid or by negotiation, and without regard to dollar value, shall be conducted in a manner that provides maximum open and free competition, wherever possible, consistent with applicable state and federal law and the policies and procedures of the members of RITBA's.. ~~It is RITBA's procurement policy to maximize competitive opportunities and to encourage a competitive environment for vendors competing for RITBA contracts~~ limitation, awards, purchase orders, and leases.~~

RITBA will utilize the State's Master Pricing Agreement list to the fullest practicable extent. In addition, RITBA will utilize the electronic Rhode Island Vendor Information Program maintained through the Department of Administration Division of Purchases for the purpose of providing vendors with notice of potential contracting opportunities.

1.1.4 Definitions

~~Responsive and~~

- A. In addition to the provisions set forth in R.I. Gen. Laws §§ 37-2-7 and 37-2-15, the following definitions shall be applicable to procurements pursuant to these Rules and Regulations and procurement activities by the Authority:
1. "Responsible ~~State law requires that contracts be awarded based on the lowest price offered by a responsive and responsible vendor. A responsive vendor is one that offers a price for exactly what was requested or an acceptable alternative. The term "responsible vendor" refers to a vendor that bidder" means a person who~~ is financially stable, dependable, professional, and honest, who has the capability in all material respects to perform fully the contract requirements, and who has the integrity and reliability to assure good faith performance.
 2. "Responsive bidder" means a person who has submitted a bid, proposal or quotation one that conforms in all material respects to a solicitation.

1.2 Source Selection

1.2.1 Contracting Methods

A. In addition to the provisions set forth in R.I. Gen. Laws § 37-2-17, the Authority RITBA recognizes the following four basic contracting methods in procuring services, construction, equipment, and supplies, in both locally funded and federally assisted projects and programs:

1. competitive sealed bids;
2. competitive negotiation;
3. small purchases; and
4. noncompetitive ~~purchases~~ procurements.

1.2.2 Competitive Sealed Bids

In addition to the provisions set forth in R.I. Gen. Laws § 37-2-18, the Authority shall award contracts that exceed \$5,000 (\$10,000 for construction contracts) ~~must be awarded~~ by competitive sealed bidding whenever this method is practicable under the circumstances. ~~Public notice of the solicitation will be given, and the solicitation will state whether~~

1.2.3 Competitive Negotiation

A. In addition to the award will be made on provisions set forth in R.I. Gen. Laws § 37-2-19, the basis of the lowest bid price or the lowest evaluated or responsive bid price. Authority may utilize competitive negotiation under the following circumstances:

1. Competitive negotiation is utilized When the Chief Purchasing Officer determines, in writing, that the use of competitive sealed bidding is not practicable. ~~Competitive sealed bidding may not be practicable, by way of example, when it is not possible to detail fully the scope or quantity of the services or goods sought by RITBA. Contracts may also be competitively negotiated when~~ practicable.
2. When the Chief Purchasing Officer determines, in writing, that the bid proposal prices received by the competitive sealed bidding method either are greater than the funds available or were not independently reached in open competition, and the best interests of ~~RITBA would not be served by delay. Requests for proposals or requests for qualifications leading to a negotiated procurement shall be publicly advertised and solicited in order to obtain the greatest possible competition. the Authority would not be served by delay. Any contract for professional services under \$20,000 requires the bidder to acknowledge that the entire value of any contract~~

~~will not exceed \$20,000 in total, including without limitation, change orders.~~

1.2.4 Small Purchases

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

1.2.5 Noncompetitive Procurements

- A. In addition to the provisions set forth in R.I. Gen. Laws § 37-2-21, when it is determined that there is only one source for the services, construction, equipment, or supplies required (sole source procurement), or when there exists a threat to public health, welfare, or safety under emergency conditions (emergency conditions), contracts may be awarded by noncompetitive negotiation procurements.
- 1. Sole Source Procurement
 - a. Contracts may be awarded for a supply, service, equipment, or construction by noncompetitive negotiation procurements when there is only one source.
 - b. Sole source procurement will be allowed only on an extreme exception basis and must be documented and approved in writing by the Purchasing Agent (for contracts up to \$5,000) and the Chief Purchasing Officer, based on a written recommendation by the Purchasing Agent (for contracts in excess of \$5,000). ~~Multiyear contracts require the prior approval of the members of RITBA. The Purchasing Agent will prepare a monthly report that identifies all~~

~~such actions and include such report on the agenda of the members of RITBA.~~

- c. Sole source procurements that will result in multiyear contracts require the prior approval of the members of the Authority.
- d. Examples of sole source exceptions include, without limitation, circumstances in which:
- (1) there is only one responsible source and no other supplier, such as a utility company;
 - (2) the source demonstrates a unique and innovative concept not otherwise available to ~~RITBA~~the Authority;
 - (3) specialized replacement or repairs parts are necessary to maintain the integrity or function of a system.
- e. Each noncompetitive procurement over \$5,000 must be supported by documentation that justifies the selection of the vendor ~~including,~~
- (1) Such documentation shall include, without limitation,
 - (AA) a statement of the relevant circumstances and detailed information to support that statement;
 - (BB) cost and price analysis;
 - (CC) summary of the negotiations with the vendor; and
 - (DD) basis for determining that the price is fair and reasonable.
 - (2) A general conclusion that a certain source is uniquely qualified, has personal know-how or experience, or is the only source that can meet certain delivery requirements, does not qualify as sufficient justification to utilize a single source. ~~Additionally, the supporting documentation must provide:~~
 - ~~(i) cost and price analysis;~~
 - ~~(ii)(i) summary of the negotiations with the vendor; and~~
 - ~~(iii)(i) basis for determining that the price is fair and reasonable.~~
- f. The availability of this sole source procurement exception from competitive bidding does not diminish the responsibility of the

Purchasing Agent to evaluate the market continuously to research product alternatives and develop additional sources.

- g. In attempting to achieve the goal of maximizing competition to the greatest extent possible, alternative vendors will be pursued for sole source items by using compatible replacement parts as long as warranties and operational cost effectiveness are not affected by substitution.

2. Emergency Conditions Procurement

- a. The Chief Purchasing Officer or the Purchasing Agent (in his or her absence) may make, or authorize others to make, emergency procurements when there exists a threat to public health, welfare, or safety under emergency conditions; provided that ~~such~~ emergency procurements shall be made with such competition as is practicable under the circumstances.
- b. The determination of the basis for emergency and for the selection of the vendor must be in writing. ~~The Chief Purchasing Officer or the Purchasing Agent (in his or her absence) may react quickly to critical situations when the cost for the remedy or repair is in excess of \$250, and there is not sufficient time to undertake a public, formal or informal, bidding process.~~
- c. An emergency means a situation to which an urgent response is required because of immediate dangers to health and safety, threats to property and necessary functions, or failures of critical equipment. Inadequate anticipation of need is not considered justification for "emergency" procurement. Commitments that extend beyond the immediate response to the emergency conditions are prohibited.
- d. The Purchasing Agent will establish and maintain, through competitive bidding, a list of emergency response vendors.
 - (1) When practicable, the required services, construction, equipment, or supplies will be obtained from a list of vendors selected by competitive process to provide specialized trade in emergencies.
 - (2) If an emergency cannot be addressed by a designated vendor, the Purchasing Agent shall obtain names and telephone numbers of responsible vendors.

1.3 Requests for Proposals

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

1.4 Public Records

~~Bid proposals will be opened publicly at the time and place specified~~

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

Bidders-C. Bid proposals will be opened publicly at the time and place specified in the solicitation.

1.5 Bid Security

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

1.6 Minority, Women, and Disadvantaged Business Enterprises

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

1.7 Prequalification

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

1.8 Reservation of Rights

A. ~~The Authority~~ RITBA reserves the right, at any time, for any reason, in its sole discretion, to:

1. revoke, suspend, or terminate any solicitation;
2. accept or reject any and all bid proposals, in whole or in part;
3. waive any technical defects, irregularities, or omissions in any bid proposals; and/or
4. terminate any contract, with or without cause.

B. The continuation of any contract is contingent at all times upon the availability of funds.

1.9 Compliance with Terms of Contract

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

1.10 Code of Ethics

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

1.11 Implementation

- A. The policies herein set forth shall be implemented by the Chief Purchasing Officer.

- B. Violations of the provisions of this Procurement Policy, or any of ~~RITB~~the Authority's procurement policies and procedures, or any applicable state or federal laws or regulations shall be immediately reported to the Executive Director.
- C. The Executive Director shall have the authority to apply appropriate sanctions.