

2011 -- S 0864

LC02483

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2011

A N A C T

RELATING TO PUBLIC PROPERTY AND WORKS

Introduced By: Senators Ciccone, Walaska, and Lynch

Date Introduced: April 14, 2011

Referred To: Senate Government Oversight

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. [Effective January 1, 2011.]** -- (a) Contracts  
4 exceeding the amount provided by section 37-2-22 shall be awarded by competitive sealed  
5 bidding unless it is determined in writing that this method is not practicable or that the best value  
6 for the state may be obtained by using an electronic reverse auction as set forth in section 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.

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

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

16 (e) All department of transportation highway and bridge contractors submitting proposals  
17 to the division of purchases shall submit a duplicate original of a vendor's software compatible  
18 electronic copy on a readable compact disk (CD) which shall satisfy the public copy requirement  
19 for public works related projects. In addition, for the department of transportation, the following  
20 conditions shall apply:

21 (1) All bid proposals shall be opened publically;

22 (2) The division of purchases will acknowledge, in the purchasing bid room, the  
23 submission of both a paper copy of an offer together with the compact disk (CD) which shall be  
24 compatible with software defined in the division of purchases regulations;

25 (3) If the software becomes inoperable during the bid opening, then the division of  
26 purchases will document all responses but continue the bid opening process when the software is  
27 back online. An addendum shall be posted for public viewing on the Rhode Island vendor  
28 information program indicating the date and time for continuation of the bid opening. All bids  
29 will be securely held within the division of purchases and no additional proposals or documents  
30 will be accepted;

31 (4) An abstract copy of the bidder's proposals which includes itemized pricing and total  
32 summary shall be available for public inspection by the close of business that day;

33 (5) At the time that a proposal is submitted, a bidder must submit a hard copy proposal  
34 along with two (2) duplicate original electronic files compact disk (CD) generated from the

1 software defined in the division of purchases regulations; and

2 (6) Contractors must follow all instructions included in the electronic bidding procedures  
3 which are set forth in the division of purchasing regulations.

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

17 ~~(f)~~(g) Subsequent to the awarding of the bid, all documents pertinent to the awarding of  
18 the bid that were not made public pursuant to subsection 37-2-18(e) shall be made available and  
19 open to public inspection, pursuant to chapter 38-2, the Access to Public Records Act, and  
20 retained in the bid file. The copy of the bid proposal provided pursuant to subsection 37-2-18(b)  
21 shall be retained until the bid is awarded.

22 ~~(g)~~(h) The contract shall be awarded with reasonable promptness by written notice to the  
23 responsive and responsible bidder whose bid is either the lowest bid price, lowest evaluated, or  
24 responsive bid price.

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

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

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EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF  
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RELATING TO PUBLIC PROPERTY AND WORKS

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- 1           This act would mandate a specific bid submittal process for proposals submitted by
- 2 highway and bridge contractors to the department of transportation.
- 3           This act would take effect upon passage.

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