

# Purchasing Policies

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## SECTION 1 - GENERAL PROVISIONS

### 1.1 PURPOSE AND POLICIES

#### 1.1.1 Underlying Purposes and Policies.

- 1.1.1.1 To simplify, clarify and modernize purchasing activities undertaken by the Corporation;
- 1.1.1.2 To permit the continuous development of purchasing policies and practices;
- 1.1.1.3 To provide for increased public confidence in the procedures followed in public Procurement;
- 1.1.1.4 To insure fair and equitable treatment of all Persons who deal with the Procurement system of the Corporation;
- 1.1.1.5 To provide increased economy in the Corporation's Procurement activities by fostering effective Competition;
- 1.1.1.6 To provide safeguards for the maintenance of a Procurement system of quality, integrity and the highest ethical Standards; and
- 1.1.1.7 To promote Equal Opportunity and Affirmative Action in the Corporation's Procurement process.

#### 1.1.2 Administrative Practices and Policies.

- 1.1.2.1 The Corporation's primary method of assuring that Procurements are advantageous to the Corporation is Competitive Sealed Bidding. Other Procurement methods will be used when Competitive Sealed Bidding is not available or practicable.
- 1.1.2.2 Contract awards shall be made to the Most Responsive Bidder taking into consideration the reliability of the Bidder, the quality of the materials, equipment or Services to be supplied, the conformity with the Specifications, the terms of delivery and the best interests of the Corporation.

## 1.2 APPLICATION

- 1.2.1 Every Expenditure of Funds. RISPA § 37-2-4 and these Policies shall apply to every expenditure of funds, except as otherwise provided by law, by the Corporation under any Contract or like Business agreement, excepting only those Contracts or like Business agreements between the Corporation and the state or other state agencies. Nothing in RISPA or in these Policies shall prevent the Corporation from complying with the terms and conditions of any grant, gift, bequest or cooperative agreement.
- 1.2.2 Purchasing Policies. These Policies shall apply to all Corporation Procurements, except that the Corporation may use the State Purchasing Authority to procure specific items or in lieu of the procedures set forth in these Policies.

## 1.3 GENERAL DEFINITIONS

- 1.3.1 "Architect" shall have the same meaning as a Person who, under the provisions of § 5-1-2 of the R.I. Gen. Laws, is qualified to engage in the practice of architecture as attested by an architect license issued by the state.
- 1.3.2 "Benefits" shall mean monies or gifts provided by the Corporation to or on behalf of Persons.
- 1.3.3 "Most Responsive Bidder" shall be that Responsive Bidder determined by the Corporation pursuant to these Policies to have submitted the Bid with the best terms and conditions.
- 1.3.4 "Bid" shall mean an executed document submitted by a Bidder in response to Solicitation.
  - 1.3.4.1 "Firm Bid" shall mean a Bid that binds the Bidder until a stipulated time of expiration.
  - 1.3.4.2 "Sealed Bid" shall mean a Firm Bid submitted in a sealed envelope to prevent its contents from being revealed or known before the Bid Opening.
- 1.3.5 "Bid Bond" shall mean an insurance agreement with a third party agreeing to be liable to pay a certain amount of money in the event that a specific Bidder's Bid is accepted, if such Bidder subsequently fails to accept the Contract.
- 1.3.6 "Bid Deposit" or "Bid Security" shall mean a sum of money deposited with the Corporation by the prospective Bidder to guarantee the Bidder will, if selected, accept the Contract in accordance with the Bid.
- 1.3.7 "Bidder" shall mean any Person submitting a competitive Bid in response to a Solicitation.

- 1.3.8 “Bidder List” shall mean a list maintained by the Corporation containing the names and addresses of Suppliers of various goods and Services from whom Bids, proposals, and quotations can be solicited.
- 1.3.9 “Bidder Registration Form” means the form used by the prospective Bidders to become listed on the Bidder List.
- 1.3.10 “Bid Opening” shall mean the process by which Sealed Bids are opened and the contents revealed for the first time to the Corporation, other Bidders and to the public.
- 1.3.11 “Board” shall mean the Board of Commissioners of the Corporation.
- 1.3.12 “Business” shall mean any corporation, partnership, individual, sole proprietorship, limited liability company, joint venture, or other legal entity through which Business is conducted.
- 1.3.13 “Change Order” shall mean a written authorization signed by the purchasing agent directing or allowing the Contractor to proceed with changes, alterations, or modifications to the terms, conditions, or scope of work on a previously awarded Contract.
- 1.3.14 “Chief Purchasing Officer” or “CPO” shall mean the Executive Director of the Corporation, or an individual designated by the Executive Director to act in the CPO’s stead for a specific transaction, event or period.
- 1.3.15 “Competition” shall mean the process by which two or more Vendors vie to secure the Business by offering the most favorable terms as to price, quality, delivery and service.
- 1.3.16 “Construction” shall mean the process of building, altering, repairing, improving or demolishing any structures or building, or other improvements of any kind to real property. It does not include the routine maintenance or repair of existing structures, buildings or real property performed by salaried employees of the Corporation in the usual course of their jobs.
- 1.3.17 “Consultant” shall mean any Person with whom the Corporation has a Contract that provides for the Person to give direction or information regarding an area of knowledge in which the Person is a specialist or has expertise.
- 1.3.18 “Contract” shall mean all types of agreements for the purchase or disposal of Supplies, Services, Construction or any other items. With respect to these Policies, “Contract” shall not include labor contracts with employees of the Corporation, loans made to borrowers or Benefits, Grants or Entitlements. Permissible types of Contracts shall include the following:
- 1.3.18.1 The “Firm Fixed Price” (“FFP”) Contract provides for a price that is not subject to any adjustment by reason of the Contractor’s costs.

- 1.3.18.2 A "Time and Materials" ("T/M") Contract provides for the purchase of Supplies or Services on the basis of direct labor hours at specified fixed hourly rates and material at cost.
- 1.3.18.3 A "Guaranteed Maximum Price" Contract provides for the purchase of Services on the basis of an agreed upon hourly rate with a specified maximum price.
- 1.3.19 "Contract Dispute" shall mean a circumstance whereby a Contractor and the Corporation are unable to arrive at a mutual interpretation of the requirements, limitations or compensation for the performance of a Contract.
- 1.3.20 "Contract File" means the file maintained by the Corporation pertaining to each procurement of the Corporation and containing written determinations of the CPO.
- 1.3.21 "Contract Modification" shall mean, in accordance with RISPA § 37-2-7(6), any written alteration in the Specifications, terms, conditions or other 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.
- 1.3.22 "Contractor" shall mean a Person having a Contract with the Corporation.
- 1.3.23 "Corporation" shall mean Rhode Island Housing and Mortgage Finance Corporation and its subsidiaries and affiliated entities.
- 1.3.24 "Debarment" means an exclusion from Corporation Contracting and the Bidder List in accordance with the Corporation's Policies Governing Debarment and Suspension.
- 1.3.25 "Delegated Purchasing Authority" shall mean the transfer of Purchasing Authority from the CPO to another Corporation official in accordance with the provisions and limitations of RISPA and these Policies.
- 1.3.26 "Division Director" shall mean an individual from each of the Corporation's divisions who is responsible for Procurements on behalf of such division.
- 1.3.27 "Emergency" shall mean a threat to public health, welfare or safety under emergency conditions as determined by the CPO.
- 1.3.28 "Engineer" shall mean a Person who, under the provisions of § 5-8-2 R.I. Gen. Laws, is qualified to practice engineering and is registered as an engineer.
- 1.3.29 "Entitlements" shall mean monies or gifts provided by the Corporation as part of subsidy programs for which the distribution of funds is determined in accordance with specific eligibility criteria or by formula.
- 1.3.30 "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 that affect the economy and effectiveness in the operation or use of the product, such as reliability, maintainability, useful life and residual value.

- 1.3.31 "Evaluation of Bids" 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 Most Responsive Bidder.
- 1.3.32 "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.
- 1.3.33 "Good Faith" shall mean honesty in fact and in the conduct or transaction concerned and the observance of reasonable commercial standards of fair dealing.
- 1.3.34 "Grants" shall mean monies provided by the Corporation to or on behalf of individuals or entities to underwrite specific costs of Services or programs.
- 1.3.35 "Invitation for Bids" shall mean all documents, whether attached or incorporated by reference, utilized for soliciting proposals in accordance with the procedures set forth in § 37-2-18.
- 1.3.36 "Letter of Authorization" or "LA" shall mean a written instrument binding only when signed by the CPO that authorizes immediate commencement of the delivery of Supplies or the performance of Services.
- 1.3.37 "Master Pricing Agreement" or "MPA" shall mean an agreement that has been established for more than one state agency or department which includes the terms and conditions under which a specific item or specific category of items in an indefinite quantity, are to be purchased for a specific period of time, usually a year.
- 1.3.38 "Negotiation" shall mean the establishment of contractual provisions methods set forth in RISPA §§ 37-2-19, 37-2-20, and 37-2-21.
- 1.3.39 "Nonperformance" shall mean lack of compliance with the Contract Specifications, terms or conditions.
- 1.3.40 "Offeror" shall mean an individual who proposes a specific offer to sell goods and Services to the Corporation, whether in response to a Bid or an RFP or unsolicited.
- 1.3.41 "Person" shall mean any Business, individual, organization or group of individuals.
- 1.3.42 "Personal Services" shall mean Services provided by Persons paid directly by the Corporation but who are not employees of the Corporation.
- 1.3.43 "Policies" shall mean these Purchasing Policies of the Corporation.
- 1.3.44 "Prime Contractor" shall mean a Contractor who engages Subcontractors in the course of satisfying the requirements of a Contract.
- 1.3.45 "Procurement" shall mean the purchasing, buying, renting, leasing or otherwise obtaining of any Supplies, Services or Construction. It shall also include all functions that pertain to

the obtaining of any Supply, Service or Construction item, and all phases of contract administration.

- 1.3.46 “Professional Service Provider” shall mean a Contractor who is a specialist or has the expertise, as demonstrated by professional licensing or certification and experience, necessary to carry out tasks regarding one or more Professional Services.
- 1.3.47 “Professional Services” shall mean Services performed by Professional Service Providers and shall include architectural services; engineering services; consulting services; and legal representation.
- 1.3.48 “Proposer” shall mean a Person submitting a proposal in response to an RFP.
- 1.3.49 “Proprietary Information” shall mean information or data describing technical processes, mechanisms, (prices) or operational factors that a Business wishes to keep from the general public in order to maintain competitive capabilities in the market.
- 1.3.50 “Protest” shall mean a complaint about an action or decision of the Corporation brought by a prospective Bidder, a Bidder, a Contractor or other interested party to the CPO with the intention of achieving a remedial result.
- 1.3.51 “Purchase of Services” shall mean monies expended for the provision of specific units of time and effort rather than an end product.
- 1.3.52 “Purchasing Agent” shall mean any Person authorized by the CPO in accordance with procedures prescribed by these Policies, to enter into and administer Contracts and make written determinations and findings with respect thereto on behalf of the Corporation.
- 1.3.53 “Purchasing Authority” shall mean the authority to act on behalf of the Corporation to commit funds, enter into binding agreements or Contracts, dispose of property, or in any other manner control Procurement or obligate the Corporation.
- 1.3.54 “Reimbursement” shall mean monies paid to make restoration for expenses undertaken.
- 1.3.55 “Request for Information” or “RFI” shall mean an informal Solicitation of information, data, comments, or reaction from possible Suppliers preceding the issuance of an RFP.
- 1.3.56 “Request for Proposal” or “RFP” shall mean all documents, whether attached or incorporated by reference, utilized for soliciting competitive proposals, including invitations to submit qualifications for particular projects or services.
- 1.3.57 “Request for Quotation” or “RFQ” shall mean a written or oral Solicitation used to promote competition on small purchases or on any purchase that do not require Competitive Sealed Bidding.
- 1.3.58 “Requisition” shall mean a request to obtain goods or Services for a specified need and may include the technical description of the requested item, delivery requirements, evaluation criteria and suggested sources of supply. For the purposes of these Policies, a

“Requisition” may also mean an internal document used by a division to request Procurement.

- 1.3.59 “Responsible Bidder” shall mean a Bidder who has the capability in all respects including financial responsibility to fully perform the Contract requirements, and the integrity and reliability that will assure Good Faith performance.
- 1.3.60 “Responsive Bidder” shall mean a Responsible Bidder who has submitted a Bid that conforms in all material respects to the Solicitation.
- 1.3.61 “RISPA” shall mean the Rhode Island State Purchases Act, Chapter Two of Title 37 of the Rhode Island General Laws.
- 1.3.62 “Services” shall mean performance measured by time and effort rather than the furnishing of a specific end product, other than reports that are merely incidental to the required performance of Services. Services do not include labor contracts with employees of the Corporation.
- 1.3.63 “Small Purchases” shall mean procurement not exceeding an aggregate amount of Twenty-Five Thousand Dollars (\$25,000.00) for Construction and Ten Thousand Dollars (\$10,000.00) for all other purchases.
- 1.3.64 “Sole Source” shall mean that there is only one source for a required Supply, Service or Construction item, as approved by the CPO in writing.
- 1.3.65 “Solicitation” shall mean the process of notifying prospective Bidders that the Corporation wishes to receive Bids for furnishing goods or Services. The process may consist of public advertising, mailings, posting notices, and telephone messages to prospective Bidders.
- 1.3.66 “Source Selection” shall mean the procedure of selection required in the Solicitation, such as competitive sealed bidding, competitive Negotiation, non-competitive negotiation, small purchase procedure, sole source or emergency purchase.
- 1.3.67 “Special Services” shall mean Services deemed necessary or desirable to purchase provided by Persons possessing special knowledge or skills that do not require formal licensing or certification. Examples of Special Services include:
  - 1.3.67.1 expert witness testimony;
  - 1.3.67.2 interpreting (languages, deaf);
  - 1.3.67.3 public information; and
  - 1.3.67.4 training.
- 1.3.68 “Specifications” shall mean a description of the Supply or Service the Corporation seeks to purchase and the criteria considered for award for a contract. A Specification may be

a description of the physical or functional characteristics, or the nature of a supply or service.

- 1.3.69 “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.
- 1.3.70 “Standard” shall mean a characteristic or criteria for an item that, for reasons of performance level, compatibility or interchangeability, is generally accepted by producers and by users of the item.
- 1.3.71 “State Purchasing Authority” shall mean the Director of the Rhode Island Department of Administration.
- 1.3.72 “Subcontractor” shall mean any Person undertaking part of the work under the terms of a Contract, by virtue of an agreement with the Prime Contractor, who, prior to such undertaking, receives the consent and approval of the Corporation.
- 1.3.73 “Supplier” shall mean an actual or potential Contractor or Vendor.
- 1.3.74 “Supplies” shall mean all personal property, including but not limited to leases of real property, printing and insurance, except land or permanent interests in land.
- 1.3.75 “Suspension” means an exclusion from the Corporation’s Contracting and Bidder List for a temporary period of time or pending the completion of an investigation or legal proceedings.
- 1.3.76 “Vendor” shall mean Persons who sell goods or provide Services.

#### **1.4 DOCUMENTATION AND REPORTS**

- 1.4.1 Contract Files. Adequate written records shall be maintained in Contract Files to document Procurement activities, reasons for selection of the Vendor and justification of price.
  - 1.4.1.1 At a minimum, the Contract File shall include adequate justification of Source Selection and pricing.
  - 1.4.1.2 The Contract File may vary with the procurement requirements, value and complexity.
  - 1.4.1.3 Procurement shall require an “audit trail” for every purchase. The Contract File shall be recorded and maintained in accordance with procedures established by the CPO for the purpose of:
    - 1.4.1.3.1 providing background information to assure that informed decisions are made at each step in a Procurement;

- 1.4.1.3.2 providing a rationale for the action taken;
    - 1.4.1.3.3 providing information for reviews and audits; and
    - 1.4.1.3.4 furnishing facts in the event of litigation.
  - 1.4.1.4 All documentation of Contracts made shall be retained for a period of five (5) years or for the time period determined by State or Federal law applicable to the procurement, whichever is greater, and be made available for public inspection.
- 1.4.2 Required Signatures. 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.
  - 1.4.2.1 The Chief Financial Officer shall maintain a list of the Corporation officials who shall have Purchasing Authority for all purchases made through the Corporation. Annually Division Directors shall submit to the CPO names of officials for the CPO to approve to have authority to act on behalf of a division. The approved list shall be placed on file at the Corporation.
    - 1.4.2.1.1 All authorizations shall be specific as to:
      - 1.4.2.1.1.1 maximum levels of expenditure, commitment and program accounts;
      - 1.4.2.1.1.2 Persons authorized to obtain information or provide clarification on Procurements; and
      - 1.4.2.1.1.3 officials who will have the authority to decide whether the situation requires an Emergency Purchase and will be responsible for following Emergency Purchase procedures.
  - 1.4.2.2 Contracts shall require the signature of the CPO or other authorized representative of the Corporation.
  - 1.4.2.3 Requisitions shall require the signature of an official designated by the CPO as responsible for certifying as to the availability of funds for purchasing actions.
- 1.4.3 Form of Documentation. Documentation records may be in the form of copies, microfilms, computer files or other means permitted in accordance with procedures established by the CPO or shall be original documents as required by law.
- 1.4.4 Requirement of Written Determinations. In accordance with RISPA § 37-2-6, every determination required by RISPA and these Policies shall be in writing and based upon written findings of fact and maintained in the Contract File.

1.4.5 Audit of Contractors' Records.

1.4.5.1 The Corporation may audit the books and records of any Person who has submitted cost or pricing data for negotiated Contracts exceeding Fifty Thousand Dollars (\$50,000.00) or Change Orders exceeding Twenty-Five Thousand Dollars (\$25,000.00) at any time during the three (3) years after the date 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 RISPA § 37-2-28.

1.4.5.2 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 the final payment under the subcontract.

1.4.6 Bid Abstract. A summary of responsive Bids to a Solicitation shall be recorded and a Bid Abstract made available for public inspection upon request. Subsequent to the awarding of a Bid, and subject to the exceptions set forth in the Rhode Island Access to Public Records Act, documents pertinent to the awarding of the Bid shall be made available and open to public inspection upon request and retained in the Contract File.

1.4.6.1 The CPO shall insure that information not subject to public disclosure is not divulged.

1.4.6.2 Bids shall not be available for public inspection at the Bid Opening. Bid Abstracts shall be available for public inspection no later than ten (10) working days after a Bid Opening.

1.4.6.3 Requests for access to records other than Bid Abstracts shall be made in writing and signed by the applicant.

1.4.6.3.1 The CPO shall have a reasonable time to respond to requests for access to information.

1.4.6.3.2 Reviews of document records shall be permitted by appointment only and shall be conducted under staff supervision.

1.4.6.4 No documentation shall be removed from the premises without the written consent of the CPO.

1.4.7 Purchase Reports.

1.4.7.1 The Corporation shall maintain records of all purchases and sales made under these Policies.

1.4.7.2 Sole Source, Emergency and Small Purchases

- 1.4.7.2.1 In accordance with RISPA §37-2-37, the CPO shall compile annually within ninety (90) days following the close of the Fiscal Year a report of Procurement actions for Sole Source, Emergency and Small Purchase Contracts made during the preceding Fiscal Year. The summary shall name each Contractor and state the amount and type of each Contract.

## **SECTION 2 - PROCUREMENT AUTHORITY AND RESPONSIBILITY**

### **2.1 CENTRALIZED PROCUREMENT AUTHORITY**

- 2.1.1 Jurisdiction of CPO. All rights, powers, duties and authority relating to the Procurement of Supplies, Services and Construction, and the management, control, warehousing, sale and disposal of Supplies, Services and Construction exercised by the Corporation shall be under the jurisdiction of the CPO pursuant to RISPA § 37-2-12(1), except as provided in RISPA §§ 37-2-68 and 37-2-71 and these Policies, and no purchase or Contract shall be binding unless made under these Policies.
- 2.1.2 CPO Appointment of Purchasing Agent. The CPO shall appoint a Purchasing Agent who shall:
  - 2.1.2.1 Serve as the central Procurement and Contracting agent of the Corporation;
  - 2.1.2.2 Recommend policies and procedures to the CPO; and
  - 2.1.2.3 Purchase or otherwise acquire or, with the approval of the CPO, delegate the purchase and acquisition of all Supplies, Services and Construction for the Corporation pursuant to RISPA § 37-2-11(3).
- 2.1.3 Delegated Purchasing Authority. The CPO may delegate Purchasing Authority in circumstances where cost-effectiveness and efficiency are best served.
  - 2.1.3.1 The Purchasing Agent may delegate Purchasing Authority with the written approval of the CPO.
  - 2.1.3.2 Requested Delegated Purchase Authority shall be specifically justified and authorized by the CPO in advance of any purchase action.
  - 2.1.3.3 All Delegated Purchasing Authority shall be specific as to:
    - 2.1.3.3.1 The names and titles of individuals authorized to commit funds on behalf of the Corporation.
    - 2.1.3.3.2 The accounts, commodities and levels of expenditures that are authorized.

- 2.1.3.4 The implementation of Delegated Purchasing Authority shall be monitored by the CPO. If at any time a user division is deemed to be in violation of purchasing rules, regulations, policies and procedures, the CPO may revoke any Delegated Purchasing Authority.
- 2.1.4 Delegation of Procurement Functions. The CPO may provide for the distribution of the Corporation's Procurement activities and functions among the various divisions within the Corporation pursuant to RISPA § 37-2-10. However, in accordance with RISPA § 37-2-13(3), the CPO shall not delegate the power to issue Purchasing Policies.
- 2.1.5 Disposal of Corporate Property. Except as otherwise provided herein,
  - 2.1.5.1 the CPO shall have power to sell, salvage, exchange, condemn and otherwise dispose of Supplies, equipment and real property with a value not to exceed Fifty Thousand Dollars (\$50,000.00) which is not needed, has become unsuitable for public use or would be more suitably consistent with the public interest in another use;
  - 2.1.5.2 the CPO, with the Board's approval, shall have power to sell or otherwise dispose of all residential real property of the Corporation; and
  - 2.1.5.3 the CPO, with the Board's approval, shall have the power to sell or dispose of all other Corporation property.
  - 2.1.5.4 Notwithstanding the foregoing section 2.1.5.2, the CPO shall be authorized to sell or dispose of residential real property consisting of four (4) units or less previously owned by a borrower either by public sale or foreclosure or in a private negotiated transaction, in accordance with procedures adopted by the business division of the Corporation that is responsible for loan servicing operations.

## **2.2 RESPONSIBILITY FOR PROCUREMENT**

- 2.2.1 The Board shall be responsible for:
  - 2.2.1.1 Policy formation through adoption and amendment of these Policies;
  - 2.2.1.2 Approval of Contracts for goods or Services in excess of One Hundred Thousand Dollars (\$100,000.00);
  - 2.2.1.3 Final selection of and negotiation with the highest qualified firm for Architectural, Engineering, or Consultant Services that are estimated to exceed Twenty Thousand Dollars (\$20,000.00); provided, however, that contract negotiation may be delegated to staff consistent with applicable resolutions adopted by the Board;
  - 2.2.1.4 Contracting for Legal Services on behalf of the Corporation; and

2.2.1.5 Sale or disposition of real property consisting of more than four (4) residential units.

2.2.2 The CPO shall be responsible for:

2.2.2.1 Enforcing the Corporation's policy;

2.2.2.2 Defining and promulgating procedures;

2.2.2.3 Delegating purchasing authority;

2.2.2.4 Monitoring and evaluating central purchasing activity to ensure that the Corporation is attaining the most advantageous Procurements possible;

2.2.2.5 Approval of Purchases as provided in these Policies; and

2.2.2.6 Determining courses of action when the policies and procedures outlined herein require interpretation or when disputes arise or conflicts occur.

2.2.3 The Purchasing Agent shall be responsible for:

2.2.3.1 Assuring adherence to RISPA and other state Procurement laws and the Corporation's Policies;

2.2.3.2 Supervising Procurement activity;

2.2.3.3 Assuring that Delegated Purchasing Authority is exercised properly;

2.2.3.4 Establishing and maintaining good relations with Suppliers and potential Suppliers without conflicts of interest;

2.2.3.5 Assuring that Procurements are made in a context which supports to the greatest extent possible;

2.2.3.5.1 competitive purchases;

2.2.3.5.2 Equal Opportunity and Affirmative Action; and

2.2.3.5.3 opportunities for local Rhode Island enterprises.

2.2.3.6 Assuring that a pool of responsible, qualified Suppliers is developed, maintained and utilized;

2.2.3.7 Promoting standardization of requirements to increase economies of combined purchasing;

2.2.3.8 Establishing and monitoring Standards of quality;

2.2.3.9 Assuring that goods and Services are delivered according to specified requirements; and

2.2.3.10 Supervising the Corporation's warehousing and inventory activities.

2.2.4 Division Directors' Responsibilities. All Division Directors shall be accountable to the CPO for carrying out the Corporation's Procurement activities. The Division Directors shall be responsible for:

2.2.4.1 Assuring the availability of funds to sustain purchase commitments;

2.2.4.2 Enforcing adherence to applicable policies and procedures;

2.2.4.3 Thoughtful planning that will:

2.2.4.3.1 Promote opportunities for effective Procurement, e.g., economies of scale; and

2.2.4.3.2 Reduce the occurrence of crisis situations that detract from the Corporation's ability to make the most advantageous purchases possible.

2.2.4.4 Careful development of Specifications to:

2.2.4.4.1 Promote speed of Bid implementation;

2.2.4.4.2 Reduce misunderstanding and conflicts; and

2.2.4.4.3 Enhance quality and competition.

## **2.3 BREACH OF CONTRACT DISPUTES**

2.3.1 CPO Authority to Settle. Prior to the institution of arbitration or litigation concerning any Contract, claim or controversy, the CPO is authorized, subject to any limitations or conditions imposed by these Policies, 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 Corporation, including a claim or controversy based on a Contract Dispute, mistake, misrepresentation or other cause for Contract Modification or rescission, but excluding any claim or controversy involving penalties or forfeitures prescribed by statute or Policy where an official other than the CPO is specifically authorized to settle or determine such controversy.

2.3.1.1 The CPO shall be authorized to resolve Contract Disputes between Contractors and the Corporation upon the submission of a request in writing, which shall provide:

- 2.3.1.1.1 a description of the problem, including all appropriate citations and references from the Contract in question;
  - 2.3.1.1.2 a clear statement by the party requesting the decision of its interpretation of the Contract; and
  - 2.3.1.1.3 a proposed course of action to resolve the Contract Dispute.
- 2.3.1.2 The CPO shall determine whether:
- 2.3.1.2.1 the interpretation provided is appropriate;
  - 2.3.1.2.2 the proposed solution is feasible; or
  - 2.3.1.2.3 if another solution may be negotiated.
- 2.3.2 Written Decision of CPO. If a Contract Dispute between the Corporation and a Contractor is not resolved by mutual agreement, the CPO shall promptly issue a decision in writing. A copy of the decision shall be mailed or otherwise furnished to the Contractor. If the CPO does not issue a written decision with thirty (30) days after written request for a final decision or within such longer period as might be established by the Contract, then the Contractor may proceed as if an adverse decision had been received.

## 2.4 RESOLUTION OF PROTESTS

- 2.4.1 Presumption of Correct Decision. The decision of any official, board, agent or other Person appointed by the CPO 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; 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, capricious or characterized by abuse of discretion or unwarranted exercise of discretion.
- 2.4.2 Authority to Resolve Disputes.
- 2.4.2.1 The CPO shall have authority to determine protests and other controversies of actual or prospective Bidders in connection with the Solicitation or awards of Contracts.
  - 2.4.2.2 Any actual or prospective Bidder or Contractor who is aggrieved in connection with the Solicitation or award of a Contract may file a protest with the CPO within two (2) calendar weeks after such aggrieved Person knows or should have known of the facts giving rise thereto.

2.4.2.3 The CPO shall promptly issue a decision in writing. A copy of that decision shall be mailed or otherwise furnished to the aggrieved person and shall state the reasons for the action taken.

2.4.3 CPO Determination. In the event of a protest timely filed under RISPA § 37-2-52(2), the Corporation shall not proceed further with the Solicitation or award involved until the CPO makes a written determination that continuation of the Procurement is necessary to protect a substantial interest of the Corporation.

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

2.5.1 Violations. Violations of or deliberate disregard of laws, regulations, policies and procedures shall be cause for dismissal of Corporate employees and Suspension or Debarment of Suppliers.

2.5.1.1 The CPO shall have authority to impose sanctions on any Corporation employee who has violated these Policies.

2.5.1.2 The CPO shall have the authority to suspend or debar Suppliers in accordance with the Corporation's Governing Policies Debarment and Suspension.

2.5.2 Conflicts of Interest and Violations Reported to CPO. Suspected violations of state conflict of interest laws regarding Procurement shall be reported to the CPO. Violations of RISPA or these Policies shall be reported to the CPO and to the Attorney General if required under Section 3.2.2.

2.5.3 Suspected Collusion of Bidders. When collusion is suspected among Bidders, a written notice of the facts giving rise to such suspicion shall be transmitted to the Attorney General. All documents involved in any Procurement in which collusion is suspected shall be made available to the Attorney General upon request and shall be retained until the Attorney General gives notice that they may be released.

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

## **2.6 GOODS PRODUCED IN SOUTH AFRICA**

In conformity with the policy of divestment established in § 35-10-12, the Corporation shall manage its Procurement in conformity with RISPA § 37-2-57.

## **SECTION 3 - CODE OF ETHICS AND PROHIBITED ACTIVITIES**

### **3.1 CODE OF ETHICS**

All Corporation employees, including those involved in the Procurement process, shall be subject to the provisions of Chapter 36-14 of the Rhode Island General Laws, all regulations promulgated by the Rhode Island Ethics Commission, and the Corporation's Code of Ethics.

## 3.2 PROHIBITED ACTIVITIES

- 3.2.1 Bidder Prohibitions. In order to ensure that all Persons meet a Standard of responsibility that assures the Corporation that Persons will both compete and perform honestly in their dealings with the Corporation and avoid conflicts of interest. Bidders are prohibited from engaging in the following activities:
- 3.2.1.1 No Bidder shall give any gift, fee, preferential loan, political contribution, services at preferential rates, discounts, gratuities or anything of monetary value or a promise of future employment, directly or indirectly, to a Corporation employee or commissioner, a relative of a Corporation employee or commissioner or an organization designated by a corporation employee or an organization designated by a Corporation employee or commissioner, based on any understanding that the official action or judgment of a Corporation employee or commissioner would be influenced thereby. Relative refers to the immediate family of an employee or commissioner, or the immediate family of an employee's or commissioner's spouse.
  - 3.2.1.2 No Bidder shall have any interest, financial or otherwise, direct or indirect, or engage in any business, transaction or professional activity with a Corporation employee or commissioner, which is in conflict with the proper discharge of such employee's or commissioner's duties in the public interest.
  - 3.2.1.3 No Bidder shall influence or attempt to influence or cause to be influenced, any Corporation employee or commissioner in his or her official capacity in any manner that might impair the objectivity or independence of the employee's judgment.
  - 3.2.1.4 No Bidder shall cause or influence, or attempt to cause or influence, any Corporation employee to use or attempt to use his or her official position to secure unwarranted privileges or advantages for the Bidder.
- 3.2.2 Requirement to Report Violations. All Persons shall report to the Attorney General and the CPO of any such prohibited activities by Bidders or any attempt to solicit a Bidder to engage in such prohibited activities by a Corporation Board member or employee.
- 3.2.3 Exceptions. The prohibited activities listed above shall not be construed to prohibit a Bidder from offering or giving gifts to or contracting with a Corporation employee or commissioner if the acceptance of such gifts or contracting by an employee or commissioner is permitted by the Corporation's Code of Ethics, provided that such activities are offered or made under the same terms and conditions that are available to the general public and are consistent with any rules promulgated by the Ethics Commission and the Corporation's Code of Ethics.

- 3.2.4 Prohibitions in all RFPs and Contracts. The Corporation shall include a reference to the prohibited activities set forth in 3.2.1 and reporting requirements of 3.2.2 in RFPs by the Corporation and in all Contracts with every Supplier.

## **SECTION 4 - VENDOR QUALIFICATION AND SOLICITATION**

### **4.1 BIDDER LIST**

A Bidder List may be developed and maintained by the Corporation consisting of the names and addresses of Suppliers of various goods and Services from whom Bids, proposals and quotations may be solicited.

- 4.1.1 Equal Opportunity. All Bidders shall be required to provide evidence of compliance with R. I. General Laws § 28-5.1-10 which mandates that contractors/subcontractors doing business with the State of Rhode Island exercise the same commitment to equal opportunity as prevails under Federal contracts controlled by Federal Executive Orders 11246, 11625 and 11375.

- 4.1.2 CPO Power to Delete from Bidder List. The CPO may delete from the Bidder List if available information indicates that a Bidder is not qualified or certified to provide goods or services to meet the required specifications or needs of the Corporation.

- 4.1.3 Bidder List Composition.

- 4.1.3.1 The Bidder List shall consist of registered Suppliers who have submitted completed Bidder Registration Forms that have been reviewed and approved by the CPO.

- 4.1.3.2 Unregistered Suppliers that have not expressed interest in selling to the Corporation by submitting a Bidder Registration Form, but who have been determined by the CPO to be responsible and qualified with regard to particular commodities may be included on the Bidder List. Inclusion of any person on the Bidder List without a supporting Bidder Registration Form shall be permitted with written approval of the CPO, which written approval shall contain an explanation of the circumstances supporting the need for the inclusion of an unregistered Supplier and basis on which the CPO determined the Supplier to be responsible and qualified.

- 4.1.4 Supplier Size or Item Restrictions. Based on the review of a Supplier's level of financial responsibility and qualification, the CPO may restrict the items or size of orders for which a Supplier will be solicited.

- 4.1.4.1 Restrictions shall relate to:

- 4.1.4.1.1 limiting the kinds of goods and Services for which the Supplier may be solicited to a portion of those indicated on a Bidder Registration Form.

- 4.1.4.1.2 limiting the scope and amount of goods and Services for which the Supplier may be solicited (e.g., categorizing a Contractor by the size of Construction projects the Contractor is deemed capable of undertaking).
  - 4.1.4.2 The CPO shall notify in writing any Supplier whose inclusion on the Bidder List has been restricted and the reason for such action, informing the Supplier of the right to request reconsideration of the decision.
    - 4.1.4.2.1 Upon receipt of a request for reconsideration from a Supplier, providing sufficient justification for such reconsideration, the CPO may amend the Bidder List.
    - 4.1.4.2.2 The CPO shall make a determination on the request for reconsideration within thirty (30) calendar days of receipt of the request. Such decision shall be final.
- 4.1.5 Bidder Information Files. The Corporation shall maintain Bidder information files for the following documentation purposes:
  - 4.1.5.1 Bidder Registration Forms;
  - 4.1.5.2 Results of investigations for prequalification, responsibility, Suspension, Debarment, restriction and Nonperformance;
  - 4.1.5.3 Certifications;
  - 4.1.5.4 Correspondence;
  - 4.1.5.5 Bidding history; and
  - 4.1.5.6 Performance history.
- 4.1.6 Bidder Registration Form Updates. The CPO may require registered Suppliers to submit updated Bidder Registration Forms annually, but in every case at least once every five years.

## 4.2 DETERMINATION OF RESPONSIBILITY OF BIDDERS AND OFFERORS

- 4.2.1 Inquiry to Determine Responsibility. A reasonable inquiry to determine the responsibility of a Bidder may be conducted. Written documentation of such determination of responsibility of a Bidder shall be placed in the Bidder's information file. The failure of a Bidder to supply information within five (5) working days in connection with an inquiry related to responsibility may be grounds for a determination of non-responsibility.

4.2.1.1 Except as otherwise provided by law, information furnished by a Bidder or pursuant to this Section may not be disclosed outside of the Corporation without prior written consent of the Bidder.

4.2.1.2 The CPO may utilize factors such as financial capability, past performance, references, management, etc., to evaluate the responsibility and qualifications of Bidders and Offerors.

#### **4.3 PREQUALIFICATION OF CONTRACTORS**

4.3.1 Prequalification. The CPO may require the prequalification of prospective Contractors for types of Supplies, services and Construction. The CPO may require solicitation of potential Contractors for Supplies, Services and Construction to be limited to prequalified Contractors. Prequalification shall not foreclose a written determination that:

4.3.1.1 Between the time of the Bid Opening or receipt of offers and the making of an award, that a prequalified Supplier is not responsible; or

4.3.1.2 A Supplier who is not prequalified at the time of Bid Opening or receipt of offers is responsible.

4.3.2 Prequalification Information. Prequalification information may be submitted subsequent to a project Bidder's conference as specified in the Bid Solicitation.

4.3.3 Supplementary Prequalification. The CPO may conduct supplementary prequalification examinations of registered Bidders prior to Solicitation or award that include, but are not limited to:

4.3.3.1 requirement for additional certifications;

4.3.3.2 demonstration of additional licensure;

4.3.3.3 recent financial information;

4.3.3.4 an Affirmative Action employment plan; and

4.3.3.5 the names of proposed Subcontractors and the value of such subcontracts.

4.3.4 Inclusion on Bidder List. Inclusion of a Supplier on the Bidder List shall constitute a prequalification determination.

### **SECTION 5 - DEBARMENT AND SUSPENSION**

#### **5.1 SCOPE OF DEBARMENT AND SUSPENSION**

Any Person who is subject to Debarment or Suspension by the Corporation pursuant to the Corporation's Policies Governing Debarment and Suspension shall be barred from all contracting

and subcontracting within the control or jurisdiction of the Corporation during the period of such debarment or suspension, including any Contracts that utilize Corporation funds. When it is determined by the CPO to be essential to the public interest, an exemption from total exclusion may be made with respect to a particular Corporation Contract.

## **5.2 RELIANCE ON OTHER AGENCY DEBARMENT LIST**

Notwithstanding the failure of the Corporation to debar or suspend any Bidder pursuant to these Policies, whenever the Corporation participates in any program financed, issued or guaranteed by any department, agency or instrumentality of the State or United States Government, it may rely on and distribute lists of Bidders suspended or debarred by such agency, department or instrumentality and prevent the listed Bidder from participating in that program.

## **SECTION 6 - CONTRACTING PROCEDURES**

### **6.1 GENERAL PROVISIONS**

6.1.1 Contracting Procedures. Except as otherwise authorized by law, or as specifically exempted herein, all Corporation Contracts shall be awarded pursuant to RISPA § 37-2-17 as the result of:

- 6.1.1.1 Competitive sealed bidding;
- 6.1.1.2 Competitive Negotiation;
- 6.1.1.3 Noncompetitive Negotiation;
- 6.1.1.4 Small Purchase procedures;
- 6.1.1.5 Sole Source procurement;
- 6.1.1.6 Other exceptions to competitive Bidding;
- 6.1.1.7 Emergencies; or
- 6.1.1.8 Requests for Proposal.

### **6.2 RULES FOR SOLICITATION**

6.2.1 Solicitation Procedure. Solicitations for competitive bid shall be posted on the Corporation website, the website or webpage maintained by the State of Rhode Island for the purpose of advertising procurements by quasi-public corporations, and by other means deemed necessary by the CPO. In addition, if available, the Corporation may solicit bids directly from Suppliers on a Master Price Agreement established by the State of Rhode Island, or from a Bidder List established by the Corporation. Disadvantaged Business Enterprises, Minority Business Enterprises, Women Business Enterprises, and

Rhode Island businesses shall be solicited to the maximum extent practicable as determined by the CPO.

6.2.2 Notification and Advertising.

6.2.2.1 Notices of solicitation shall be published in sufficient time to afford Bidders a fair opportunity to respond prior to the Bid Opening. Such notice shall be published not less than seven (7) days before the date set for the Bid Opening.

6.2.2.2 Advertisements may be utilized with RFQs or RFPs for products or services at any estimated level of expenditure if the CPO determines:

6.2.2.2.1 That the commodity or service is of such special nature that Competition will be enhanced by extending invitations to other than Registered Suppliers;

6.2.2.2.2 That a purchase will be of interest to supportive industries, e.g. Construction projects;

6.2.2.2.3 That the purchase is unusually large, specialized or infrequent; or

6.2.2.2.4 That advertising will promote effective competition.

6.2.3 Solicitations of Unregistered Bidders. The CPO may solicit offers from prospective Suppliers not on the Bidder List or Master Price Agreement upon recommendation by a division; however, if and to the extent applicable, the Contract award shall be subject to the successful Bidder satisfying all requirements of Bidder Registration.

6.2.4 Unsolicited Offers. The Corporation shall be under no obligation to consider an offer that has been submitted without Solicitation.

6.2.5 Form of Solicitation. Solicitations shall be prepared in a manner and form that enables Suppliers to submit fully responsive and knowledgeable offers, and clearly defines the criteria to be used in evaluating responses.

6.2.6 Requisition for Solicitation Requirement. All material submitted by a requisitioning division to CPO for action shall be in sufficient detail and shall contain adequate supportive information to:

6.2.6.1 Adequately describe the purpose, use or desired performance level of the requirement; and

6.2.6.2 Identify measurable criteria for evaluation of the bids to provide goods or services.

6.2.7 Standard Specifications Incorporated. Whenever possible, Solicitations shall incorporate a Standard Specification, describing the level of performance required and measurable criteria that define acceptance.

6.2.7.1 In certain cases, following detailed evaluation, brand name or other designations may be defined as Standard Specifications when it is determined to be in the best interest of the Corporation with regard to economies of scale, cost or value analysis.

6.2.7.2 The CPO shall review, develop and update Specifications and Standards for items or Services frequently used by the Corporation.

6.2.8 Selection and Evaluation Criteria. Selection and evaluation criteria shall be clearly defined in all Solicitations.

6.2.8.1 The Invitation for Bids shall state whether award shall be made on the basis of the lowest Bid price or the most Responsive Bid. If the latter basis is used, the objective measurable criteria to be utilized shall be set forth in the Invitation for Bids, if available.

6.2.8.2 Unless alternate offers are clearly requested or allowed, only Responsive Bids shall be considered. Alternate Specifications may only be considered when it has been determined that the alternate satisfies all objective performance characteristics of the Procurement or provides for a measurable improvement; and represents a reduction in expenditure.

### **6.3 CANCELLATION OF SOLICITATIONS AND REQUESTS FOR PROPOSALS**

Invitations for Bids, RFPs and other Solicitations may be canceled, or all Bids or proposals received may be rejected, if the CPO determines in writing that the action is taken in the best interest of the Corporation.

6.3.1 All Bids Unacceptable. If a Solicitation results in no Responsive Bids, the CPO may declare all Bids unacceptable and resolicit the Procurement.

6.3.2 Single Unacceptable Bid. If a Solicitation results in only one Responsive Bid, with a price that is not reasonably close to expectations, the CPO may declare the Bid unacceptable and either resolicit the Procurement or negotiate the price with the Bidder.

6.3.3 Elimination of Uncompetitive Bids. The CPO may eliminate Bidders whose offers are clearly noncompetitive prior to resolicitation.

### **6.4 CORRECTION OR WITHDRAWAL OF BIDS**

6.4.1 Within CPO's Discretion. The CPO shall determine whether a correction or withdrawal of a Bid may be made without penalty.

6.4.2 Requests for Corrections to CPO. The CPO shall respond to a request for correction or withdrawal of a Bid within ten (10) working days, notifying the Bidder of the status of the Bid, Bid Bond, if applicable, and the Bidder's continued inclusion on the Bidder List.

#### 6.4.3 Correction of a Bid.

6.4.3.1 Correction of a Bid at any time prior to Bid Opening may be permitted without penalty when a Bidder requests that the Bid be returned and the Bidder resubmits a corrected Bid prior to the Bid Opening.

6.4.3.2 A Bidder who fails to resubmit a corrected Bid before the Bid Opening shall be considered nonresponsive.

6.4.3.3 Requests by the Most Responsive Bidder for correction of Bid, identifying all errors and specifying corrective action, shall be submitted in writing to the CPO and shall be re-evaluated with all other Responsive Bids within five (5) working days.

#### 6.4.4 Withdrawal of Bids.

6.4.4.1 Request for withdrawal of Bids shall be submitted in writing to the CPO with an explanation for the action and advising the CPO as to why the Bidder should not be suspended from the Bidder List.

6.4.4.2 Withdrawal of Bids without the written consent of the CPO shall result in forfeiture of the Bid Bond and result in Suspension or Debarment from the Bidder List, depending upon the severity of the violation.

### 6.5 **SELECTION METHODOLOGY**

6.5.1 Competitive Sealed Bids. Competitive Sealed Bids shall be required for Procurements exceeding Twenty-Five Thousand Dollars (\$25,000) for Construction contracts and Ten Thousand Dollars (\$10,000.00) for all other purchases except under the circumstances set forth in Section 6.5.4, 6.5.5, 6.5.6, 6.5.7 and 6.5.8 hereof or unless such method is not practicable.

6.5.1.1 Determination of Practicability. Factors to be considered in determining if Competitive Sealed Bidding is practicable shall include whether: (1) Specifications can be prepared that permit award on the basis of either the lowest Bid price or the lowest Evaluated Bid Price; (2) the available sources; (3) the time and place of performance; and (4) other relevant circumstances appropriate for the use of Competitive Sealed Bidding.

6.5.1.2 Number of Competitive Bids. Competitive Sealed Bids shall be obtained from a sufficient number of Suppliers to be considered representative of the industry. Although three Bids shall be considered the minimum, the CPO may in some instances declare the existence of two Bids to be sufficient to provide adequate price Competition. Such determination shall be made in writing and placed in the Contract File.

- 6.5.1.3 Awarding of Bids. Bids shall be opened publicly at the time and place designated in the Solicitation. Each Bid, together with the name of the Bidder shall be recorded and a Bid 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 for public inspection pursuant to paragraphs 1.4.6.2 and 1.4.6.3 hereof and retained in the Contract File.
- 6.5.1.4 Notice to Most Responsive Bidder. The Contract shall be awarded with reasonable promptness by written notice to the Most Responsive Bidder. Awards shall be made within sixty (60) days of the Bid Opening unless expressly provided to the contrary in the Solicitation. Bids may not be withdrawn during this period without penalty except with the express permission of the CPO.
- 6.5.2 Competitive Negotiation. When the CPO determines in writing that the use of Competitive Sealed Bidding is not practicable, except as provided in RISPA §§ 37-2-21 (Sole Source Procurement) and 37-2-22 (Small Purchases); or when the Bids received in response to an RFP are unreasonable;, a Contract may be awarded by competitive Negotiation.
- 6.5.2.1 CPO Determinations. Contracts may be competitively negotiated when the CPO determines in writing that the Bid prices received by Competitive Sealed Bidding are unreasonable as to all or part of the requirements and;
- 6.5.2.1.1 Each Bidder has been notified of the intention to negotiate and is given reasonable opportunity to negotiate; and
- 6.5.2.1.2 The negotiated price is lower than the lowest rejected Bid by any Responsive Bidder; and
- 6.5.2.1.3 The negotiated price is the lowest responsive price offered by a Bidder.
- 6.5.2.2 To Define Unknown Terms and Conditions. Competitive Negotiation may be used in any case that the scope, term or other requirements of the Procurement have not been determined at the time that the Requisition is issued or the value of the Procurement has not been definitively established.
- 6.5.3 Noncompetitive Negotiation. In the event that (i) all Competitive Sealed Bids submitted through a formal Solicitation result in Bid prices in excess of the funds available for the purchase; (ii) the CPO determines in writing that no additional funds are available from any source to permit an award to the Most Responsive Bidder; and (iii) the best interests of the Corporation will not permit the delay attendant to a re-solicitation under revised specifications or for revised quantities under Competitive Sealed Bidding, then a noncompetitive negotiated award may be made as set forth in this Section.
- 6.5.3.1 Used with Competitive Sealed Bids.

Noncompetitive Negotiation may be used to improve the price offered by the Most Responsive Bidder.

6.5.3.2 Used for Sole Source. The CPO may authorize the award of a Contract on the basis of noncompetitive Negotiation when the CPO has determined in writing that:

6.5.3.2.1 A Sole Source Procurement is involved; or

6.5.3.2.2 The product or produce market is noncompetitive in nature; or

6.5.3.2.3 Collusive or exclusionary selling practices exist.

6.5.3.3 To Modify Contract. Noncompetitive Negotiation may be used for Contract Modifications during performance of a contract if it is determined by the CPO to be in the best interests of the Corporation.

6.5.3.4 Documentation Requirement. In all noncompetitive Negotiations, the issues discussed, options considered, the rationale applied to decisions made, the principal elements of the price negotiation and agreements reached shall be documented in summary and placed in the Contract File.

6.5.4 Small Purchases. Competitive Sealed Bidding shall not be required for Small Purchases not exceeding an aggregate amount of Twenty-Five Thousand Dollars (\$25,000.00) for Construction and Ten Thousand Dollars (\$10,000.00) for all other purchases if the prices are considered to be reasonable. Procurement requirements shall not be artificially divided so as to constitute a Small Purchase under this section.

6.5.4.1 Fair and Reasonable Requirement. It shall be the responsibility of Corporation personnel to exercise good judgment as to what is a fair and reasonable price.

6.5.4.2 Review of Unreasonable Prices. Specific action to verify the reasonableness of a price shall be taken when it is suspected that the price may not be reasonable, e.g., comparison to previous prices paid or the Person's knowledge of the item involved.

6.5.4.3 Informal Bids. Informal Bids may be solicited for Small Purchases. Prices may be obtained using published lists or catalogs, market analysis, or by telephone or email.

6.5.4.4 Contents. An Informal Bid consists of:

6.5.4.4.1 Lack of a specific time for Bids to be submitted;

6.5.4.4.2 Lack of sealed Competitive Sealed Bids; quotes may be oral on the spot or by telephone and confirmed later in writing;

6.5.4.4.3 Lack of a Bid Opening; and

6.5.4.4.4 The Solicitation of registered or unregistered Bidders for the commodity or service.

6.5.4.5 Competition. All Informal Bid invitations shall be conducted in such manner as to maximize the opportunity for competitive bidding.

6.5.4.6 Selection of Other Than Low Bidder. When Informal Bids are received and an award is not made to the low Bidder, the Contract File shall be annotated with statements of how the Bidder was selected and why the price is fair and reasonable.

6.5.4.7 Annual Review. The CPO shall audit the use of Informal Bids annually to review performance and to sample the reasonableness and effectiveness of the process.

6.5.4.8 Equitable Distribution. To the extent possible, Small Purchase orders shall be distributed equitably among Suppliers. Quotations should be solicited from other than the previous Supplier prior to placing a repeat order to ensure equitable distribution and to enhance Competition.

6.5.5 Sole Source Procurement.

A Contract may be awarded for a supply, service or Construction item without Competition when the CPO determines in writing that only one source exists for the required supply, service or Construction item. The following are categories of Sole Source Procurements:

6.5.5.1 items unique in nature that are unavailable from other sources due to patents or Proprietary Information;

6.5.5.2 books, maps, periodicals, technical pamphlets, films, video or audio cassettes obtained from publishers;

6.5.5.3 computer software;

6.5.5.4 licenses;

6.5.5.5 specialized replacement or repair parts necessary to maintain the integrity of systems;

6.5.5.6 works of art for public display;

6.5.5.7 specialized Services with only one documented accepted source, such as transactions involving unique professional Services or institutions; and

6.5.5.8 advertisements or public notices in magazines, newspapers or television.

6.5.5.9 maintenance contracts, annual and multi-year, which shall be subject to the approval by the CPO.

6.5.6 Other Exceptions to Competitive Sealed Bidding.

In accordance with RISPA § 37-2-54, the following exceptions to competitive sealed bidding are permitted; however, the CPO may require Competitive Sealed Bidding in any circumstance the CPO deems that it may increase cost savings:

6.5.6.1 Public Utility Services. Contractual Services when no Competition exists, such as telephone service, electrical energy and other public utility Services.

6.5.6.2 Instructional Material from Sole Source;

6.5.6.3 Rates Fixed by Law or Ordinance;

6.5.6.4 Commercial Items Purchased for Resale;

6.5.6.5 Professional, Technical or Artistic Services;

6.5.6.6 Interests in Real Property;

6.5.6.7 Standard Catalog Items; and

6.5.6.8 Spot Purchases, when market analysis indicates that such Procurements are in the best interest of the Corporation.

6.5.7 Emergencies. Notwithstanding any other provision of RISPA or these Policies, the CPO may make Emergency Procurements when an Emergency exists; 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.

6.5.7.1 Definition of Emergency. An Emergency shall mean a situation to which an urgent response is required. Immediate dangers to health and safety, threats to property and necessary functions, and failures of critical equipment constitute Emergencies.

6.5.7.2 Authority to Use Emergency Procedures. In accordance with procedures established by the CPO, authorized officials in user divisions shall be permitted to react quickly to critical situations when the cost for a remedy or repair does not exceed One Thousand Dollars (\$1,000.00) and there is not sufficient time to undertake a Competitive Sealed Bidding process.

6.5.7.3 Inadequate Anticipation of Need. Inadequate anticipation of need shall not be considered justification for Emergency purchases.

6.5.7.4 Commitments Beyond Emergency Period. Commitments that extend beyond the immediate response to the Emergency shall be prohibited.

6.5.7.5 Emergency Response Vendor List. The Purchasing Agent may establish, through Competitive Sealed Bidding, a list of emergency response Vendors and shall make such lists available to user divisions.

6.5.7.5.1 When possible, divisions shall obtain Services from a list of Vendors selected by competitive process to provide specialized trade in Emergencies.

6.5.7.5.2 If an Emergency cannot be addressed by a listed Vendor, CPO shall assist in obtaining responsible Vendors.

6.5.7.6 Emergency After Business Hours. If the Emergency occurs outside of Business hours, the Purchasing Agent is authorized to proceed in accordance with the principles and policies of sound Procurement practices outlined herein.

6.5.8 Requests for Proposal.

6.5.8.1 RFPs shall be used in all cases where:

6.5.8.1.1 Lowest price is not the sole or primary consideration to be used in determining an award; or

6.5.8.1.2 Performance is neither specific nor objective, and open to interpretation; or

6.5.8.1.3 It is anticipated that offers may be substantially different with insufficient common ground for objective comparison; or

6.5.8.1.4 It is anticipated that changes will be made after proposals are opened and that the nature of the proposals and prices offered will be negotiated prior to award.

6.5.8.2 Wherever possible, the RFP shall define the performance or benefit required and shall set forth specific criteria to be utilized in evaluating proposals.

6.5.8.3 Proposals shall be evaluated by a committee comprised of one or more representatives of the user division and other appropriate parties. Proposals shall be selected by the CPO on the basis of criteria, including, but not limited to:

6.5.8.3.1 The qualifications of the Proposers, based on professional accomplishment and previous experience;

6.5.8.3.2 Aspects of proposals that provide benefit, other than those based on cost; and

6.5.8.3.3 Other provisions of proposals determined to serve the best interests of the Corporation.

- 6.5.8.4 Upon receipt of a request for information regarding proposals received, the CPO shall only be required to reveal the names of those responding. The nature of responses shall not be subject to public disclosure until after a Contract has been awarded.
- 6.5.8.5 Written or oral discussion may be conducted with any or all Responsive Bidders who answer RFPs. Discussions need not be conducted when:
- 6.5.8.5.1 Prices are fixed by law or regulation, except that consideration shall be given to competitive terms and conditions; or
  - 6.5.8.5.2 Time of delivery or performance will not permit discussions; or
  - 6.5.8.5.3 Competition or prior experience for a particular supply, service or construction item clearly demonstrate that acceptance of an initial offer without discussion would result in fair and reasonable prices, and the RFPs notify all Offerors of the possibility that award may be made on the basis of the initial offers.
- 6.5.8.6 Competitive Negotiations may be conducted (if more than one Bidder) with the three (two if there are only two) most Responsive Bidders, in which case such competitive Negotiations with the most Responsive Bidders shall be conducted under the following restrictions:
- 6.5.8.6.1 If discussions pertaining to the revision of the Specifications or quantities are held with any Bidder, the other Bidders shall be afforded an opportunity to take part in such discussions.
  - 6.5.8.6.2 A new RFP, based upon revised Specifications or quantities, shall be issued and shall be awarded upon the basis of the lowest Evaluated Bid Price submitted by any of the most Responsive Bidders.
    - 6.5.8.6.2.1 The provisions of this section may be waived in any case where the lowest-cost response is lower by ten percent (10%) or more than the next lowest Bid.
- 6.5.8.7 The CPO may make a Request for Best and Final Offer from Bidders if the CPO determines such a procedure is in the best interest of the Corporation. Such requests shall be as follows:
- 6.5.8.7.1 On the basis of discussions with Bidders, a Request for Best and Final Offer that describes the requirements of the Procurement in the final form, shall be issued to all Bidders still under consideration.
  - 6.5.8.7.2 Each Bidder shall submit a Best and Final Offer that states their best price and terms for the Procurement.

6.5.8.7.3 Best and Final Offers shall be evaluated in the same fashion as Competitive Sealed Bids.

6.5.8.7.4 Award shall be made to the Responsible Bidder whose proposal is determined in writing to be the most advantageous to the Corporation taking into consideration the factors set forth in the RFP.

6.5.8.8 Nothing herein shall be construed to preclude an award based solely on cost.

6.5.8.9 The evaluation of proposals, including the weight assigned to various aspects of the proposals, and all award determinations, including the reasons for a selection recommendation, shall be fully documented and placed in the Contract File.

## **SECTION 7 - PROFESSIONAL SERVICES**

### **7.1 PROFESSIONAL SERVICE PROVIDER SELECTION FOR SERVICES NOT EXCEEDING TWENTY THOUSAND DOLLARS (\$20,000.00)**

When a Professional Service Provider Contract is estimated to be between Five Thousand Dollars (\$5,000.00) and Twenty Thousand Dollars (\$20,000.00), the CPO may establish a technical review committee to evaluate the qualifications of potential Suppliers. The technical committee shall recommend one or more Suppliers to the CPO. The CPO shall make the selection of the Supplier or Suppliers. Selection of Professional Service Providers for services not exceeding Ten Thousand Dollars (\$10,000.00) shall be carried out in accordance with the procedures for Small Purchases described in section 6.5.4 hereof.

### **7.2 PROFESSIONAL SERVICE PROVIDER SELECTION FOR SERVICES EXCEEDING TWENTY THOUSAND DOLLARS (\$20,000.00)**

#### **7.2.1 Solicitation.**

7.2.1.1 The CPO shall give public notice of an RFP for Professional Services.

7.2.1.2 Such notice shall be published sufficiently in advance of the date when responses must be received.

7.2.1.3 The notice shall:

7.2.1.3.1 contain a brief statement of the Services required;

7.2.1.3.2 describe the project;

7.2.1.3.3 specify how specific information on the project may be obtained; and

7.2.1.3.4 be published on the Corporation website, and the website or webpage maintained by the State of Rhode Island for the purpose of advertising procurements by quasi-public corporations. In addition,

the notice may be published in a newspaper of general circulation in the state and in such other publication as in the judgment of the CPO is desirable.

7.2.1.4 The Solicitation shall describe the Corporation's requirements and set forth evaluation criteria for the selection of the successful Bidder and shall be distributed to interested Persons.

7.2.1.5 The CPO may establish a committee to review the proposals.

7.2.2 Bidder's Conference. A Bidder's conference, if appropriate, will be held with the following provided:

7.2.2.1 a description of the criteria to be used in evaluating a Bidder's qualifications and past performance;

7.2.2.2 a discussion of the scope of the work; and

7.2.2.3 an on-site review, if appropriate.

7.2.3 Interview of Finalists. The committee may require that an interview be held with one or more of the Bidders.

7.2.4 Final Selection. Consistent with section 2.2.1.3 hereof, the Board shall be responsible for final selection of and negotiation with the highest qualified firm, provided however that negotiation of the resulting Contract may be delegated to staff for convenience.

### **7.3 EVALUATION FOR SELECTION**

7.3.1 Criteria for Evaluation. Criteria for evaluation of Professional Service Providers shall include, but shall not be limited to:

7.3.1.1 Competence to perform the Services as reflected by technical training, education and general experience;

7.3.1.2 Ability to perform the Services as reflected by workload and availability of adequate personnel, equipment and facilities;

7.3.1.3 Past performance with the Corporation, other government entities or private parties with respect to such factors as control of costs, quality of work and ability to meet deadlines;

7.3.1.4 Price;

7.3.1.5 The Vendor's proposed approach to the project or assignment; and

7.3.1.6 Other relevant factors.

7.3.2 Qualification and Performance Data. The committee shall evaluate the following in light of the criteria set forth in the Solicitation:

7.3.2.1 Statements submitted in response to the Solicitation; and

7.3.2.2 Other required statements of qualifications and performance data.

#### **7.4 ADDITIONAL REQUIREMENTS FOR LEGAL SERVICES**

7.4.1 Prerequisite. Before the Corporation procures legal services, the CPO shall demonstrate to the satisfaction of the Board the following is in accordance with RISPA § 37-2-70;

7.4.1.1 The need for the Services, including the scope, to be performed;

7.4.1.2 That no legal personnel employed by the Corporation on a full-time basis is available to perform the Services; and

7.4.1.3 That funding is available, indicating from which sources such funding is to be provided.

7.4.2 Additional Legal Evaluation Criteria. The attorney(s) to be engaged must meet the following minimum requirements;

7.4.2.1 Appropriate professional licensing;

7.4.2.2 Competence to perform such Services as reflected by formal training and education, general experience and experience in providing the required Services and the qualifications and competence of Persons who would be assigned to perform the Services; and

7.4.2.3 Ability to perform the Services as reflected by workload and availability of adequate personnel, equipment and facilities.

7.4.3 Letter of Engagement. The attorney(s) shall enter into a letter of engagement with the Corporation. The letter of engagement shall state the rate of compensation, the scope of the Services to be performed and the provision for the payment of expenses incurred in connection with legal Services. The letter of engagement shall certify that the rate of compensation does not exceed the rate of compensation charged by counsel to counsel's preferred public or private clients.

7.4.4 Professional Requirements. Demonstration to the satisfaction of the CPO that professionals meet minimum requirements may be accomplished by the Corporation obtaining annual verification of the status of attorneys from the Supreme Court listing of members of the Rhode Island Bar or such other state Bar as may be applicable.

## **7.5 INDEPENDENT AUDITORS**

- 7.5.1 Auditor General Review and Approval. In accordance with RISPA § 37-2-59(3), independent auditing shall be subject to the provisions of R.I. Gen. Laws §§ 22-13-6 and 35-7-13.
- 7.5.2 Requisition for Independent Auditor. Requisitions for independent audit services shall be submitted to the CPO with written verification of the Auditor General's approval of the proposed purchase of services.

## **SECTION 8 - CONTRACTS**

### **8.1 CONTRACT REQUIREMENTS**

- 8.1.1 Creation. No Contract shall be binding on the Corporation unless made in accordance with these Policies.
  - 8.1.1.1 The terms and conditions of a valid Contract and its supplements, as signed by the CPO, shall constitute a Contract of the Corporation.
    - 8.1.1.1.1 The entire agreement with the Supplier shall be reflected in writing solely in the Contract and its referenced supplements or amendments.
    - 8.1.1.1.2 Any alleged oral agreement or arrangements made by a Supplier with the Corporation may be disregarded and shall not be binding on the Corporation.
- 8.1.2 Policies' Effect on Existing Contracts. These Policies shall not alter a Contract commitment by the Corporation or of a Contractor to the Corporation that was in existence on the effective date of these Policies.
- 8.1.3 Future Contracts Incorporate Policies. These Policies shall be incorporated in all future Corporation Contracts.
- 8.1.4 Obligation of Good Faith.
  - 8.1.4.1 Every Contract or duty under these Policies shall impose upon both parties the obligation of Good Faith in its performance and enforcement.
- 8.1.5 Equal Opportunity and Affirmative Action. In accordance with RISPA § 37-2-9(p), Contractors must comply with state and federal Equal Opportunity and Affirmative Action requirements for all contracts for Supplies and Services exceeding Ten Thousand Dollars (\$10,000.00). 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.

## **8.2 GENERAL CHARACTERISTICS OF CORPORATION CONTRACTS**

8.2.1 General Terms and Conditions. The CPO shall develop and make available to potential Suppliers the general terms and conditions applicable to all Corporation quotations and contracts.

8.2.1.1 The general terms and conditions shall:

8.2.1.1.1 be referenced and made a part of all Solicitations, RFPs and RFQs; all Corporation Contracts and Letters of Authorization and Bidder Registrations.

8.2.1.1.2 provide notice to Bidders that Contract award may be subject to Bidder certification regarding certain legal requirements or restrictions relating to foreign corporations, goods produced in South Africa, labor rates, local product preference and other considerations as required by the CPO.

8.2.1.2 When a contract has been entered into with the Corporation, neither party shall have the right to add new terms or conditions without the consent of the other, unless the Contract so specifies.

8.2.1.3 All Contracts shall be FFP Contracts unless otherwise provided in these Policies or agreed to by the CPO.

8.2.1.4 A Contract shall not be made on the basis of estimate pricing or price to be determined agreements. Commitments may be made on the basis of estimated prices with a "not to exceed" clause when FFP Contracts are not possible.

8.2.1.5 Changes in scope, price and length of Contract period shall require written Contract amendments.

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

8.2.2 Termination Clauses. As appropriate, Corporation contracts shall include clauses that address special conditions and procedures for termination of Contract not contained in the Corporation's terms and conditions; e.g., provisions for penalties or forfeitures for Contract noncompliance may be included; or a convenience termination clause that permits the Corporation to terminate at its own discretion and to make a settlement of the Vendor's claims in accordance with appropriate policies and applicable contractual conditions.

8.2.3 Offer and Acceptance. A Contract shall consist of an offer by the Bidder and an acceptance by the Corporation.

8.2.3.1 When a Contract is executed that does not differ from the Bid submitted by a Bidder, mutuality is assumed.

- 8.2.3.2 The CPO reserves the right to make partial Bid awards.
- 8.2.3.3 Any Bid, whether in response to an Invitation for Bids or made without a Solicitation, that is accepted in the form of an order by the CPO shall be considered a Contract.
- 8.2.4 Consideration. Consideration to support a Contract shall mean the agreement by the Corporation to pay a sum of money for the delivery of the desired goods or Services.
- 8.2.5 Legal Capacity. The contracting parties are assumed to have the legal capacity to enter into contracts.
- 8.2.6 Legal Age. The contracting parties are assumed to be of legal age and of sound mind.
- 8.2.7 Term or Period of Contract Required. Length of Contract period shall be specified.
- 8.2.8 Corporate Official Named as Liaison. An official of the Corporation from whom the Contractor shall obtain direction shall be named.
- 8.2.9 Construction Contracts. Construction Contracts shall provide for the following additional considerations:
- 8.2.9.1 Each Contractor shall have certificates of insurance to protect the Corporation's property from injury or loss arising from actions or inaction of the Contractor during the progress of a Contract.
- 8.2.9.2 Each Contractor shall be responsible for providing satisfactory evidence of insurance, permits and licenses required by state, city or town statutes, ordinances or regulations.
- 8.2.10 Subcontractor Inaccuracies. Prime Contractors must agree that the price shall be reduced by any amount that the prime Contract price was overstated because a Subcontractor did not submit accurate, complete or current cost or pricing data as required.
- 8.2.11 Audit Clause Requirement. Contracts shall contain an audit clause that provides if, after award, the CPO obtains information that the submitted data was inaccurate, incomplete or not current, or if the data was not adequately certified at the time of Negotiation, then a post-award audit may be undertaken by the Corporation.
- 8.2.12 Unit Pricing for Change Orders. Contracts shall contain language that provides for unit pricing for potential Change Orders when possible.
- 8.2.13 Price Analysis. CPO shall conduct or shall obtain price analysis to ascertain whether the price quoted is fair and reasonable in relation to comparable Procurements when the absence of open market Competition precludes the use of Competitive Sealed Bidding.

### 8.3 MULTI-YEAR CONTRACTS

8.3.1 Conditions for Contracts Extending Beyond End of Fiscal Year. Unless otherwise provided by law, multi-year Contracts for Supplies or Services may be entered into for periods extending beyond the end of the fiscal year in which the contract was made (i) if funds for the first fiscal year of the contemplated contract are available at the time of contracting and the contract states that payment and performance obligations for succeeding fiscal years shall be subject to the availability of funds therefor; or (ii) if the contract is terminable by the Corporation at will.

8.3.1.1 Multi-year contracts shall specify the annual costs of each Contract.

8.3.2 CPO Determinations Required. Prior to entering into multi-year contracts described in RISPA § 37-2-33(1), the CPO shall determine in writing:

8.3.2.1 That estimated requirements cover the period of the Contract and are reasonably firm and continuing; and

8.3.2.2 That such Contract will serve the best interest of the Corporation by encouraging effective Competition or otherwise promoting economies in Procurement.

8.3.3 Appropriate Use of Multi-Year Contracts. Multi-year Contracts shall be appropriate purchasing instruments for transactions for which the nature of the goods and Services will remain relatively stable over time and for which potential changes in price can be predicted and agreed to in advance, including provisions for mandated escalation requirements, such as:

8.3.3.1 Lease and lease-purchase agreements for equipment, real property or facilities;

8.3.3.2 Maintenance and repair contracts for specialized equipment;

8.3.3.3 Licensing agreements;

8.3.3.4 Special Services based on an RFP;

8.3.3.5 Supplemental Services based upon the recommendation and selection by the CPO; and

8.3.3.6 Any other contractual relationship for which the CPO determines that a long-term agreement shall be the most cost-effective method of Procurement.

8.3.4 Determination of Use. Multi-year Contracts that extend beyond two years shall be permitted if a written justification is placed in the Contract file or the category of Procurement is set forth in Section 8.3.3 above or has by regulation or policy been identified by the CPO as appropriate for multi-year contracting.

8.3.5 Cancellation of Multi-Year Contracts. When funds are made available to support continuation of performance in a subsequent year of a contract as described in Section

8.3.1 above, the contract for the subsequent year may be cancelled and the contractor shall be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the supplies or services delivered under the contract. The cost of cancellation may be paid from:

8.3.5.1 Funds currently available for performance of the contract;

8.3.5.2 Funds currently available for procurement of similar supplies or services and not otherwise obligated; or

8.3.5.3 Funds made available specifically for the payment of cancellation costs.

#### **8.4 LETTER OF AUTHORIZATION**

If the CPO determines in writing that it is necessary 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 time, the CPO may issue a Letter of Authorization.

8.4.1 A Letter of Authorization shall:

8.4.1.1 Represent a preliminary authorization subject to the subsequent issuance of a Contract.

8.4.1.2 Be superseded by a definitive Contract at the earliest practicable date, not later than the greater of the following:

8.4.1.2.1 the expiration of 180 days from the date of the Letter of Authorization or

8.4.1.2.2 performance of 40% of the Contract.

8.4.1.3 Specify the following:

8.4.1.3.1 that the Vendor proceed immediately with the performance of the Contract, including Procurement of necessary materials;

8.4.1.3.2 the extent and method of payments in the event of termination or default;

8.4.1.3.3 the Vendor is not authorized to expend monies or incur obligations in excess of the maximum liability the Corporation has set forth in the Letter of Authorization;

8.4.1.3.4 the type of definitive Contract contemplated;

8.4.1.3.5 as many definitive Contract provisions as possible;

8.4.1.3.6 the price and cost information as may reasonably be required by the Corporation; and

8.4.1.3.7 that the Vendor and the Corporation shall enter into Negotiations promptly and in Good Faith to reach agreement and execute a definitive Contract.

## **8.5 CHANGES TO CONTRACTS**

8.5.1 Change Orders. Agreements and changes to scope of work, price or other terms shall be incorporated into a Change Order. No Change Order shall be binding without the signature of the CPO.

8.5.2 Change Order Limitations. So long as the goods or services that form the basis of the Change Order do not substantially vary from those originally solicited, such that a new solicitation would be required, the CPO is authorized to approve Change Orders representing up to forty percent (40%) of the original contract value; provided, however, that such Change Order would not cause the value of the contract to exceed any applicable threshold for Board approval.

8.5.3 Not Binding Without Approvals. Personnel shall not commit the Corporation to technical/contractual changes to Contracts without first securing all necessary approvals.

8.5.4 Writing Required. All preliminary discussions of potential changes, oral or written, may be disclaimed as not being binding on the Supplier or the Corporation until formally incorporated in the Contract or Agreement in writing.

8.5.5 Supplier Quotation and Discussion. Change Orders shall be issued by the CPO following receipt of quotations and discussions of price and delivery with the Supplier.

## **8.6 TERMINATION OF CONTRACTS**

8.6.1 Bidder Certification Invalid. Invalidity of Bidder certifications shall be grounds for termination of a Contract.

8.6.2 Notice of Termination. Notice of termination by either party shall be submitted in writing to the other party in accordance with the termination clause of the Contract.

8.6.3 Cancellation of a Contract by the Corporation.

8.6.3.1 Cancellation of Contracts or MPAs shall require the signature of the CPO.

8.6.3.2 A Contract may be cancelled or annulled at the Contractor's expense upon determination by the CPO that a condition of Nonperformance exists.

8.6.3.3 Cancellation by the CPO for Nonperformance shall be subject to the following rules:

- 8.6.3.3.1 A formal complaint of Nonperformance or unsatisfactory performance shall be submitted to the CPO describing the justification for the complaint.
- 8.6.3.3.2 A delegated authority, may be authorized to attempt to resolve the problem to the satisfaction of the user division.
- 8.6.3.3.3 The CPO shall determine whether the problem requires formal action, and if the problem has not been resolved, the CPO shall notify the Contractor in writing that the Contractor is not in compliance with the Contract. Such notice of Nonperformance shall:
  - 8.6.3.3.3.1 specify the nature of the complaint;
  - 8.6.3.3.3.2 direct the Contractor to take corrective action;
  - 8.6.3.3.3.3 direct the Contractor to respond in writing to the notice of Nonperformance within a specified time period; and
  - 8.6.3.3.3.4 notify the Contractor that failure to respond as directed may result in cancellation of the Contract.
- 8.6.3.4 If a Contractor fails to take corrective action or respond to a notice of Nonperformance, the CPO may cancel the Contract.
- 8.6.3.5 If, after reviewing the Contractor's response, the CPO determines that the Contractor is in compliance with the Contract, the CPO shall so notify the user division and the Contractor in writing.
- 8.6.3.6 If the CPO determines that valid extenuating circumstances out of the control of the Contractor have prevented compliance with the Contract, the CPO may so inform the user division and may amend the Contract to provide for a reasonable opportunity for the Contractor to perform.
- 8.6.3.7 If the CPO believes that a Contractor's action or inaction presents a clear and immediate danger to the public interest, the CPO may authorize immediate termination of the Contract.
- 8.6.3.8 Copies of all communications with a Contractor regarding Nonperformance shall be sent to the Contractor's bonding company, if a performance bond has been issued.
- 8.6.3.9 If the CPO determines that a Contractor is unwilling or unable to perform a Contract, the CPO shall:

- 8.6.3.9.1 direct the Contractor's bonding company to assume responsibility for the performance of the contract, if a performance bond has been issued; and
- 8.6.3.9.2 so, notify the user division; and
- 8.6.3.9.3 notify the Contractor of temporary Suspension or Debarment from the Corporation's Bidder List and that the Contractor shall be responsible for any costs incurred by the Corporation in the completion of the Contract.

8.6.4 Contract Settlement Negotiations. In the Negotiation of settlements of Contracts that have been terminated:

8.6.4.1 Contract settlement shall be made in accordance with terms specified in the Contract.

8.6.4.2 In the absence of appropriate Contract language, the Vendor shall be paid for costs incurred, plus a reasonable profit for performance before the Contract was terminated.

8.6.4.3 Penalties due to the Corporation in accordance with a Contract may be deducted from any payment to which a Vendor is entitled.

8.6.5 Reimbursement of Incurred Costs. To determine the allowability of incurred costs for the purpose of reimbursing costs under Contract provisions that provide for the reimbursement of costs, reimbursements shall be made only upon the presentation of documented, auditable evidence to the Corporation that the Vendor has incurred an eligible expense unless otherwise provided in the Contract.

## **8.7 SELECTION OF TYPE OF CONTRACT**

The selection of the appropriate type of contract requires the exercise of judgment to obtain fair and reasonable prices subject to the circumstances of the Procurement.

8.7.1 Contractor's Cost Data Requirement. Except with respect to FFP contracts, no Contract type shall be used unless it has been determined in writing that the proposed Contractor's accounting system will permit timely development of all necessary cost data in the form required by the specific Contract type contemplated and is adequate to allocate costs in accordance with generally accepted accounting principles. The FFP Contract shall be used unless the use of another type of Contract (other than cost plus a percentage of cost) is determined by the CPO to be more appropriate and to provide the best interests of the Corporation.

8.7.2 Cost Reimbursement Contracts Prohibited.

8.7.2.1 The use of Cost Plus fixed fee contracts is prohibited, in accordance with RISPA § 37-2-28, unless it is determined in writing by the CPO that such Contract is likely to be less costly to the Corporation than any other type of contract, or that it is impracticable to obtain Supplies or Services of the kind or quality required except under such a Contract.

8.7.2.2 All cost reimbursement contracts shall contain a provision that only costs recognized as allowable, in accordance with cost principles set forth in regulations or policies issued by the CPO, will be reimbursed.

8.7.3 T/M Contract Requirements. A T/M Contract shall include the establishment of a cost limitation that the Contractor may not exceed. A T/M Contract shall be used only in a situation when:

8.7.3.1 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 engineering and design Services, certain repair, maintenance or overhaul work, or emergencies; and

8.7.3.2 Provision has been made for appropriate supervision and oversight by Corporation personnel during Contract performance.

8.7.4 Applicability of MPA Contracts.

8.7.4.1 The Corporation may utilize a Master Pricing Agreement, if available, to purchase goods and services. All such purchases shall be consistent with the terms and conditions as defined in the MPA.

8.7.4.2 The Contractor shall be authorized to deliver only those items and amounts specified in a request issued under the authority of the MPA. The Corporation is obligated for payment only to the extent of the specific quantities set forth in the delivery request.

8.7.4.3 The specific category of items to be purchased shall be included in a purchase order issued by the State of Rhode Island pursuant to the MPA or listed in a catalog prepared specifically for the MPA, 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 be determined as being legally sufficient.

**8.8 BIDDER SECURITY FOR CONSTRUCTION CONTRACTS**

8.8.1 Construction Contracts Over Fifty Thousand Dollars (\$50,000.00). To the extent required by law, Bidder security shall be required for all Competitive Sealed Bids for Construction contracts estimated to exceed Fifty Thousand Dollars (\$50,000.00). Nothing herein

prevents the requirement of such Bid Bonds on Construction contracts under Fifty Thousand Dollars (\$50,000.00).

- 8.8.2 Bond Provided by Surety Company. Bidder's security shall be a Bid Bond provided by a surety company authorized to do business in the State of Rhode Island, or the equivalent in cash, in a form satisfactory to the Corporation.

8.8.2.1 The Bidder may submit a certified check, bank check or money order as surety instead of a Bid Bond.

8.8.2.2 All Bid Bonds must be dated within 30 days of the Bid Opening and shall be valid for at least 60 days after the Bid Opening.

8.8.2.3 All Bid Bonds shall be made payable to the Corporation.

8.8.2.4 All Bid Bonds shall contain an identification of the Bid number to which the Bid Bond is intended.

- 8.8.3 Amount of Bidder Security. Bid Bonds shall be in an amount equal to at least five percent (5%) of the Bid amount or such percent required in the Solicitation.

- 8.8.4 Bid Security Requirement. When the Invitation for Bids requires that Bid security be provided, noncompliance requires that the Bid be rejected as not responsible, provided; however, that the CPO may set forth exceptions to this requirement.

- 8.8.5 Withdrawal of Bid. 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 or her Bid before award because of a mistake in the Bid as allowed by law or these Policies, no action shall be taken against the Bidder or the Bidder's surety.

- 8.8.6 Return of Bidder Security After Opening. After the Bid Opening, the CPO shall return the bid security of all but the three (3) best Bidders. When the evaluation of the Bid has been completed, the CPO shall return all but the best Bidder's security.

- 8.8.7 Selection of Most Responsive Bidder. After the Most Responsive Bidder has been notified of the Corporation's intent to proceed with a Contract and a Contract has been entered, the Most Responsive Bidder's Bid security shall be returned. When performance, labor and/or material bonds are required, the Bid security shall be returned upon receipt of the appropriate bond.

## **8.9 EXPENDITURES NOT CONSIDERED PROCUREMENTS: GRANTS, BENEFITS, ENTITLEMENTS, SUBSIDIES AND REIMBURSEMENTS**

- 8.9.1 Exception from Competitive Procurement. For the purposes of administering RISPA and these Policies, Grants, Benefits, Entitlements, Subsidies and Reimbursements shall not be considered Procurements. The following types of expenditures shall not be subject to the provisions of RISPA for competitive Procurement:

8.9.1.1 Reimbursement to local governments.

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

8.9.1.3 Grants, Subsidies, Entitlements or Benefits purchased on behalf of or paid directly to individuals.

8.9.1.4 Employee expenses, Subsidies and Benefits.

8.9.1.5 Reimbursement for damages.

## **SECTION 9 - INVENTORY WAREHOUSING MANAGEMENT**

### **9.1 AUTHORITY**

Under the jurisdiction of the CPO, appropriate action shall be taken to assure least cost availability of Supplies necessary to the efficient provision of Corporation Services.

### **9.2 ASSESSMENT OF CURRENT SYSTEM AND PROCEDURE**

The CPO shall be responsible for assessment of current systems and procedures and to assure compliance with these Policies.

### **9.3 IMPLEMENTATION AND MAINTENANCE**

Cost effective controls shall be implemented and maintained to achieve appropriate inventory and warehouse objectives.

### **9.4 REPORTS AND FIELD AUDIT REQUIREMENT**

At any time, the CPO may direct or require reports or field audits to measure levels of compliance and shall direct correction of any deficiencies discovered.

### **9.5 PERIODIC FORECAST OF REQUIREMENTS AND USAGE**

As required under routine established procedure or as directed by the CPO, Corporation staff shall prepare periodic forecasts of requirements to identify and report upward or downward shifts in projected usage, thereby mitigating inventory surpluses or shortages resulting from inventory replenishment decisions or techniques based solely on historical usage.

## SECTION 10 - RHODE ISLAND VENDOR IDENTIFICATION PROGRAM (RIVIP)

### 10.1 UTILIZATION OF RIVIP

- 10.1.1 Advertisement of Solicitations. Except for purchases solicited pursuant to the provisions for Small Purchases set forth in Section 6.5.4 hereof and any other category exempt from competitive bidding requirements, the Corporation's Invitations for Bid and RFPs shall be advertised or made available (i) on the Corporation's website; and (ii) through the electronic Rhode Island Vendor Identification Program (RIVIP) system in the section or on the page applicable to procurements by quasi-public agencies.
- 10.1.2 Availability of RIVIP; Adherence to General Principles in RISPA. Pursuant to RISPA § 37-2-12, the Corporation may but is not required to utilize the centralized purchasing function of the State. The Corporation through its existing internal purchasing function shall adhere to the general principles, policies, and practices set forth in RISPA. The Corporation may utilize RIVIP to search and identify MPAs, and may order MPA items directly from vendors in accordance with procedures established by the CPO, as the need arises.