

STATE OF RHODE ISLAND PROCUREMENT REGULATIONS (Amended January 2011)

PURSUANT TO CHAPTER 37 - 2 OF THE GENERAL LAWS OF RHODE ISLAND STATE PURCHASES

PURPOSE OF THE REGULATIONS: These regulations have been developed to provide a framework for implementation of the letter and intent of State Purchasing Law, Chapter 37-2 of the General Laws of Rhode Island. The procurement activities of all state agencies are governed by this document. Among other provisions, the legislation and regulations set forth herein prohibit state agency administrators from committing funds or entering into agreements without the **express** written authorization of the Chief Purchasing Officer. Each agency director must be familiar with these regulations and must indoctrinate his/her personnel in their implementation.

LEGISLATIVE INTENT: The major thrust of the legislation is the creation of a framework for enhanced opportunities for competitive procurement and increased accountability for state officials through the centralization of purchasing functions for state agencies. The legislation names the Director of the Department of Administration the state's Chief Purchasing Officer and requires all state agencies and commissions to adhere to certain mandates of the law and comply with regulations, policies and procedures promulgated by the Chief Purchasing Officer. Certain public agencies are not under the jurisdiction of the Chief Purchasing Officer but must adhere to all requirements of the legislation.

ADMINISTRATIVE PROCEDURES ACT: On July 10, 1989, House Bill 89-H 5000 Substitute A as amended (known as the "Lamb Legislation"), an Act Relating to State Purchases, was signed into law. The Act repealed in its entirety Chapter 37-2 of the General Laws of Rhode Island, and substituted new language to institute legal mandates based on the Model Procurement Act published by the American Bar Association. The legislation, effective when the Governor signed the bill, made provision for a January 1, 1990, implementation date. In accordance with the Administrative Procedures Act (Title 42, Chapter 35 of the General Laws of Rhode Island), a Public Hearing was held on December 7, 1989, on the draft regulations promulgated by the Chief Purchasing Officer, pursuant to the requirements of Chapter 37-2. In addition to comments provided at the hearing, written comments and suggestions were received from state and public agencies and from trade organizations. Consideration of these comments and further dialogue demonstrated that, due to the complexity and depth of the requirements of the new law, refinements and additions to the regulations should be considered in relation to a relevant body of administrative procedures. Therefore, in accordance with the provisions of the Administrative Procedures Act, after consideration was given to these comments, interim Emergency Regulations were filed on March 15, 1990, with all additions, deletions, or other modifications subject to further public commentary. A minor technical revision was filed on April 2, 1990, and the final regulations filed with the Secretary of State on October 12, 1990. In April of 1994 Emergency Regulations were filed and a public hearing on the changes was held in May of 1994. Further technical revisions were filed in November of 1994. This document has been published to incorporate new requirements and to re-codify and/or clarify existing regulations. In January of 1995 updated Regulations were filed with the Secretary of State. Amended Regulations were

filed with the Secretary of State in January of 2009. Amended Regulations were filed with the Secretary of State in November of 2010 and became effective in January of 2011.

FORMAT: These regulations have been developed in a manner which attempts to avoid legalistic terminology to the extent practicable to enhance the ability of all affected persons, agencies and suppliers to understand and meet the requirements of Rhode Island law. However, in certain instances, the exact language of the enabling legislation has been used due to its specificity, clarity, or inclusiveness. Language copied precisely from the enabling legislation is indicated by a citation in bold print preceding the quotation. If the language is a rephrasing of the legislation for the sake of brevity or clarity, the reference is preceded by the phrase "in accordance with." Because the order in which the regulations have been presented differs from the enabling legislation a different codification system has been used. Each Section has been assigned a title and unique number.

SECTION 1 - GENERAL PROVISIONS

1.1 PURPOSES AND POLICIES

1.1.1 The underlying purposes and policies of these regulations are:

1.1.1.1 To simplify, clarify, and modernize purchasing activities undertaken by the State of Rhode Island and its local public agencies;

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 state.

1.1.1.5 To provide increased economy in state and public agency 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 provide for clearly defined accountability and responsibility for procurement actions.

1.1.2 Administrative Practices and Policies

1.1.2.1 Competition: The State of Rhode Island will operate an effective procurement system by obtaining goods and services within a competitive environment whenever possible.

The primary method of assuring that procurements are to the advantage of the State of Rhode Island, will be the use of competitive bidding procedures.

Contract awards shall be made to the lowest responsive and responsible bidder, taking into consideration the reliability of the bidder, the qualities of the materials, equipment or supplies to be furnished, their conformity with the specifications, the purposes for which required, terms of delivery and the best interests of the state.

1.1.2.2 Centralization: The State of Rhode Island will operate an effective procurement system by establishing a centralized purchasing authority responsible for the promulgation and oversight of rules, regulations, policies and procedures for the implementation of all laws relating to purchasing activities. The State of Rhode Island will provide centralized purchasing support services to assure that equity and professional expertise are employed in the purchase of goods and services.

1.1.2.3 Responsibility and Accountability: All state agency officials shall be responsible for verbatim compliance with purchasing legislation enacted by the General Assembly and with all related policies, rules, regulations, procedures and codes promulgated by the Chief Purchasing Officer and shall be held accountable for violations of the spirit, intent and letter of these governing requirements.

All state employees shall be responsible for carrying out their designated functions with care, integrity and a sense of responsibility to the taxpayers of Rhode Island for providing public services in the most cost-effective manner possible.

1.2 APPLICATION

1.2.1 In accordance with Section [37-2-4], Chapter 37-2, RIGL, shall apply to every expenditure of public funds except as otherwise provided by law, by the State of Rhode Island or a public agency under any contract or like business agreement, excepting only those contracts or like business agreements between the state and its political subdivisions or other governments. It shall also apply to the disposal of state supplies. Nothing in Chapter 37-2 or in the regulations promulgated hereunder shall prevent any governmental body or department or division from complying with the terms and conditions of any grant, gift, bequest or co-operative agreement.

1.2.2 Regulations promulgated by the Chief Purchasing Officer in accordance with the authority and requirements set forth in Chapter 37-2, RIGL, shall apply to the procurements of every state governmental body with the following exceptions:

1.2.2.1 Secretary of State printing, advertising, and election expenses [37-2-74]. – All printing, binding and advertising and election expenses in connection with all primaries and elections, advertising Rhode Island, and all legislative printing, including the printing of the public laws and acts and resolves, shall be purchased by the Secretary of State and in respect to said purchases the Department of State shall be exempt from the requirements of Chapter 37-2 which relate to the function of purchasing.

1.2.2.2 General Assembly [22-11-3(5/6)] The Joint Committee on Legislative Management shall have the exclusive responsibility for procurement for the General Assembly: Office space, supplies, equipment, professional and technical assistants, rental, installation and maintenance of equipment.

1.2.2.3 [37-2-12(1)] A public agency does not have to utilize the centralized purchasing of the state but the public agency, through its existing internal purchasing function, shall adhere to the general principles, policies and practices set forth in this chapter [37-2].

1.2.2.4 Public agencies may utilize the state Central Purchasing Authority as a procurement agency provided that such activity is conducted in accordance with all purchasing policies, procedures and regulations promulgated by the Chief Purchasing Officer.

1.3 GENERAL DEFINITIONS

1.3.1 [37-2-7(1)] "Business" shall mean any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or other legal entity through which business is conducted.

1.3.2 [37-2-7(4)] "Construction" shall mean the process of building, altering, repairing, improving or demolishing any public structures or building, or other public improvements of any kind to any public real property. It does not include the routine maintenance or repair of existing structures, buildings, or real property performed by salaried employees of the state in the usual course of their job.

1.3.3 [37-2-7(8)] "Data" shall mean recorded information, regardless of form or characteristic.

1.3.4 [37-2-7(9)] "Designee" shall mean a duly authorized representative of a person holding a superior position.

1.3.5 [37-2-7(11)] "Governmental body" shall mean any department, commission, council, board, bureau, committee, institution, legislative body, agency, government corporation, including, without limitation, the Board of Governors for Higher Education and Board of Regents - Elementary and Secondary Education or other establishment of the executive, legislative, or judicial branch of the state.

1.3.6 [37-2-7(12)] "May" shall mean permissive.

1.3.7 [37-2-7(14)] "Person" shall mean any business, individual, organization or group of individuals.

1.3.8 [37-2-7(15)] "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, including description of requirements, selection and solicitation of sources, preparation and award of contracts, and all phases of contract administration.

1.3.9 "Proprietary Information" shall mean information or data describing technical processes, mechanisms, or operational factors that a business wishes to keep from general public view in order to maintain competitive capabilities in the market. See "trade secret."

1.3.10 "Protest" shall mean a complaint about a governmental action or decision brought by a prospective bidder, a bidder, a contractor, or other interested party to the appropriate administrative section with the intention of achieving a remedial result.

1.3.11 Public Agency. In accordance with Chapter 37-2-7(16) of the RIGL, a "public agency" shall be defined as any of the following agencies and "any other body corporate and politic which has been hereto fore or which is hereinafter created or established within this state excepting cities and towns":

Rhode Island Industrial and Recreational Facilities Authority
Rhode Island Port Authority and Economic Development Corporation
Rhode Island Industrial Facilities Corporation
Rhode Island Public Buildings Authority
Rhode Island Housing and Mortgage Finance Corporation
Rhode Island Solid Waste Management Corporation
Rhode Island Public Transit Authority
Rhode Island Student Loan Authority
Howard Development Corporation
Water Resources Board Corporate
Rhode Island Health and Education Building Corporation
Rhode Island Higher Education Assistance Authority
Rhode Island Turnpike and Bridge Authority
Blackstone Valley (Sewer) District Commission
Narragansett Bay Water Quality District Commission
Rhode Island Public Telecommunications Authority
Convention Center Authority
Channel 36 Foundation

1.3.12 [37-2-7(18)] "Purchasing agency" shall mean any governmental body which enters into a contract to procure supplies, services or construction or the Central Purchasing Authority acting on behalf of another governmental body.

1.3.13 [37-2-7(20)] "Services" shall mean the rendering, by a contractor, of its time and effort rather than the furnishing of a specific end product, other than reports which are merely incidental to the required performance of services. "Services" does not include labor contracts with employees of state agencies.

1.3.14 [37-2-7(21)] "Shall" shall mean imperative.

1.3.15 [37-2-7(25)] "State" shall mean the State of Rhode Island and any of its departments or agencies and public agencies.

1.3.16 "State agency" shall mean any state governmental body other than the General Assembly or public body as defined herein.

1.3.17 "Trade Secret" shall mean any aspect of a business or its operation not made available to competitors. See "proprietary information."

1.3.18 [37-2-7(24)] "Using Agency" shall mean any governmental body[/]public agency of the state which utilizes any supplies, services or construction procured under this chapter [37-2].

1.4 DOCUMENTATION AND REPORTS

1.4.1 Purchase Reports

1.4.1.1 [37-2-54(9)] The Department of Administration shall maintain records of all purchases and sales made under its authority and shall make periodic summary reports of all transactions to the Chief Purchasing Officer, the Governor, and the General Assembly.

1.4.1.2 [37-2-54(9)] The Chief Purchasing Officer shall also report trends in costs and prices, including savings realized through improved practices, to the above authorities.

1.4.1.3 Sole Source, Emergency and Small Purchases

1.4.1.3.1 In accordance with Section [37-2-37] the Purchasing Agent 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 (1) name each contractor, and (2) state the amount and type of each contract.

1.4.1.3.2 All documentation of contracts made for such procurements shall be retained for a period of five (5) years and made available for public inspection.

1.4.2 Adequate written records shall be maintained in purchasing files to document procurement activities, reasons for selection of the supplier's product and justification of price.

1.4.2.1 At a minimum, documentation shall include adequate justification of source selection and pricing.

1.4.2.2 The extent of documentation may vary with user agency needs and requirements and the value and complexity of the purchase.

1.4.2.3 Procurement officials shall be required to provide an "audit trail" for every purchase. Such documentation shall be recorded and maintained in accordance with procedures established by the Purchasing Agent. Purchasing personnel shall document and maintain records of all actions with respect to a purchase for the purpose of:

1.4.2.3.1 providing background information to assure that informed decisions are made at each step in a procurement;

1.4.2.3.2 rationale for action taken;

1.4.2.3.3 providing information for reviews and audits conducted by purchasing management and audit agencies; and

1.4.2.3.4 furnishing facts in the event of litigation.

1.4.3 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 for which he/she is responsible.

1.4.3.1 Annually the Director/Chief Executive of each user agency shall submit to the Chief Purchasing Officer for approval, a list of agency officials who shall have the authority to act on behalf of the agency. The approved list shall be placed on file at the Department of Administration Offices of Purchases, Accounts and Control and Budget.

1.4.3.1.1 All authorizations shall be specific as to:

1.4.3.1.1.1 maximum levels of expenditure commitment, program account;

1.4.3.1.1.2 persons authorized to call Office of Purchases personnel to obtain information or provide clarification on requisitions; and

1.4.3.1.1.3 officials who will have the authority to decide whether a situation requires an emergency purchasing action and who will be responsible for following emergency purchasing procedures.

1.4.3.1.2 The Chief Purchasing Officer shall have the right to reject for cause the authorization of any official to represent an agency in procurement transactions.

1.4.3.2 State Purchase Orders shall require the original signature of the Chief Purchasing Officer, the Purchasing Agent or his designee.

1.4.3.3 Requisitions shall require the original signature of an official designated by the user agency Director/Chief Executive as a agent authorized to act on his behalf for procurement transactions.

1.4.3.4 Requisitions submitted to the Office of Purchases shall require the original signature of an official designated by the Budget Officer as responsible for certifying as to the availability of funds for purchasing actions.

1.4.4 Documentation records may be in the form of copies, microfilms, computer files or other means permitted in accordance with procedures established and published by the Chief Purchasing Officer or shall be original documents as required by law or the State Controller.

1.4.5 Audit of contractors records.

1.4.5.1 In accordance with [37-2-34(2)] the Department of Administration may audit the books and records of any person who has submitted cost or pricing data for certain negotiated contracts or change orders at any time until the period of record retention as set forth in 37-2-34(3) shall have expired. The right to audit hereunder shall only extend to those books and records reasonably connected with cost or pricing data submitted in accordance with 37-2-28. (Note: Actual reference is to 37-2-27, which addresses prequalification of construction management vendors; 37-2-28 addresses cost and pricing data, so an assumption was made that the latter was the correct reference.)

1.4.5.1.1 "Certain negotiated contracts or change orders" shall mean negotiated contracts exceeding fifty thousand dollars (\$50,000) and negotiated change orders exceeding twenty five thousand dollars (\$25,000).

1.4.5.2 [37-2-34(3)] The Department of Administration or the Auditor General may audit the books and records of a contractor or any subcontractor under any negotiated contract or subcontract other than a firm fixed-price type contract, provided, however, that this subsection shall not limit the right to audit as set forth in subsection (2) of this section [37-2-34].

1.4.5.3 [37-2-34(2/3)] Such 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 [37-2-36(2)] All documents involved in any procurement in which collusion is suspected shall be retained until the Attorney General gives notice that they may be released, and all such documents shall be made available to the Attorney General or his designee upon request.

1.4.7 In accordance with [37-2-6] every determination required by Chapter 37-2 and the policies contained herein shall be in writing and based upon written findings of fact by the public official making the determination. These determinations and written findings shall be retained in an official contract file in the Office of the Chief Purchasing Officer or in the Office of the using agency or public agency administering the contract. For the purposes of this section, the Office of Purchases shall be considered synonymous with the "Office of the Chief Purchasing Officer."

1.4.8 [37-2-18(a-h)] Each bid, together with the name of the bidder, shall be recorded and an abstract made available for public inspection, except as otherwise provided for pursuant to RIGL 37-2-18 (a)-(h) "Competitive Sealed Bidding" and these regulations.. Subsequent to the awarding of a bid, all documents pertinent to the awarding of the bid shall be made available and open to public inspection, except as otherwise provided for pursuant to RIGL 37-2-18 (a)-(h) "Competitive Sealed Bidding" and these regulations and retained in the bid file.

1.4.8.1 "Bid Abstract" shall mean a summary of responsive bids to a solicitation.

1.4.8.2 All documentation records shall be subject to public disclosure with the following exceptions:

1.4.8.3.1 Information of a proprietary nature submitted by vendors, except as otherwise provided for pursuant to RIGL 37-2-18 (a)-(h) "Competitive Sealed Bidding" and these regulations; and

1.4.8.4.2 Information furnished by a bidder in connection with an inquiry related to responsibility.

1.4.8.5 The Purchasing Agent shall assure that information not in the public domain is not divulged, except as otherwise provided for pursuant to RIGL 37-2-18 (a)-(h) "Competitive Sealed Bidding" and these regulations .

1.4.8.6 Bids shall not be available for public inspection at the bid opening, except as otherwise provided for pursuant to RIGL 37-2-18 (a)-(h) "Competitive Sealed Bidding" and these regulations. Abstracts of bid information shall be available for public inspection at the Office of Purchases no later than ten (10) working days after an award has been made, except as otherwise provided for pursuant to RIGL 37-2-18 (a)-(h) "Competitive Sealed Bidding" and these regulations.

1.4.8.7 Requests for access to records other than bid abstracts shall be made in writing and signed by the applicant, except as otherwise provided for pursuant to RIGL 37-2-18 (a)-(h) "Competitive Sealed Bidding" and these regulations..

1.4.8.8. The Purchasing Agent shall have a reasonable time to respond to requests for access to information, except as otherwise provided for pursuant to RIGL 37-2-18 (a)-(h) "Competitive Sealed Bidding" and these regulations.

1.4.8.9. Reviews of document records shall be permitted by appointment only and shall be conducted under the supervision of an Office of Purchases official, except as otherwise provided for pursuant to RIGL 37-2-18 (a)-(h) "Competitive Sealed Bidding" and these regulations..

1.4.8.10 No documentation shall be removed from the premises of the Office of Purchases without the written consent of the Chief Purchasing Officer.

1.5 BREACH OF CONTRACT DISPUTES

1.5.1 [37-2-46] Authority to resolve contract and breach of contract controversies. - Prior to the institution of arbitration or litigation concerning any contract, claim, or controversy, the Chief Purchasing Officer is authorized, subject to any limitations or conditions imposed by regulations, 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 Department of Administration on behalf of the state or any state agency, including a claim or controversy based on of contract, mistake, misrepresentation, or other cause for contract modification or rescission, but excluding any claim or controversy involving penalties or forfeitures prescribed by statute or regulation where an official other than the Chief Purchasing Officer is specifically authorized to settle or determine such controversy.

1.5.1.1 "Contract dispute" shall mean a circumstance whereby a contractor and the state user agency are unable to arrive at a mutual interpretation of the requirements, limitations, or compensation for the performance of a contract.

1.5.1.2 The Purchasing Agent shall be authorized to resolve contract disputes between contractors and user agencies upon the submission of a request in writing from either party, which request shall provide:

1.5.1.2.1 a description of the problem, including all appropriate citations and references from the contract in question,

1.5.1.2.2 a clear statement by the party requesting the decision of his interpretation of the contract, and

1.5.1.2.3 a proposed course of action to resolve the dispute.

1.5.1.3 The Purchasing Agent shall determine whether:

1.5.1.3.1 the interpretation provided is appropriate,

1.5.1.3.2 the proposed solution is feasible, or

1.5.1.3.3 another solution may be negotiable.

1.5.1.4 The Purchasing Agent may assess dollar damages against vendors or contractors determined to be non-performing or otherwise in default of their contractual obligations equal to the cost of remedy incurred by the State, and make payment of such damages a condition for consideration of any subsequent award. Failure by the vendor or contractor to pay such damages shall constitute just cause for disqualification and **rejection**, suspension, or debarment.

1.5.2 [37-2-47] Failure to render timely decisions. This section shall apply to a claim or controversy arising under contracts between the state and its contractors. If such a claim or controversy is not resolved by mutual agreement, the Chief Purchasing Officer or his designee, shall promptly issue a decision in writing. A copy of the decision shall be mailed or otherwise furnished to the contractor. If the Chief Purchasing Officer does not issue a written decision within thirty (30) days after written request for a final decision, or within such longer period as might be established by the parties to the contract in writing, then the contractor may proceed as if an adverse decision had been received.

1.5.3 Legal Remedy for Disputes

1.5.3.1 Public Works Contracts - In accordance with [37-2-48] disputes involving public works contracts shall be resolved in accordance with the provisions for arbitration set forth in Chapter 37-16 of the General Laws of Rhode Island.

1.5.3.2 Other Contracts - [37-2-49(2)] Any person, firm or corporation, having a lawfully authorized written contract with the state at the time of or after January 1, 1990 may bring an action against the state on the contract, including but not limited to actions either for breach of contracts or for enforcement of contracts or for both. Any such claim shall be commenced in Superior Court within three (3) years from the date of completion specified in the contract and shall be tried by the court sitting without a jury. Such case shall receive a priority position on the calendar. All defenses in law or equity, except the defense of governmental immunity, shall be preserved to the state.

1.5.3.3 [37-2-49(3)] The Superior Court shall enter its findings as a judgment of the court, and such judgment shall have the same effect and be enforceable as any other judgment of the court in civil cases, subject to the provisions of this Chapter.

1.5.3.4 [37-2-49(4)] Appeals may be taken to the Supreme Court under the same conditions and under the same practice as appeals are taken from judgments in civil cases rendered by the Superior Court.

1.5.3.5 [37-2-49(5)] If damages awarded on any contract claim under this section exceed the original amount of the contract, such excess shall be limited to an amount which is equal to the amount of the original contract.

1.5.3.6 [37-2-49(6)] No person, firm or corporation shall be permitted more than one (1) money recovery upon a claim for the enforcement of or for breach of contract with the state.

1.5.4 Settlement of dispute

1.5.4.1 [37-2-50(1)] The first five hundred thousand dollars (\$500,000) of any arbitration award or Superior court judgment against the state awarding damages on a contract claim under the provision of state purchasing law shall be a necessary governmental expense and payment shall be approved by the Chief Purchasing Officer and paid by the State Treasurer out of the General Fund upon warrants drawn by the Chief Purchasing Officer. Appropriations for these judgments shall be continued appropriations.

1.5.4.2 [37-2-50(2)] The Governor shall request an appropriation from the next regular session of the General Assembly for the purpose of satisfying all such awards and judgments granted during the preceding two (2) fiscal years which are not satisfied under [provisions set forth in Chapter 37-2-50(1) of the RIGL].

1.6 RESOLUTION OF PROTESTS

1.6.1 [37-2-51] The decision of any official, board, agent, or other person appointed by the state 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 of the agency; 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 or capricious or characterized by the abuse of discretion or clearly unwarranted exercise of discretion.

1.6.2 Authority to resolve protests

1.6.2.1 [37-2-52(1)] The Chief Purchasing Officer or his designee shall have authority to determine protests and other controversies of actual or prospective bidders or offerors in connection with the solicitation or selection for award of a contract.

1.6.2.2 [37-2-52(2)] Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation or selection for award of a contract may file a protest with the Chief Purchasing Officer. A protest or notice of other controversy must be filed promptly and in any event within two (2) calendar weeks after such aggrieved person knows or should have known of the facts giving rise thereto, except as otherwise provided for pursuant to RIGL 37-2-

18 (a)-(h) “Competitive Sealed Bidding” and these regulations... All protests or notices of other controversies must be in writing.

1.6.2.3 [37-2-52(3)] The Chief Purchasing Officer shall promptly issue a decision in writing. A copy of that decision shall be mailed or otherwise furnished to the aggrieved party and shall state the reasons for the action taken.

1.6.3 [37-2-53] In the event of a protest timely filed under Section 37-2-52(2) of this chapter, and except as otherwise provided for pursuant to RIGL 37-2-18 (a)-(h) “Competitive Sealed Bidding” and these regulations, -, the state shall not proceed further with the solicitation or award involved, until the Chief Purchasing Officer makes a written and adequately supported determination that continuation of the procurement is necessary to protect substantial interest of the state.

1.6.3.1 The protestor may request access to documentation to support his protest.

1.6.3.2 The Purchasing Agent shall assure that information not in the public domain is not divulged, except as otherwise provided for pursuant to RIGL 37-2-18 (a)-(h) “Competitive Sealed Bidding” and these regulations.

1.6.3.3 Requests for access to records shall be made in writing and signed by the protestor, and, where applicable, shall be in compliance with the requirements of RIGL 37-2-18 (a)-(h) “Competitive Sealed Bidding” and these regulations.

1.6.3.3.1 The Purchasing Agent shall have a reasonable time to respond to requests for access to information, and, where applicable, the Purchasing Agent’s response shall be in compliance with the requirements of RIGL 37-2-18 (a)-(h) “Competitive Sealed Bidding” and these regulations. .

1.6.3.3.2 Reviews of document records shall be permitted by appointment only and shall be conducted under the supervision of an Office of Purchases official, except as otherwise provided for pursuant to RIGL 37-2-18 (a)-(h) “Competitive Sealed Bidding” and these regulations..

1.6.3.3.3 No documentation shall be removed from the premises of the Office of Purchases without the written consent of the Chief Purchasing Officer.

1.7 IMPREST FUNDS

1.7.1 [37-2-55(1)] Subject to the provisions of this chapter any budget unit, when provided for by appropriation or when authorized by the Department of Administration may establish one (1) or more imprest cash funds for the purpose of making disbursements requiring prompt cash outlay, and to carry out the provisions of this chapter. The State Treasurer upon warrants to the Chief Purchasing Officer based upon a requisition for the head of the budget unit, shall pay to the head of such budget unit the amount necessary to establish such a fund.

1.7.1.1 "Budget Unit" shall mean state agency or department.

1.7.1.2 "Head" shall mean the Chief Executive Officer, Director or Executive Director.

1.7.1.3 Prior to the establishment of any imprest fund the agency shall submit to the State Controller a document demonstrating the need for such a fund. If the Controller determines that a such need exists and that adequate accounting controls are provided, he shall obtain the approval of the state Budget Office and the Chief Purchasing Officer to establish the fund.

1.7.2 [37-2-55(2)] A custodian shall be designated by the head of the budget unit and certified by the Department of Administration after appropriate instruction and testing as qualified to administer the fund. The custodian shall, as often as may be necessary to replenish the fund and at least once each month file with the Chief Purchasing Officer a schedule of the disbursements from the fund, accompanied by appropriate vouchers and statements of indebtedness therefore approved by the head of the budget unit, and by a certificate as to the condition of the fund. The amount of the total of the approved voucher shall be paid to the custodian of the fund on the warrant of the Chief Purchasing Officer, and the amount shall be devoted to reimbursement of the fund. Any question relative to the amount to be allowed in any imprest cash fund, the expenditure thereof, the accounting therefore, and the repayment thereof to the state treasurer, shall be determined by the Chief Purchasing Officer.

1.7.2.1 The Chief Purchasing Officer may delegate authority and responsibility for oversight of imprest fund cash flow to the State Controller.

1.7.3 [37-2-55(3)] The agency head shall be responsible for expenditures authorized from such funds, and the custodian shall be responsible for administration of the fund. Each agency head and custodian shall be separately bonded in the amount by which the total authorization for the fund exceeds the state blanket bond for such officials.

1.7.4 [37-2-55(4)] A post audit of each imprest fund shall be conducted.

1.7.4.1 The audit may be conducted by the Bureau of Audits, the Auditor General or by an independent audit firm approved by the Auditor General.

1.7.4.2 Costs for the audit shall be the responsibility of the budget unit responsible for the imprest fund.

1.7.5 [37-2-55(5)] Each imprest fund shall lapse with the appropriation for the next ensuing year or when authorized by the Chief Purchasing Officer, [whichever occurs first].

1.7.6 [37-2-55(6)] Where work is done on public projects by the state through the use of its own personnel or facilities in whole or in part, which work is not subject to the provisions of law for competitive bidding, the budget unit having such work performed may, when authorized by the Chief Purchasing Officer, establish an imprest cash fund for the purpose of defraying the expenses of the proposed project, which fund shall not exceed at any time an amount equal to twenty-five percent (25%) of the anticipated total cost of the project.

1.8 PURCHASING FOR MUNICIPALITIES AND REGIONAL SCHOOL DISTRICTS.
[37-2-56] The Chief Purchasing Officer shall permit, subject to such terms and conditions as he may prescribe, any municipality or municipalities or regional school district of the state, to participate in contract for the purchase of materials, supplies and equipment entered into by the

Purchasing Agent. Any municipality or regional school district desiring to participate in purchase contracts shall file with the Chief Purchasing Officer a certified copy of a resolution of its council or regional school committee requesting that it be authorized to participate in purchase contracts of the Purchasing Agent and agreeing that it will be bound by such terms and conditions as the Purchasing Agent may prescribe, and that it will be responsible for payment directly to the vendor under each purchase contract.

1.8.1 Nothing herein shall prevent a municipality or regional school district, other political subdivision, or public agency from negotiating with vendors who have been awarded contracts for goods or services by the State, or from accepting a State contract as the basis for the award of a requirement by the municipality, regional school district, other political subdivision, or public agency, where rules, regulations, charter or ordinance permit.

1.9 GOODS PRODUCED IN THE REPUBLIC OF SOUTH AFRICA [37-2-57] In conformity with the policy of divestment established in Section 35-10-12, the state of Rhode Island, including all of its departments, agencies, authorities, and instrumentalities, shall refrain from the purchase of any goods which are known to be wholly produced in the Republic of South Africa. Such goods are those which are in their final form for use or consumption without additional processing, assembly, or manufacturing. Further, the state will give preference in its purchasing to companies not doing business in, or with, the Republic of South Africa. The Chief Purchasing Officer shall promulgate such rules and regulations as are necessary and proper to carry out the purpose of this section.

1.9.1 Firms expressing an interest in being placed on the state Bidders List shall be required to report whether the goods (in their final form) which the firm intends to supply are made in the Republic of South Africa.

1.10 ADMINISTRATIVE RESPONSIBILITY FOR CONTRACTUAL AND OTHER EXPENDITURES WHICH ARE NOT PROCUREMENTS

1.10.1 [37-2-7(5)] "Contract" shall mean all types of agreements, including grants and orders, for the purchase or disposal of supplies, services, construction, or any other items. It shall include awards, contracts of a fixed price, cost, cost-plus-a-fixed-fee, or incentive type; contracts providing for the issuance of job or task orders, leases, letter contracts, purchase orders and construction management contracts. It also includes supplemental agreements with respect to any of the foregoing. With respect to the procurement regulations set forth herein, "contract" shall not apply to labor contracts with employees of state agencies.

1.10.1.1 Contracts for concessions (cafeteria services, vending machines, recreational programs, transportation services, etc.) shall be deemed not to be procurements.

1.10.2 Except for contracts for grants-in-aid, award of non-procurement contracts shall be subject to the same open, competitive procedures which apply to procurements.

1.11 [37-2-54(3)] No purchase or contract shall be binding on the state or any agency thereof unless approved by the Department [of Administration] or made under general regulations which the Chief Purchasing Officer may prescribe.

1.11.1 The Chief Purchasing Officer may delegate authority to enter into non-procurement contracts; or

1.11.2 The Chief Purchasing Officer may direct the Purchasing Agent to oversee and/or administer competitive procedures prior to the award of non-procurement contracts, including, but not limited to, grants, interagency cooperative agreements, and concessions. However, such administrative authority shall not constitute responsibility for the selection of recipients of such contracts, or the substance of the accompanying agreements.

1.12 New Employee Verification Requirement through E-Verify (or any successor thereto) – Pursuant to Executive Order 08-01, all Executive Branch departments, agencies and personnel shall require that any and all persons and businesses, including but not limited to grant recipients, contractors and their subcontractors, and vendors, doing business with or proposing to engage in a business relationship with an Executive Branch department or agency of the State of Rhode Island certify that said person or business has registered with and is utilizing a federally approved work authorization program/service, such as “E-Verify,” to ensure that newly hired employees of said person or business have complied with all applicable federal immigration laws.

1.12.1 Definitions

For the purposes of this Section and any related provisions of these Regulations the following definitions shall apply:

1.12.1.1 “Contract” shall mean all types of agreements including, but not limited to, State grants; orders for the purchase or disposal of supplies, services, construction, or any other item; awards; contracts of a fixed-price, cost, or incentive type; contracts providing for the issuance of job or task orders; letter contracts; purchase orders; Master Price Agreements; Agency Price Agreements; and, construction management contracts.

1.12.1.2 “Contractor” shall mean any person or business with one or more employees having a contract with any Executive Branch entity as defined in section 1.12.1.3.

1.12.1.3 “Executive Branch” shall mean any department, commission, council, board, bureau, committee, institution, agency, authority or other entity, together with their respective officers and employees, under the supervision or control of the Chief Executive of the State government, including the Board of Governors for Higher Education and Board of Regents-Elementary and Secondary Education.

1.12.1.4 "Federally approved work authorization program" or “E-Verify” shall mean any federal electronic verification of work authorization program or service operated by the United States Department of Homeland Security (“USDHS”), or any equivalent electronic federal work authorization program or service operated by the USDHS, whose purpose is to verify information of newly hired employees, pursuant to the Immigration Reform and Control Act of 1986 (IRCA), P.L. 99-603. Any other electronic federal work authorization program operated by the USDHS or any equivalent federal electronic work authorization program recognized by the USDHS to verify information of newly hired employees, pursuant to the Immigration Reform

and Control Act of 1986 (IRCA), P.L. 99-603, as such work authorization programs become available, may be used in the alternative, subject to review and approval by the Chief Purchasing Officer.

1.12.1.5 “Doing business with or proposing to engage in a business relationship with an Executive Branch department or agency of the State of Rhode Island” shall mean registration with the Rhode Island Vendor Information Program (“RIVIP”), the submission of a bid offering, the response to a “Request for Proposals,” “Request for Quotations,” “Request for Information or LOI,” receipt of a monetary grant; or the entering into, renewal or extension of a contract to provide goods or services to an Executive Branch department or agency which has resulted in or is expected to result in the issuance of a Purchase Order.

1.12.1.6 “Subcontractor” shall mean any person or business, at any tier, who provides goods and or services required to be supplied or performed by a Contractor under a Contract with the Executive Branch.

1.12.2 Requirements

1.12.2.1 The Executive Branch shall implement Executive Order 08-01 and Procurement Regulation 1.12 as follows:

1.12.2.2 The Executive Branch shall not do business with or award a contract to any person or business unless the contractor, and its subcontractors, registers with and participates in the E-Verify program to ascertain the work eligibility information of all new employees and so certifies its compliance to the Executive Branch in accordance with section 1.12.2.4. Purchase Orders or other similar contracts shall not be entered into, extended or renewed by the Executive Branch unless the person or business doing business with the State complies with this section.

1.12.2.3 Subcontractors – No person or business doing business with the Executive Branch shall enter into a subcontract directly related to the delivery of goods or services to the Executive Branch unless the subcontractor has registered with and utilized the E-Verify program to verify the work eligibility information of all new employees and so certifies in accordance with section 1.12.2.4.

1.12.2.4 Any person or business doing business with the Executive Branch, shall certify compliance with the requirement to register and utilize E-Verify on a form acceptable to the Purchasing Agent. Completion of such certifications shall be a material term and condition of any contract with the Executive Branch.

1.12.2.5 The Rhode Island Vendor Information Program (“RIVIP”) certification form, which is submitted with a bid or proposal to do business with the Executive Branch, shall include a provision that represents express agreement from a vendor to register and utilize E-Verify, and to certify that subcontractors of the vendor also comply with the requirements of this regulation. Failure to certify E-Verify registration and use on the RIVIP form shall result in the vendor’s bid or proposal being considered non-responsive. Any non-responsive bid or proposal shall be **rejected** from consideration. The terms and conditions included in the RIVIP certification form are general terms and conditions of the agreement with the Executive Branch.

1.12.2.6 Failure to certify compliance with the requirement to register and utilize E-Verify or otherwise meet the requirements contained in this section shall be grounds for contract termination, cancellation and other sanctions, including but not limited to suspension and debarment at the discretion of the Purchasing Agent. Any sanctions or contract terminations or cancellations that occur related to the requirements of this section shall be in accordance with the R.I. Gen. Laws § 37-2-1, *et seq.* and these Procurement Regulations.

1.12.2.7 All persons and businesses doing business with the Executive Branch shall maintain any and all documents relating to participation in the E-Verify program for not less than three (3) years after ceasing to do business with the Executive Branch or as required by law, whichever period is longer. Any such records shall be available upon request by the Rhode Island Department of Administration. The Department of Administration reserves the right to conduct random audits of contractor records to confirm compliance with the requirement of these regulations.

1.12.2.8 Enforcement – The Purchasing Agent or his/her designee shall be responsible for reviewing complaints alleging non-compliance in accordance with these Procurement Regulations.

1.12.2.9 All requirements of the E-Verify Program consistent with this regulation shall be considered additional requirements of these regulations.

1.12.2.10 The requirements of this section shall not be used for purposes other than to verify the eligibility of individuals legally qualified to work in the State of Rhode Island in accordance with federal laws and regulations relating thereto. Any discrimination or abuse of these requirements directed at individuals legally entitled to work in the United States shall not be tolerated by the Rhode Island Department of Administration and shall be subject to sanctions in accordance with the provisions of these regulations and the State Purchasing Act at the discretion of the Chief Purchasing Officer.

1.12.2.11 These regulations are in addition to and not a substitute for any other employment requirements required by state and/or federal law, or specific requirements included in a solicitation issued by the Executive Branch.

1.12.2.12 In the event of an emergency procurement in accordance with R.I. Gen. Laws 37-2-21(b) and Procurement Regulation 9.6, the Purchasing Agent may waive the E-Verify requirements to any extent practicable with the understanding that any ongoing relationship that occurs after the emergency has ceased shall require compliance with these regulations.

1.12.3 General Information

The "Federal work authorization program" or "E-Verify" began as the "Basic Pilot Program," an electronic program which compares employer-provided U.S. Citizenship and Immigration Services Form 1-9 information with Social Security Administration and USDHS databases to verify the employment authorization of newly hired employees. This database can be accessed from the USDHS, U.S. Citizenship and Immigration Services, internet website at: <http://www.uscis.gov/portal/site/uscis>.

1.12.4 Exceptions

1.12.4.1 These regulations shall not apply to any labor contracts between the State of Rhode Island and collective bargaining agents for employees of State agencies or contracts for the purchase, sale, lease or license of real estate.

1.12.4.2 Participation in E-Verify is voluntary for a surety performing under a takeover agreement entered into with an agency pursuant to a performance bond unless otherwise provided by agreement.

SECTION 2 - PROCUREMENT STRUCTURE AND ACCOUNTABILITY

2.1 DEFINITIONS

2.1.1 In accordance with [37-2-7(3)], for state agencies the Chief Purchasing Officer shall be the Director of the Department of Administration.

2.1.2 In accordance with [37-2-7(19)] "purchasing agent" shall mean:

2.1.2.1 any person authorized by a governmental body in accordance with procedures prescribed by regulations, to enter into and administer contracts and make written determinations and findings with respect thereto; or

2.1.2.2 any authorized representative acting within the limits of authority; or

2.1.2.3 the person appointed in accordance with Chapter 37-2-1 as the administrator of the state's central purchasing and contracting authority.

2.1.3 For the purposes of the regulations contained herein, the definition set forth in Section 2.1.2.3 shall apply to the terms "State Purchasing Agent" or "Purchasing Agent".

2.2 CENTRALIZED PROCUREMENT AUTHORITY FOR STATE AGENCIES SET FORTH IN CHAPTER 37-2

2.2.1 [37-2-12(1)] 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 any state agency as established by the General Assembly, shall be under the jurisdiction of the state's Chief Purchasing Officer.

2.2.1.1 [37-2-54(3)] No purchase or contract shall be binding on the state or any agency thereof unless approved by the department [of Administration] or made under general regulations which the Chief Purchasing Officer may prescribe.

2.2.1.1.1 Purchasing Authority shall be defined as the authority to act on behalf of the state to commit funds, enter into binding agreements or contracts, dispose of state property, or in any other manner control procurement or obligate the State.

2.2.1.1.2 No state agency official shall have the right to exercise purchasing authority through written or oral agreements or contracts or in any other way financially or otherwise obligate the State without the express written consent of the Chief Purchasing Officer.

2.2.1.1.3 No state agency may place orders or negotiate with suppliers or potential suppliers without the participation or express approval of the Chief Purchasing Officer.

2.2.1.2 The Office of Purchases within the Department of Administration shall be the state's centralized purchasing and contracting authority.

2.2.2 [37-2-1] Within the Department of Administration there shall be a purchasing agent who shall be appointed by the Chief Purchasing Officer with the approval of the Governor, and who shall now and hereafter be in the classified service of the state. [37- 2-11] The Purchasing Agent shall be the administrator of the Office of Purchases and shall:

2.2.2.1 [37-2-11(1)] Serve as the central procurement and contracting agent of the state;

2.2.2.2 [37-2-11(2)] Recommend regulations, rules, and procedures to the Chief Purchasing Officer;

2.2.2.3 [37-2-11(3)] Purchase or otherwise acquire, or, with the approval of the Chief Purchasing Officer to delegate the purchase and acquisition of, all supplies, services and construction for the state.

2.2.3 [37-2-54(1)] The Chief Purchasing Officer, except as otherwise provided by law, shall purchase, or shall delegate and control the purchase of, the combined requirements of all spending agencies of the state including, but not limited to, interests in real property, contractual services, rentals of all types, supplies, materials, equipment, and services, except where competitive bids may not be required, and except as otherwise authorized by RIGL 37-2-18 (a)-(h) "Competitive Sealed Bidding" and these regulations.

2.2.3.1 Delegated Purchase Authority shall mean the transfer of Purchasing Authority from the Chief Purchasing Officer or the Purchasing Agent to another state official in accordance with the provisions and limitations of Chapter 37-2 of the General Laws of Rhode Island and the regulations set forth herein.

2.2.3.1.1 The Purchasing Agent may recommend to the Chief Purchasing Officer that purchasing authority be delegated in circumstances where cost-effectiveness and efficiency are best served.

2.2.3.1.2 The Purchasing Agent may delegate purchase authority with the written approval of the Chief Purchasing Officer.

2.2.3.1.3 Requested Delegated Purchase Authority shall be specifically justified by an agency director/chief executive and authorized by the Purchasing Agent in advance of any purchase action.

2.2.3.1.4 All delegated purchasing authority shall be specific as to:

2.2.3.1.4.1 The names and titles of individuals authorized by an agency director to commit funds on behalf of his agency

2.2.3.1.4.2 The accounts, commodities and levels of expenditures for which the agency director authorizes individuals to commit funds

2.2.3.1.5 The Chief Purchasing Officer shall transmit on an annual basis a list of officials approved to authorize delegated purchase transactions to the Office of Accounts and Control and the Budget Office.

2.2.3.1.6 The implementation of Delegated Purchasing Authority shall be monitored by the Purchasing Agent and the State Controller. If at any time a user agency is deemed to be in violation of purchasing rules, regulations, policies and procedures, the Chief Purchasing Officer or the Purchasing Agent, with the approval of the Chief Purchasing Officer, may revoke any Delegated Purchasing Authority privilege which has been previously granted.

2.2.4 [37-2-9(1)] The Chief Purchasing Officer shall have power and authority over, and may, except as otherwise expressly provided in Chapter 37-2 of the RIGL, adopt regulations pursuant to Section 42-35-2 governing the purchasing management and control of any and all supplies, services, and construction, and other items required to be purchased by the state. The Chief Purchasing Officer shall consider and decide matters of policy with regard to state procurement. The Chief Purchasing Officer shall have the power of review with respect to the implementation of regulations and policy determinations.

2.2.5 [37-2-10] The Chief Purchasing Officer may provide for the distribution of the Department's procurement activities and functions among the various divisions within the Department. However, in accordance with Chapter 37-2-13(3) the Chief Purchasing Officer shall not delegate his power to issue state purchasing regulations to any other person or agency, and no state purchasing regulations shall be issued except as approved by the Chief Purchasing Officer.

2.2.6 [37-2-54(3)] The Department of Administration shall have supervision over all purchases by the various spending agencies, except as otherwise provided by law, and shall prescribe rules and regulations to govern purchasing by or for all such agencies, subject to the approval of the Chief Purchasing Officer and shall publish a manual of procedures to be distributed to agencies and to be revised upon issuance of amendments to such procedures.

2.2.7 [37-2-54(4)] The Chief Purchasing Officer shall require agencies to take and maintain inventories of plant and equipment and the Department of Administration shall conduct periodic physical audits of inventories.

2.2.8 [37-2-54(5)] The Department of Administration shall require all agencies to furnish an estimate of specific needs for supplies, materials and equipment to be purchased by competitive bidding for the purpose of permitting scheduling of purchasing in large volume. It shall establish and enforce schedules for purchasing supplies, materials, and equipment. In addition, all agencies shall submit to the Department of Administration prior to the beginning of each fiscal year an estimate of all needs for supplies, materials and equipment during that year which will have to be acquired through competitive bidding.

2.2.8.1 The Chief Purchasing Officer may require any agency to submit annual or multi-year plans for proposed procurements of supplies, material, equipment, and supplemental services.

2.2.8.2 The Chief Purchasing Officer may require the sub-mission of procurement plans with the submission of budget requests.

2.2.9 [37-2-54(6)] The Department of Administration shall have power, with the approval of the State Properties Committee, to transfer between departments, to salvage, to exchange, and to condemn supplies, equipment, and real property.

2.2.9.1 [37-2-45] Supply Disposition Process. - The Chief Purchasing Officer shall sell or otherwise dispose of all property (including any interest in real property) of the state which is not needed or has become unsuitable for public use, or would be more suitable consistent with the public interest for some other use, as determined by the Chief Purchasing Officer subject to the approval of the State Properties Committee and pursuant to the provisions of Title 37, Chapter 7 [RIGL]. The determination of the Chief Purchasing Officer shall be set forth in an order and shall be reached only after review of a written request by the agency desiring to dispose of the property. Such request shall describe the property and state the reasons why the agency believes disposal should be effected. All instruments required by law to be recorded which convey any interest in any such real property so disposed of shall be executed and signed by the acquiring authority pursuant the provisions of Title 37, Chapter 7.

2.2.9.1.1 Disposal of equipment which has attained the end of its useful life, as determined by the Purchasing Agent, and is intended for use as a "one-for-one" tradein applied to the procurement of new, similar equipment shall be exempted from review by the State Properties Committee.

2.3 STRUCTURE AND RESPONSIBILITIES FOR CENTRALIZED STATE AGENCY PROCUREMENT

2.3.1 The Director of Administration/Chief Purchasing Officer shall be responsible for:

2.3.1.1 Policy formulation and dissemination;

2.3.1.2 Establishing standards;

2.3.1.3 Defining and promulgating procedures;

2.3.1.4 Monitoring and evaluating central purchasing activity to ensure that the state is attaining the most advantageous procurements possible; and

2.3.1.5 Determining courses of action when the policies and procedures outlined herein require interpretation and/or when situations arise where conflicts exist or occur.

2.3.2 The State Purchasing Agent shall be responsible for:

2.3.2.1 Assuring adherence to state procurement laws, regulations, rules, codes and procedures;

2.3.2.2 Supervising procurement activity within the Office of Purchases;

2.3.2.3 Assuring that delegated purchasing authority is exercised properly;

2.3.2.4 Establishing and maintaining good relations with suppliers and potential suppliers without conflicts of interest;

2.3.2.5 Assuring that procurements are made in a context which supports to the greatest extent possible:

2.3.2.5.1 competitive purchases,

2.3.2.5.2 opportunities for minority and women owned/operated businesses, and

2.3.2.5.3 opportunities for local Rhode Island enterprises;

2.3.2.6 Assuring that a pool of responsible, qualified suppliers is developed, maintained and utilized;

2.3.2.7 Assuring compliance with appropriate competitive bidding procedures throughout the state's procurement system;

2.3.2.8 Promoting standardization of requirements to increase opportunities for the economic advantages of combined purchasing;

2.3.2.9 Establishing and monitoring standards of quality;

2.3.2.10 Assuring that goods and services are delivered according to specified requirements; and

2.3.2.11 Supervising the state's warehousing and inventory activities.

2.3.2.12 Assuring all persons and businesses doing business with the Executive Branch register and utilize the services of the E-Verify program in accordance with section 1.12 of these regulations to ensure compliance with federal and state law.

2.3.3 The State Budget Officer shall be responsible for reviewing all purchase documentation submitted by user agencies to the Office of Budget for certification as to the availability of the funds necessary to support a purchasing commitment and authorizing expenditures as requested.

2.3.4 The State Controller shall be responsible for:

2.3.4.1 Reviewing all purchase documentation submitted by user agencies to the Division of Accounts and Controls to assure compliance with promulgated rules, regulations, policies and procedures;

2.3.4.2 Forwarding all documents manifesting clear or suspected compliance violations to the Purchasing Agent for appropriate action;

2.3.4.3 Encumbering purchase obligations and processing payments for goods and services certified as delivered in accordance with the terms of purchase orders; and

2.3.4.4 Monitoring administration of imprest cash accounts.

2.3.5 All state agency chief executives shall be accountable to the Chief Purchasing Officer for the purpose of carrying out the state's procurement activities. User agency chief executives shall be responsible for:

2.3.5.1 Assuring the availability of funds to sustain purchase commitments;

2.3.5.2 Enforcing adherence to applicable policies and procedures;

2.3.5.3 Thoughtful planning which will:

2.3.5.3.1 promote opportunities for effective procurement, e.g., economies of scale, and

2.3.5.3.2 reduce the occurrence of crisis situations which detract from the state's ability to make the most advantageous purchases possible; and

2.3.5.4 Careful development of specifications to:

2.3.5.4.1 Promote speed of bid implementation,

2.3.5.4.2 Reduce misunderstanding and conflicts, and

2.3.5.4.3 Enhance quality, competition, and control.

2.3.5.5 Implementation of administrative control systems with respect to all procurement actions, including, but not limited to, verification of contract deliverables and contractor responsibilities, maintenance of records, and all other activities relating to contract administration.

2.3.5.6 Providing written documentation to the Purchasing Agent when a contractor fails to perform as a contract requires.

2.3.6 The Director of Economic Development shall be responsible for:

2.3.6.1 Certifying vendors as meeting state (Chapter 37-14.1-3) and/or federal legal and regulatory requirements to be considered Small Disadvantaged Businesses, e.g., minority- or women-owned and controlled businesses; and

2.3.6.2 Conducting programs to enhance the capability of small disadvantaged businesses to obtain state contracts by providing assistance in obtaining the skills and information necessary to compete successfully in response to state solicitations for bids..

2.3.7 The Attorney General shall be responsible for:

2.3.7.1 Investigation of cases involving breach of contract or suspected instances of criminal activity, e.g., collusion, fraud; and

2.3.7.2 Prosecution of cases involving criminal activity.

2.3.8 The Ethics Commission shall be responsible for:

2.3.8.1 Investigating cases of suspected violation of state Conflict of Interest laws and regulations and

2.3.8.2 Referring to the Attorney General cases where determinations of violations have been made.

2.4 RELATIONSHIP OF OFFICE OF PURCHASES AND USER AGENCIES.

[37-2-14] The Purchasing Agent shall maintain a close and cooperative relationship with the using agencies of the state. Any using agency may at any time make recommendations concerning procurement to the Purchasing Agent.

2.4.1 Office of Purchases personnel shall be cognizant of the fact that they work for a service agency which other state agencies rely upon as a source for obtaining materials and services.

2.4.2 The Office of Purchases shall foster good relations with other departments and provide all reasonable assistance in accomplishing the objectives of these departments.

2.4.3 Personnel in the Office of Purchases shall maintain a close working relationship with other departments involved with the specification, ordering, inspection, storage, handling or use of material.

2.4.4 The Office of Purchases shall solicit advice from user agencies, as appropriate, on major or complex procurements, with regard to selection of bidders, evaluation of proposals, negotiation plans, and final source determination.

2.5 VIOLATIONS OF PURCHASING LAWS AND REGULATIONS

2.5.1 Deliberate disregard for regulations, policies and procedures shall be subject to disciplinary action, including dismissal of state employees and debarment of vendors conducting business with the state.

2.5.2 Violations of the purchasing code of ethics set forth herein, shall be subject to appropriate sanctions including: censure, dismissal, suspension, and debarment.

2.5.2.1 The Chief Purchasing Officer shall have authority to impose sanctions, in accordance with personnel administration requirements, on any state agency employee who has been found to have violated the state purchasing code of ethics.

2.5.2.2 The Purchasing Agent shall have the authority to impose sanctions, in accordance with personnel administration requirements, on any employee of the Office of Purchases.

2.5.2.3 The Purchasing Agent shall have the authority to suspend or debar suppliers in accordance with the requirements set forth herein.

2.5.3 Suspected violations of state conflict of interest laws and regulations regarding procurement or the state procurement code of ethics set forth herein shall be reported in confidence to the Chief Purchasing Officer and in accordance with the rules and regulations established by the State Ethics Commission.

2.5.4 Violations of purchasing laws, regulations, policies, and procedures shall be reported to the Chief Purchasing Officer or the Purchasing Agent who shall have authority to apply sanctions.

2.5.5 [37-2-36(1)] When for any reason collusion is suspected among any bidders or offerors, a written notice of the facts giving rise to such suspicion shall be transmitted to the Attorney General.

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

SECTION 3 - CODE OF ETHICS AND PROFESSIONAL BEHAVIOR

3.1 All state employees shall be subject to the provisions of Chapter 36-14 of the General Laws of Rhode Island and all regulations promulgated by the Rhode Island Ethics Commission, and any special provisions of this section.

3.2 [36-14-1] It is the policy of the state of Rhode Island that public officials and employees must adhere to the highest standard of ethical conduct, respect the public trust and the rights of all persons, be open, accountable and responsive, avoid the appearance of impropriety, and not use their positions for private gain or advantage.

3.3 [36-14-5] Prohibited Activities under the Rhode Island Conflict of Interest Statutes.

3.3.1 No person subject to the code of ethics shall have any interest, financial or otherwise, direct or indirect, or engage in any business, employment, transaction or professional activity, or incur any obligation of any nature, which is in substantial conflict with the proper discharge of his duties or employment in the public interest and of his responsibilities as prescribed in the laws of this state.

3.3.2 No person subject to the code of ethics shall accept other employment which will either impair his independence of judgment as to his official duties or employment or require him, or induce him, to disclose confidential information acquired by him in the course and by reason of his official duties.

3.3.3 No person subject to the code of ethics shall willfully and knowingly disclose, for pecuniary gain, to any other person, confidential information acquired by him in the course of and by reason of his official duties or employment or use any such information for the purpose of pecuniary gain.

3.3.4 No person subject to the code of ethics shall use in any way his public office or confidential information received through his holding any public office to obtain financial gain, other than that provided by law, for himself or spouse (if not estranged) or any dependent child or business associate or any business by which said person is employed or which said person represents.

3.3.5 No person subject to this code of ethics or spouse (if not estranged) or dependent child or business associate of such person or any business by which said person is employed or which such person represents, shall solicit or accept any gift, loan, political contribution, reward, or promise of future employment based on any understanding that the vote, official action or judgment of said person would be influenced thereby.

3.3.6 No person shall give or offer to any person covered by this code of ethics, or to any candidate for public office, or to any spouse (if not estranged) or dependent child or business associate of such person, or any business by which said person is employed or which such person represents, any gift, loan, political contribution, reward, or promise of future employment based on any understanding that the vote, official action or judgment of said person would be influenced thereby.

3.4 In accordance with the provisions of Chapter 37-2-9(2)(o), RIGL, the following supplemental State Code of Procurement Ethics shall be adopted.

3.4.1 Universal Code of Ethics applicable to all state employees involved in the procurement process:

3.4.1.1 To consider, first, the interests of the state in all transactions;

3.4.1.2 To support and carry out state policies;

3.4.1.3 To buy without prejudice;

3.4.1.4 To avoid any conflict of interest with respect to procurement, or the appearance thereof;

3.4.1.5 To obtain the maximum ultimate value for each dollar of expenditure;

3.4.1.6 To subscribe to and work for honesty and truth in buying and selling, and to denounce all forms and manifestations of commercial bribery; and

3.4.1.7 To respect obligation and to require that obligations to the state be respected, consistent with good business practice.

3.4.2 Relations With Suppliers - A primary responsibility of purchasing personnel shall be to maintain good relations with suppliers and potential suppliers. Relationships shall be maintained in a manner which assures that no conflict of interest situations arise.

3.4.2.1 All potential suppliers shall be afforded the courtesy of a fair opportunity to present their capabilities and products.

3.4.2.2 Reasonable effort shall be made to provide fair bidding opportunities to all qualified and interested suppliers.

3.4.2.3 [37-2-9(2)(g)] State officials shall observe a commitment to maintain the confidentiality of information submitted by suppliers and potential suppliers.

3.4.2.3.1 Supplier proposals shall be treated in confidence with regard to technical approach and terms and conditions.

3.4.2.3.2 Distribution of information contained in supplier proposals shall be limited to those having a "need to know" as determined by the Purchasing Agent.

3.4.2.3.3 Under no circumstances shall confidential information be made available to other vendors.

3.4.2.4 Personnel are prohibited from engaging in any conduct which may tend to cause any existing or prospective supplier of goods or services to believe that his relationship with the state will be affected by his purchasing or failing to purchase goods or services from any representative of the state.

3.4.2.5 Under no circumstances may a vendor provide to a procurement official nor may a purchasing agent (any person authorized by a state agency in accordance with procedures prescribed herein acting within the limits of authority to commit state funds to obtain goods and services) accept any goods or services, regardless of monetary value, for personal use for less than fair market value.

3.4.2.6 Personnel are prohibited from accepting gifts or gratuities in any form for themselves or their families (spouses, parents, children, sister, brothers, in-laws, etc.) from contractors, subcontractors or suppliers now furnishing or desiring to furnish supplies or services to the Office of Purchases.

3.4.2.6.1 Gifts or gratuities shall mean, but are not limited to money, merchandise, advertising media (any merchandise carrying a vendor's name or logo), gift certificates, trips (individually or in groups), cock-tail parties, dinners, evening entertainment, sporting events, etc.

3.4.2.7 Social interaction between personnel involved in the procurement process and any present or prospective contractors, subcontractors or suppliers and their representatives creating the impression of favoritism shall be avoided.

However, this regulation does not prohibit social interactions between state employees and representatives of suppliers which are clearly of a personal nature, in which the parties involved would normally be expected to reciprocate, and in which no reimbursement from the state is sought by the employee. For example, the supplier's representative may be an acquaintance, neighbor, relative or former state employee. The responsibility rests on the individual employee to regulate his/her own actions and to seek advice from Purchasing Management or the Ethics Commission if concerned about an apparent conflict of interest.

3.4.3 It shall be the obligation of all state employees to avoid conflicts of interest with respect to procurement, and to report promptly to the Chief Purchasing Officer all instances where a conflict exists or is suspected to exist.

3.4.3.1 Conditions under which a conflict of interest may be held to exist include, but are not limited to the following:

3.4.3.1.1 Where a procurement official with a principal responsibility for a category of goods or services:

- receives personal enrichment as a result of an award, or

- holds a secured financial interest in a firm offering such goods or services, or,

- receives indirect or subsequent income, by way of employment, retainer, consultancy, or other remuneration from a firm offering such goods or services, or,

- has an immediate family member or blood relative holding an equity interest, or a management or directorial position in a firm offering such goods or services;

3.4.3.1.2 Where any state employee divulges or withholds information (including, but not limited to, price, design, or requirement information) with the intent or result that one vendor is competitively advantaged over another.

3.4.3.1.3 Under any circumstances described in Chapter 36-14 of the General Laws of Rhode Island.

3.4.4 The Chief Purchasing Officer shall have the responsibility to investigate all claims with respect to conflicts of interest in procurement, to issue determinations which define whether or not conflict, in fact, existed, and to take action to resolve such conflict.

3.4.4.1 Resolution of conflict may include, but shall not be limited to, the following measures:

3.4.4.1.1 Reassignment of the procurement official or other state employee involved;

3.4.4.1.2 Termination of employment of the procurement official or other state employee involved; and

3.4.4.1.3 Debarment of any and all vendors who may be involved.

3.4.5 All employees of the Office of Purchases shall be required to sign and submit annual disclosure statements with respect to Purchasing Conflicts of Interest. Any and all purposeful or willful withholding of knowledge of or disclosure of conflict shall be held to be fraudulent activity, and may result in the immediate termination of the employment of that individual.

3.4.6 Membership and active participation in the meetings and activities of local purchasing organizations are encouraged.

3.4.7 Samples provided by vendors shall be deemed to be the property of the state which the Chief Purchasing Officer may determine appropriate for donation to charitable organizations or needy individuals.

3.4.8 Promotional programs and campaigns available through airlines, rental companies, hotels, motels, etc., which provide bonuses and rebates, and result from state paid travel, shall be applied toward state use or benefit and not personal use.

3.4.9 Purchasing personnel shall not make purchases for personal use in the name of the state or through the use of any state procurement forms.

SECTION 4 - VENDOR QUALIFICATION, PREQUALIFICATION AND SOLICITATION

4.1 DEFINITIONS

4.1.1 "Bidder" shall mean any person submitting a competitive bid in response to a solicitation, and except as otherwise defined pursuant to RIGL 37-2-18 (a)-(h) "Competitive Sealed Bidding" and these regulations.

4.1.2 "Bidders Lists" shall mean lists maintained by the Purchasing Agent containing the names and addresses of suppliers of various goods and services from whom bids, proposals, and quotations may be solicited.

4.1.3 A "Handicapped Business Enterprise" shall mean a small business concern, owned and controlled by one or more handicapped persons certified by the Rhode Island Handicapped Products Committee to meet the definition established by Chapter 37-2.2-2 of the General Laws of Rhode Island.

4.1.4 A "Minority Business Enterprise" shall mean a small business concern, owned and controlled by one or more minorities or women certified by the Rhode Island Department of Economic Development to meet the definition established by Chapter 37-14.1 of the General Laws of Rhode Island. A "small disadvantaged business" shall mean a minority business enterprise.

4.1.5 "Offeror" shall mean an individual who proposes a specific offer to sell goods and services to the state, whether in response to a bid or request for proposals or unsolicited.

4.1.6 "Proposer" shall mean a person submitting a proposal in response to a Request for Proposal.

4.1.7 "Qualified Bidder" shall mean a bidder determined by the Purchasing Agent to meet standards of business competence, reputation, financial ability, and product quality, and except as otherwise herein pursuant to RIGL 37-2-18 (a)-(h) "Competitive Sealed Bidding" and these regulations.

4.1.8 [37-2-15(6)] "Responsible Bidder" shall mean a qualified bidder who has the capability in all respects including financial responsibility to perform fully the contract requirements, and the integrity and reliability which will assure good faith performance, and except as otherwise defined pursuant to RIGL 37-2-18 (a)-(h) "Competitive Sealed Bidding" and these regulations.

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4.1.9 A "Small Disadvantaged Business" shall refer to either a "minority business enterprise" or a "handicapped business enterprise" as defined above.

4.1.10 "Supplier" shall mean an actual or potential contractor; a vendor.

4.1.11 "Vendor" shall mean a supplier or contractor.

4.2 RESPONSIBILITY AND AUTHORITY OF THE PURCHASING AGENT – Unless notified in writing by the Chief Purchasing Officer to the contrary, the Purchasing Agent shall be authorized to act on behalf of the Chief Purchasing Officer in carrying out the responsibilities and authority set forth herein for selection, evaluation, approval, debarment, suspension, rejection, and restriction of bidders and offerors.

4.3 RESPONSIBILITIES OF BIDDERS AND OFFERORS

4.3.1 [37-2-24(1)] A reasonable inquiry to determine the responsibility of a bidder or offeror may be conducted. A written determination of responsibility of a bidder or offeror shall be made and it shall be made in accordance with regulations issued by the Chief Purchasing Officer. The failure of a bidder or offeror to supply information promptly in connection with an inquiry related to responsibility may be grounds for a determination of non-responsibility.

4.3.1.1 "Prompt" shall mean five (5) working days unless otherwise specified by the Purchasing Agent, and except as otherwise defined pursuant to RIGL 37-2-18 (a)-(h) "Competitive Sealed Bidding" and these regulations.

4.3.1.2 [37-2-24(2)] Except as otherwise provided, by law, information furnished by a bidder or offeror pursuant to this Section may not be disclosed outside of the Division of State Purchasing or the purchasing agency administering the contract without prior written consent of the bidder or offeror, and except as otherwise permitted or required pursuant to RIGL 37-2-18 (a)-(h) "Competitive Sealed Bidding" and these regulations.

4.3.1.3 The Purchasing Agent may utilize factors such as financial capability, reputation, management, (and, as to Executive Branch contracts, registration with and utilization of the E-

Verify program), etc., to evaluate the responsibility and qualifications of potential suppliers in order to develop a list of prospective bidders qualified to be sent invitations to bid.

4.3.1.4 Ability to meet performance bond requirements set forth for public works contractor in Chapters 37-12 and 37-13-14 shall be valid criteria for determination of responsibility, provided that the Chief Purchasing Agent may waive such requirement for good cause for contracts not exceeding fifty thousand dollars (\$50,000).

4.3.1.4.1 "Public Works Contractor" shall mean a contractor, in accordance with Chapter 37-12-1 of the General Laws of Rhode Island, every person (including co-partnerships, joint enterprises and corporations) being awarded contracts by the departments of administration or transportation for construction, improvement, completion or repair of any public building, or portion thereof, and as otherwise defined pursuant to RIGL 37-2-18 (a)-(h) "Competitive Sealed Bidding" and these regulations.

4.3.1.5 The Purchasing Agent may require interested suppliers to submit completed state Bidder Registration Forms to the Office of Purchases for consideration by the Purchasing Agent.

4.3.1.5.1 A copy of the state's General Terms and Conditions for contracts shall be distributed with the Bidder Registration Form.

4.3.1.5.2 The Bidder Registration Form shall be signed by a representative of the supplier who has the capacity to enter into contracts. The signature shall be an original signature made in ink and dated by the signatory. The signature shall affirm that:

(a) any and all information on the Registration Form is true and accurate;

(b) the existence of relationship (blood, spousal, adoptive, financial, etc.) between a principal of the firm and any state employee where a conflict of interest may exist has been disclosed; and

(c) that falsification of information contained on a signed Registration Form may be grounds for criminal charges of perjury and that conviction of such charges may be grounds for debarment.

4.3.1.5.3 As a prerequisite condition for contract award, the Purchasing Agent may require any bidder to complete a Bidder Registration Form and/or submit current certifications of financial responsibility, affirmative action compliance, drug-free and barrier free environment, and status as small, women-owned and/or disadvantaged businesses.

4.4 BIDDERS LISTS.

Bidders Lists shall be maintained by the Purchasing Agent consisting of the names and addresses of suppliers of various goods and services from whom bids, proposals, and quotations can be solicited.

4.4.1 Bidders Lists shall be formatted in a manner which identifies those suppliers certified as small disadvantaged businesses by the Rhode Island Department of Economic Development or the Handicapped Products Committee.

4.4.2 The Purchasing Agent or his designee may add to or delete suppliers from Bidders Lists based on information made available to him.

4.4.3 Bidders Lists may consist of:

4.4.3.1 Registered Suppliers - the names of interested suppliers who have submitted completed Bidder Registration Forms to the Office of Purchases which have been reviewed and approved by the Purchasing Agent.

4.4.3.2 Unregistered Suppliers - suppliers which have not expressed interest in selling to the state by submitting a Bidder Registration Form, but who have been determined by the Purchasing Agent, due to the nature of the firm's status in the market, to be responsible and qualified with regard to particular commodities. Inclusion of any firm on the Bidders List without a supporting registration form shall be permitted with the written approval of the Purchasing Agent.

4.4.4 The Purchasing Agent may disqualify a supplier, contractor, or subcontractor from participating in State Bidding Lists. Just cause for such determination may include but shall not be limited to:

4.4.4.1 Lack of a properly prepared and submitted Bidder Registration Form;

4.4.4.2 Refusal to submit a Bidder Registration Form;

4.4.4.3 Falsification of information on Bidder Registration or Certification Forms;

4.4.4.4 Suspension or debarment by the federal government;

4.4.4.5 Conviction of fraud or perjury;

4.4.4.6 Lack of competence, financial responsibility, or other limitations related to the ability of a supplier to provide the goods and services indicated on his Bidder Registration Form; or

4.4.4.7 Any reason stipulated in Section 4.8 of these regulations.

4.4.5 Based on the Purchasing Agent's review of a supplier's level of financial responsibility and/or qualification, the Purchasing Agent may restrict the items or size of orders for which a supplier will be solicited. Restriction shall relate to:

4.4.5.1 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.

4.4.5.2 limiting the scope/amount of goods and services for which the supplier may be solicited (e.g., categorizing a contractor by the size of construction projects he is deemed capable of undertaking).

4.4.6 The Purchasing Agent may require registered suppliers to resubmit updated Bidder Registration Forms annually.

4.4.6.1 [37-2-9.1] Bidder registration fee. -- The Chief Purchasing Officer may adopt regulations to establish an annual fee, of not less than twenty-five dollars (\$25.00), which shall be paid by all potential bidders requesting to subscribe to solicitation mailings for public bids for specific types of supplies, services, and construction during a fiscal year, and may waive said fee for Rhode Island firms. Additionally, the Chief Purchasing Officer may delegate to the Purchasing Agent the authority to waive said fee for an individual solicitation and to include unregistered bidders in the solicitation in the interest of expanding competition. Nothing herein shall prevent any interested party from submitting a bid in response to any solicitation of which they become aware.

4.4.7 The Office of Purchases shall maintain Vendor Information Files for the following documentation purposes:

4.4.7.1 General.

4.4.7.1.1 Bidder Registration Forms.

4.4.7.1.2 Results of investigations for prequalification, responsibility, suspension, debarment, restriction, and nonperformance.

4.4.7.1.3 Certifications.

4.4.7.1.4 Correspondence.

4.4.7.2 Bidding history.

4.4.7.3 Performance history.

4.4.7.3.1 Solicited and unsolicited reports regarding contract performance (e.g., quality, responsiveness) shall be recorded in the Vendor Information File.

4.4.7.3.2 Complaints shall be investigated by Office Purchases staff, the results submitted to the Purchasing Agent for adjudication, and the results documented and maintained in the Vendor Information File.

4.4.8 Potential bidders who have been determined by the Purchasing Agent to be brokers or jobbers shall not be included on State Bidders Lists.

4.4.9 Firms bidding on construction or building renovation must demonstrate an ability to perform a substantial portion of the subject work using their own forces. Bidders who do not maintain permanent workforces, or who propose to subcontract a disproportionate percentage of project work shall be considered unqualified, and the Purchasing Agent reserves the right to reject their offers.

4.5 PREQUALIFICATION OF CONTRACTORS

4.5.1 General Procurement - [37-2-25] The Chief Purchasing Officer may provide for prequalification of suppliers as responsible prospective contractors for particular types of

supplies, services, and construction. Solicitation mailing lists of potential contractors of such supplies, services, and construction shall include but need not be limited to such pre-qualified contractors. Prequalification shall not foreclose a written determination:

(1) Between the time of the bid opening or receipt of offers and the making of an award, that a pre-qualified supplier is not responsible; or

(2) That a supplier who is not pre-qualified at the time of bid opening or receipt of offers is responsible.

4.5.2 Prequalification information may be submitted within a time period subsequent to a project bidder's conference, which period has been specified in the bid solicitation.

4.5.3 The Purchasing Agent may conduct supplementary prequalification examinations of registered bidders prior to solicitation or award which include, but are not limited to:

4.5.3.1 requirement for additional certification(s);

4.5.3.2 requirement for demonstration of additional licensure;

4.5.3.3 requirement for recent financial information;

4.5.3.4 submission of an affirmative action employment plan; and/or

4.5.3.5 submission of the names of proposed small disadvantaged business subcontractors and the value of such subcontracts.

4.5.4 Inclusion of a supplier on Bidders Lists shall not constitute a prequalification determination for a specific procurement.

4.5.5 [37-2-26] Roads - Prequalification for a contractor who bids on road work for the Department of Transportation shall be conducted as follows:

4.5.5.1 The Chief Purchasing Officer may delegate responsibility and authority for evaluation of all or a portion of the evaluation of road work contractor prequalification documentation to the Director of the Department of Transportation.

4.5.5.1.1 Such delegation shall authorize the publication and implementation of policies and procedures which conform to the rules and regulations promulgated by the Chief Purchasing Officer in accordance with Chapter 37-2-26 of the General Laws of Rhode Island.

4.5.5.1.2 Such delegation shall be made in writing.

4.5.5.1.3 The Chief Purchasing Officer shall monitor the appropriateness and effectiveness of such delegation on a regular basis.

4.5.5.1.4 The Chief Purchasing Officer may rescind such authorization at any time provided that the rescission of such authority shall be conveyed in writing to the Director of the Department of

Transportation no less than thirty-five (35) working days prior to the effective date of the rescission.

4.5.5.2 Every bid solicitation shall include within the project specification document a description of the prequalification requirements set forth herein and any additional requirements established by the Department of Transportation.

4.5.5.3 Each bidder shall submit to the Office of Purchases with his bid, the following prequalification information:

4.5.5.3.1 [37-2-26(1)] A list of equipment in his possession and which he proposes to use on the contract if awarded to him. [The equipment listed shall be in operable condition.]

4.5.5.3.2 [37-2-26(2)] The name and qualifications of his superintendent or supervisory personnel to be assigned to the major features of the work.

4.5.5.3.3 [37-2-26(3)] His financial references and an original copy of his current financial statement.

4.5.5.3.4 [37-2-26(5)] The number of proposed trainees to be trained in each classification and training program as stated in the required contract provision for federal aid projects. (This information shall be submitted directly to the Department of Transportation External Equal Employment Opportunity Office for approval.)

4.5.5.3.5 [37-2-26(9)] Copies of letters directly from bonding and insurance companies indicating their willingness to furnish the required bonds and insurance for the work.

4.5.5.3.6 [37-2-26(7)] Four (4) copies on the company's letterhead of certification of nondiscrimination in equal employment opportunity.

4.5.5.3.7 [37-2-26(6)] The name of the individual who will act as equal employment opportunity officer for the company.

4.5.5.4 Prior to the Purchasing Agent executing a contract, the apparent successful contractor shall submit to and obtain approval from the Department of Transportation for the following:

4.5.5.4.1 [37-2-26(8)] The names of any proposed subcontractors and/or suppliers, indicating the phase and extent of the work which they will perform. If any proposed subcontractors have not performed similar work for the state, the contractor shall supply records of experience for work.

4.5.5.4.2 [37-2-26(4)] An executed contract agreement(s) between the contractor and the Department of Transportation approved qualified Disadvantaged Business Enterprise (DBE) to be utilized during the performance of the work.

4.5.6 Construction Management. In accordance with Chapter [37-2-27] a person who bids on a construction management contract shall provide the following information, which information shall constitute the pre-qualifications for a construction management contract:

4.5.6.1 Firm history - Name of the firm, location of principal and branch offices, length of time in business, firm ownership structure, and annual construction management volume for each of the past five (5) years including number of projects and total construction volume.

4.5.6.2 Personnel - Total number of the firm's personnel, other than secretarial/clerical, by professional or skill group and outside firms which will be used to provide such services as estimating, value engineering analysis, scheduling or computer services.

4.5.6.3 Experience - Information regarding projects which the firm has constructed during the past five (5) years, including those where the firm has served as construction manager: project name and address, year completed, type of project, construction cost, and a reference(s).

4.5.6.4 Project Staffing -

(a) The firm's proposed management staff for the project, including an organizational chart identifying the firm's key staff members and showing how each staff member interacts with other staff members assigned to the project, and

(b) A detailed resume for each key staff member which summarizes education, professional registration, professional society membership, construction experience, and construction management project experience.

4.5.6.5 Services -

(a) Scope of preconstruction phase services, including how such services are provided, with specific attention to the first budget estimate, methods of cost control, scheduling, value engineering and the method of reporting project status and schedule position;

(b) Scope of construction phase services and how such services are to be provided;

(c) The firm's method of working with the project architects, engineers, consultants and other planning team members; and

(d) The firm's method of coordinating the efforts of various trade contractors.

4.6 VENDOR DISQUALIFICATION

4.6.1 The Purchasing Agent may disqualify a supplier, contractor, or subcontractor from participating in state procurements. Disqualification may result in any of the following actions being taken:

4.6.1.1 Debarment - permanent removal from State Bidders Lists and exclusion from all subsequent procurements, and termination of all outstanding contracts; or

4.6.1.2 Suspension - temporary removal from State Bidders Lists and exclusion from subsequent procurements, and termination of outstanding contracts (at the discretion of the Purchasing Agent) for a specified period of time; or

4.6.1.3 Removal - deletion from State Bidders Lists (only), without interruption of outstanding contracts or the ability to participate in subsequent procurements; or

4.6.1.4 Rejection - lack of inclusion on State Bidders Lists or non-consideration of an offer submitted for a particular procurement, based on lack of demonstrated responsibility or competency.

4.6.2 Failure to meet the requirements of Section 1.12 that mandate vendors to register and utilize the E-Verify program is grounds for vendor disqualification from Executive Branch contracts and the other sanctions mentioned above.

4.7 Rejection AND REMOVAL

4.7.1 A vendor's offer for a specific procurement may be rejected for any of the causes described for suspension, or where, in the judgment of the Purchasing Agent, the vendor does not possess the capacity, capability, or integrity requisite for the procurement, or, as to Executive Branch contracts, fails to meet the requirements of section 1.12 mandating the registration with and utilization of the E-Verify program and certification related thereto, and except as otherwise provided for pursuant to RIGL 37-2-18 (a)-(h) "Competitive Sealed Bidding" and these regulations.

4.7.2 Failure to respond to three consecutive solicitations for products or services which a vendor has indicated an interest or ability in supplying on a Bidder Registration form, or a demonstrated lack of success in receiving awards, shall constitute grounds for removal from the Bidders List(s) in question.

4.8 DEBARMENT AND SUSPENSION

4.8.1 Applicability

4.8.1.1 A debarment or suspension judgment against a part of a corporate entity constitutes debarment or suspension of all of its divisions and all other organizational elements, except where the action has been specifically limited in scope and application, and may include all known corporate affiliates of a contractor, when such offense or act occurred in connection with the affiliate's performance of duties for or on behalf of the contractor, or with the knowledge, approval, or acquiescence of the contractor or one or more of its principals or directors, or where the contractor otherwise participated in, knew of, or had reason to know of the acts.

4.8.1.2 The fraudulent, criminal or other serious improper conduct of any officer, director, shareholder, partner, employee, or any other individual associated with a contractor may be imputed to the contractor when the conduct occurred in connection with the individual's performance of duties for or on behalf of the contractor, or with the contractor's knowledge, approval, or acquiescence. The contractor's acceptance of benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

4.8.1.3 As to Executive Branch contracts failure to register and utilize E-Verify as required in section 1.12 of these regulations is grounds for suspension or debarment. The severity of the sanction will be determined by the Purchasing Agent or his/her designee in accordance with the provisions below in this section.

4.8.2 Just cause for debarment may include, but shall not be limited to:

4.8.2.1 Conviction or final adjudication by a court or administrative agency of competent jurisdiction of any of the following offenses:

4.8.2.1.1 Criminal offense incident to obtaining or attempting to obtain a public contract or subcontract, or the performance of such contract or subcontract, in any jurisdiction, or

4.8.2.1.2 Criminal offense involving embezzlement, theft, fraud, perjury, forgery, bribery, falsification or destruction of records, receiving stolen property (or any other offense indicating a lack of business integrity or honesty which seriously and directly affects the contractor's present responsibility as a public contractor), or

4.8.2.1.3 Violation of state or federal antitrust laws relative to the submission of bids or proposals (including those proscribing price fixing between competitors, allocation of customers between competitors, and bid rigging), or

4.8.2.1.4 Violation of state or federal laws regulating campaign contributions;

4.8.2.1.5 Violation of state or federal laws regulating equal employment opportunity or handicapped access;

4.8.2.2 Violation of the terms of a public agreement or transaction so serious as to affect the integrity of any agency program;

4.8.2.3 Falsification of information on a bid submission or Bidder Registration form, subcontracting plan, or affirmative action plan;

4.8.2.4 Substantial nonperformance on two or more contracts;

4.8.2.5 Debarment by the federal government; or

4.8.2.6 Withdrawal, without written permission of the Purchasing Agent, of two or more bids after an award has been announced.

4.8.3 Just cause for suspension may include, but shall not be limited to:

4.8.3.1 Any cause for debarment, depending on the severity of the violation;

4.8.3.2 An indictment or any information filed by a public agency charging a criminal offense as described above for debarment;

4.8.3.3 Substantial evidence of willfully supplying materially false information incident to obtaining or attempting to obtain or performing any public contract or subcontract, or willful failure to comply with requirements imposed upon contractors or subcontractors by law or regulation;

4.8.3.4 Suspension by the federal government;

4.8.3.5 Substantial nonperformance on at least one contract;

4.8.3.6 Lack of responsibility evidenced by:

4.8.3.6.1 Withdrawal of two or more bids within a two-year period, even with the consent of the Purchasing Agent, or

4.8.3.6.2 Correction following public or formal opening of two or more bids within a two-year period, even with the consent of the Purchasing Agent, or

4.8.3.6.3 Rejection for non-responsiveness of two or more bids within a two-year period.

4.8.3.6.4 Failure to certify to register and utilize the E-Verify system in accordance with the section 1.12 of these regulations.

4.8.3.6.5 False certification of registering and utilizing the E-Verify system in accordance with the section 1.12 of these regulations.

4.8.4 A vendor or contractor who knowingly engages as a subcontractor, for a contract awarded by the State, a vendor or contractor then under a ruling of suspension or debarment by the State shall be subject to disallowance of cost, annulment or termination of award, issuance of a stop work order, debarment or suspension, as may be judged to be appropriate by the State Purchasing Agent.

4.8.5 The Purchasing Agent may suspend a vendor for not less than a three-month and not more than a two-year period, depending on the severity of a particular violation, provided however that where the cause of the suspension is a criminal indictment as described above, the suspension shall remain in force until such time as the court has disposed of the indictment.

4.8.6 Pest Control Services [37-2-73] Upon receipt of an order from the Director of Environmental Management pursuant to section 23-25-28(a)(1) RIGL, the Purchasing Agent shall take such steps as are necessary to insure that the named business or commercial applicator shall not be eligible to receive state contracts for pest control services for the duration of the period enumerated in said Director's order.

4.9 NOTIFICATION, PROTEST AND RECONSIDERATION

4.9.1 The Purchasing Agent shall notify in writing any vendor whom he intends to debar or suspend. Such notice shall:

4.9.1.1 state the nature of and, in the case of suspension, the duration of the sanction,

4.9.1.2 provide the vendor with the rationale for the decision, and

4.9.1.3 establish a specific time for reconsideration not less than two weeks nor more than three weeks within which the vendor may provide justification for why such action should not be implemented.

4.9.2 Where reconsideration has been requested in writing by a vendor, the Purchasing Agent shall, upon expiration of the reconsideration period, notify the affected vendor of his final decision. Where no such request is received, the action shall be implemented without notice.

4.9.3 Where issuance of a purchase order or other award to a particular vendor may compromise the best interests of the State, nothing herein prevents the Purchasing Agent from directing that a suspension or debarment take effect immediately.

4.9.4 No notice shall be required where the Purchasing Agent rejects the offer of a bidder for an individual procurement, or removes a registered bidder from one or more Bidders List(s), as described above.

4.9.5 A vendor who has been suspended, or rejected from one or more Bidders List(s), shall not be reinstated until he has submitted a written request for reinstatement to the Purchasing Agent, with evidence that the reason for suspension, rejection, or removal has been corrected.

4.9.6 Protests of decisions rendered by the Purchasing Agent shall be administered in accordance with the requirements of section 37-2-52 RIGL.

SECTION 5 – COMPETITIVE BID AND COMPETITIVE SEALED BID REVIEW AND SOURCE SELECTION

5.1 DEFINITIONS

5.1.1 "Bid" shall mean an executed document submitted by a bidder in response to an Invitation for bids, and except as otherwise defined pursuant to RIGL 37-2-18 (a)-(h) "Competitive Sealed Bidding" and these regulations, or a Request for Quotation.

5.1.1.1 "Firm Bid" shall mean a bid that binds the bidder until a stipulated time of expiration.

5.1.1.2 "Sealed Bid" shall mean a bid which has been submitted in a sealed envelope to prevent its contents being revealed or known before the deadline for the submission of all bids to enhance fair competition, and except as otherwise defined pursuant to RIGL 37-2-18 (a)-(h) "Competitive Sealed Bidding" and these regulations.

5.1.2 "Bid Abstract" shall mean a summary of responsive bids to a solicitation.

5.1.3 "Bid Bond" shall mean an insurance agreement in which a third party agrees to be liable to pay a certain amount of money in the event that a specific bidder, if his bid is accepted, failed to accept the contract as bid.

5.1.4 "Bid Deposit" or "Bid Security" or "Bid Surety" shall mean a sum of money or check deposited with and as instructed by the prospective purchaser to guarantee the bidder (depositor) will, if selected, accept the contract in accordance with the bid.

5.1.5 "Bid opening " shall mean the process through which bids are opened and the contents revealed for the first time to the state, other bidders and to the public.

5.1.6 "Bid Sample" shall mean a sample required of a bidder for examination, comparison, testing, and evaluation for the prospective purchaser.

5.1.7 "Collusive Bidding or Corrupt Combination" shall mean the response to bid invitations by two or more vendors who have secretly agreed to circumvent laws and rules regarding independent and competitive bidding.

5.1.8 "Commodity" shall mean an article of trade, a movable article of value, something that is bought or sold; any movable or tangible thing that is produced or used as the subject of barter or sale.

5.1.9 "Competition" shall mean the process by which two or more vendors vie to secure the business of a purchaser by offering the most favorable terms as to price, quality, delivery and/or service.

5.1.10 [37-2-15(2)] "Established catalogue price" shall mean the price included in the most current catalogue, price schedule or other form that:

(a) is regularly maintained by a manufacturer or vendor of an item; and

(b) is either published or otherwise available for inspection by customers; and

(c) states prices at which sales are currently or were last made to a significant number of any category of buyers, or to the general buying public for that item; and

(d) states prices which are obtained from the most recent industry wide publications and informational journals if any.

5.1.11 [37-2-15(3)] "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, which affect the economy and effectiveness in the operation or use of the product, such as reliability, maintainability, useful life, and residual value.

5.1.12 "Evaluation of Bid" 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 successful bidder.

5.1.13 [37-2-15(4)] "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 section 37-2-18 of this chapter, and except as otherwise defined pursuant to RIGL 37-2-18 (a)-(h) "Competitive Sealed Bidding".

5.1.14 "Proposal Evaluation Criteria" shall mean factors, usually weighted, relating to management capability, technical capability, manner of meeting performance requirements, price and other important considerations used to evaluate which proposer in a competitive negotiation has made the most advantageous offer.

5.1.15 [37-2-76.1)] "Recycled product" shall mean a product containing pre-consumer content and post-consumer content.

5.1.15.1 "Pre-consumer content" shall mean any material generated during any steps in the production of an end product, but does not include any waste material or byproduct that can be reused or has been normally reused within the same plant or another plant of the same parent company.

5.1.15.2 "Post-consumer content" shall mean those materials generated by a business or consumer which have served their intended end uses and which have been separated or diverted from solid waste. Printer's waste, lathe wastes, and other wastes generated during production of an end product and undistributed finished products are not "post-consumer content."

5.1.15.3 "Office paper products" shall mean any paper used by the state for the purpose of writing, printing, copying, and/or typing, including, but not limited to, computer, bond, xerographic, forms and/or duplicator paper, envelopes, business cards, index cards, and writing pads, either white or colored.

5.1.16 "Request for bids" shall mean a solicitation which consists of a specific description of the goods and services, to which necessary blueprints, specifications, and special conditions are appended, and except as otherwise defined pursuant to RIGL 37-2-18 (a)-(h) "Competitive Sealed Bidding".

5.1.17 "Request for Information (RFI)" shall mean a document used in informal, uncompetitive solicitation of information, data, comments, or reaction from possible suppliers preceding the issuance of a Request for Proposals or a multi-step bidding process.

5.1.18 In accordance with [37-2-15(5)] "Request for Proposal (RFP)" shall mean all documents, whether attached or incorporated by reference, utilized for soliciting (competitive) proposals.

5.1.19 "Request for Quotation (RFQ)" shall mean a document or oral solicitation used for seeking competition on small purchases or on any purchase lower than the amount that requires competitive bidding.

5.1.20 [37-2-7(17)] "Requisition" or a "purchase request" shall mean a document whereby a using agency requests that a contract be entered into to obtain goods and/or services for a specified need, and may include, but is not limited to, the technical description of the requested item, delivery requirements, transportation mode request, criteria for evaluation of proposals,

and/or suggested sources of supply, and information supplied for the making of any written determination and finding required by section 37-2-6 of this chapter.

For the purposes of establishing rules and regulations pursuant the Chapter 37-2, a "requisition" shall also mean an internal document by which a using agency requests the Office of Purchases to initiate a procurement. The request may include, but is not limited to, a performance or technical description of the requested item, delivery schedule, transportation mode, criteria for evaluation, suggested sources of supply, and information related to the making of any written determination required by policy or procedure.

5.1.21 [37-2-15(7)] "Responsive Bidder" shall mean a person who has submitted a bid under section 37-2-20 of this chapter which conforms in all material respects to the invitation for bids, so that all bidders may stand on equal footing with respect to the method and timeliness of submission and as to the substance of any resulting contract.

For the purposes of establishing rules and regulations pursuant the Chapter 37-2, a "responsive bidder" shall also mean a bid which conforms in all material respect to the terms and conditions, specifications and any other requirements of the Bid Invitation.

5.1.22 "Solicitation" shall mean the process of notifying prospective bidders or offerors that the state wishes to receive bids for furnishing goods and services. The process may consist of public advertising, mailing Invitations to Bid, posting notices, and/or telephone or telegraph messages to prospective bidders.

5.1.23 "Source Selection" shall mean the technique of appropriate selection by solicitation, i.e., competitive sealed bidding, multi-step competitive sealed bidding, competitive negotiation, small purchase procedure, sole source or emergency purchase.

5.1.24 "Specification" shall mean a description of what the purchaser seeks to buy, and consequently, what a bidder must be responsive to in order to be considered for award of a contract. A specification may be a description of the physical or functional characteristics, or the nature of, a supply or service. It may include a description of any requirements for inspecting, testing, or preparing a supply or service item for delivery; a purchase description.

5.1.24.1 "Standardization (of Specifications)" shall mean the process of examining characteristics and needs for items of similar end usage and developing a single specification that will satisfy the need for most or all purchases for the purpose.

5.1.24.2 "Restrictive Specification" shall mean a specification or purchase description that unnecessarily limits competition by precluding items that would be capable of satisfying the intended need.

5.1.25 "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.

5.1.26 "Standard" shall mean a characteristic or set of characteristics for an item that, for reasons of performance level, compatibility or interchangeability with other products, etc., is generally

accepted by producers and by users of the item as a required characteristic of all items for the designed purpose.

5.1.27 [37-2-7(23)] "Supplies" shall mean all property, including but not limited to leases of real property, printing and insurance, except land or permanent interest in land.

5.1.28 "Vendor" shall mean a supplier or contractor.

5.2 COMPETITION - In accordance with the purposes set forth in Chapter [37-2- 2(2)(f)], the Chief Purchasing Officer shall assure that all state agency procurement activities foster effective competition, such that economies in expenditure can be obtained. A competitive environment shall be considered to exist when the following conditions are met:

5.2.1 Two or more items or offers can be compared to determine relative merit;

5.2.2 Objective standards of comparison are fairly and impartially applied;

5.2.3 Offers are evaluated within a market context:

5.2.3.1 The lowest price offered may not be considered to be a competitive price when not supported by an evaluation of the market or market conditions within which the offer was rendered;

5.2.3.2 Market evaluation must be conducted using objective standards to assure fairness and to encourage participation;

5.2.4 An equal opportunity for participation in any procurement applies to all prospective offerors, and affirmative action to achieve participation in the procurement process as a means of achieving social objectives is accomplished without violation of these general principles.

5.3 CENTRALIZATION

5.3.1 Except as otherwise provided for herein, the Purchasing Agent shall be responsible for the administration of all procurement activities and determinations with respect to the solicitation and evaluation of competitive offers, and to source selection.

5.3.2 Unless specifically authorized otherwise, the Office of Purchases shall be the sole point of contact with prospective and current offerors, relative to the business, financial and other commercial aspects of all solicitations and offers:

5.3.2.1 All other state employees shall be authorized to contact suppliers to obtain technical data only, prior to the award of a contract.

5.3.2.2 Representatives of the Office of Purchases shall be present at, or party to, all discussions with suppliers with respect to current solicitations, or with respect to price or delivery information, or with respect to modifications of any contract.

5.3.3 Delegated Purchases.

5.3.3.1 The following goods and services may be procured by user agencies without the express approval of the Purchasing Agent in accordance with the provisions set forth herein:

5.3.3.1.1 Items purchased through Master Pricing Agreements (MPA) - Schedule/Term Contracts Purchases. All agencies shall be authorized to order MPA items directly from vendors in accordance with procedures established by the Chief Purchasing Officer.

5.3.3.1.2 Items exempted from competition by law, regulation or determination by the Chief Purchasing Officer or his designee.

5.3.3.1.3 Grants in the form of general subsidies or assistance shall be administered by state agencies in accordance with legal mandates restricting or defining the use of such funds.

5.3.3.2 State officials designated by the Chief Operating Officer (Director) of an agency or department shall be authorized to obtain bids for procurements reasonably not expected to exceed an aggregate amount of one thousand dollars (\$1,000) in accordance with small purchase regulations promulgated herein by the Chief Purchasing Officer.

5.3.3.2.1 Violation of these regulations may result in withdrawal of such authority by the Purchasing Agent.

5.3.3.2.2 All bids and contract awards made under these provisions shall be documented in a central location.

5.3.4 Violations of Purchase Authority

5.3.4.1 The Controller shall review all documents for which state agencies undertake purchasing actions and shall report suspected violations of delegated purchasing authority to the Purchasing Agent.

5.3.4.2 Transactions which are determined by the Purchasing Agent to be out of compliance with state purchasing regulations and procedures shall be returned to agencies for explanation and justification.

5.3.4.3 User agency abuses of limited delegated purchasing authority shall be reported to the Chief Purchasing Officer who will hold agency chief executives accountable for violations.

5.3.4.4 Deliberate disregard of state officials for purchasing regulations, policies and procedures shall be subject to disciplinary action, including dismissal.

5.3.5 Additional delegated authority may be granted by the Purchasing Agent upon reviewing written requests submitted by the chief executive officer of a department or agency in accordance to the provisions set forth in Section 2 of these regulations.

5.4 STANDARDS AND SPECIFICATIONS

5.4.1 [37-2-38] Issuance of specifications.

(1) The Chief Purchasing Officer shall have the responsibility for issuing and maintaining all standard specifications for supplies, services, and construction required by the state. Among its duties, it shall, to the greatest extent practicable:

(a) Prepare and issue standard specifications for supplies, services, and construction commonly required by the state.

(b) Revise all standard specifications to conform to all technical and scientific advances pertaining to the supplies, services, and construction described in those specifications, and to reflect changes in the state's requirements and user agencies; and

(c) Establish guidelines for drafting specifications.

(2) All specifications shall be drafted so as to maximize, to the extent practicable, competition in fulfillment of the state's requirements.

5.4.2 [37-2-38.1] Certification by building commissioner. -- The state controller shall order no payment to any person on account of any contract for any construction which is subject to the state building code, unless and until the state building commissioner has certified to the state controller in writing that: (i) All permits required under Sections 23-27.3 - 113.1 for the construction for which such payment has been requested have been issued and are valid; and (ii) The state building commissioner has, pursuant to Sections 23-27.3 - 113.3.1, verified that all construction work for which payment has been requested and which state law requires to be performed by licensed persons has been performed by persons so licensed.

5.4.3 Solicitations shall be prepared in a manner and form which enables suppliers to submit fully responsive and knowledgeable offers, and which clearly define the criteria to be used in evaluating responses.

5.4.4 All material submitted by requisitioners to the Office of Purchases for action shall be in sufficient detail and shall contain adequate supportive information to:

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

5.4.4.2 Identify measurable criteria for evaluation of offers including, but not limited to, acceptance testing.

5.4.5 Wherever possible, solicitations shall incorporate a standard specification, describing the level of performance required, and measurable criteria which define acceptance.

5.4.5.1 In certain cases, following detailed evaluation, brand name or other designations may be defined as standard items, where it is determined to be in the best interest of the State with regard to economies of scale, or cost or value analysis.

5.4.5.2 The Office of Purchases shall develop Standards Committees (product advisory

committees) to review, develop, and update specifications and standard item designations for frequently and/or extensively used products.

5.4.6 Selection and evaluation criteria shall be clearly defined in all solicitations.

5.4.6.1 [37-2-18 (a)-(h)] The invitation for competitive sealed bids shall state whether award shall be made on the basis of the lowest bid price or the lowest evaluated or responsive bid price. ~~bids.~~ . If the latter basis is used the objective measurable criteria to be utilized shall be set forth in the invitation for bid. All bids shall be opened and read aloud publicly at the time and place designated in the invitation to bid. Factors to be considered shall include, but not be limited to, (1) specifications prepared that permit award on the basis of either the lowest bid price or the lowest evaluated price; (2) available sources, the time and place of performance, and other relevant circumstances as are appropriate for the use of competitive sealed bidding.

5.4.6.1.1 37-2-18 (2) Pursuant to RIGL 37-2-18 (2) this section shall apply to all Competitive Sealed Bid contracts greater than one million dollars effective January 1, 2011; on January 1, 2012 for all contracts greater than five hundred thousand dollars; and on January 1, 2013 for all other contracts so awarded.

5.4.6.2 Unless alternate offers are clearly requested or allowed, only those offers which are responsive, in all material respects, to the terms of the solicitation shall be considered.

5.4.6.2.1 Alternate specifications may be considered only where it has been determined that the alternate satisfies all objective performance characteristics of the procurement, and represents a reduction in expenditure;

5.4.6.2.2 Alternate terms and conditions may be considered only where consideration is determined to be in the best interest of the State to do so, and where they constitute a reduction in expenditure.

5.4.6.3 Used Items may be purchased to achieve financial benefit if the manufacturer will provide warranties for maintenance requirements and for the replacement of parts. Such certification/warranties shall be the same as that provided for new equipment. Purchase of used items which exceed a value of two hundred and fifty dollars shall require approval by the Office of Purchases.

5.4.6.4 [37-2-75] Prohibition against the use of lead based paints. -- When purchasing paint products or contracting or subcontracting for painting, construction, improvement, completion, or repair of any public building, any public road, any public bridge, or any public construction, all governmental bodies and public agencies, as defined by sections 37-2-7(11) and 37-2-7(16), shall be prohibited from the use of lead based paint.

5.4.6.5 [37-2-76] State purchase of recycled products. -- (a) The state shall, through its purchasing policy and practice, affirmatively promote the use of recycled products. The Department of Administration in conjunction with the Department of Environmental Management shall, through regulations, establish a time table requiring increased utilization by the state of recycled products. In January of each year, the Department of Administration shall

report to the General Assembly the State's progress in utilizing recycled products materials and supplies for the preceding twelve (12) months.

(b) With respect to office paper products, at least fifty percent (50%) of the expenditure for office paper products purchased by the state of Rhode Island, its agencies and departments, shall be recycled paper products by fiscal year 1995.

(c) The Department of Administration in conjunction with the Department of Environmental Management shall annually establish comprehensive technical specifications based on research by the Department of Environmental Management for the recycled products, materials and supplies to be purchased by the state under this section. These specifications shall include the minimum performance and quality attributes as well as minimum pre- and post-consumer content.

(d) The Director of the Department of Administration, acting as the Chief Purchasing Officer of the State, shall direct that all subsequent purchases of the subject recycled products, materials and supplies by the state, its agencies and departments shall meet the source specifications of pre-consumer and/or post-consumer content standards established under subsection (c) of this section.

(e) Subsequent discovery by the State, its agencies or departments that products delivered by vendors to the state as "recycled products" do not satisfy the specifications of "recycled" content stated in the award, shall be grounds for the return of all discrepant goods, refunds of all moneys paid, termination of all outstanding contracts and orders, and at the discretion of the Chief Purchasing Officer suspension of the vendor's involvement in state procurement for a period of up to twenty-four (24) months.

5.5 GENERAL PROVISIONS

5.5.1 Except as otherwise authorized by law, or as specifically exempted herein, all state contracts shall be awarded as the result of:

5.5.1.1 [37-2-17(1)] competitive sealed bidding; or

5.5.1.2 [37-2-17(2)] competitive negotiation; or

5.5.1.3 [37-2-17(3)] non-competitive negotiation; or

5.5.1.4 [37-2-17(4)] small purchase procedures; or

5.5.1.5 [37-2-18 (a)-(h)] competitive sealed bidding;

5.5.1.6 [37-2-18.1] electronic reverse auction;

5.5.1.7 Requests for Proposal; or

5.5.1. 8 Where permitted by law, grants.

5.5.2 [37-2-8] When foodstuffs of good quality grown or produced in Rhode Island by Rhode Island farmers are available, the Purchasing Agent is hereby directed to purchase such foodstuffs at the prevailing market prices when any such foodstuffs are required by the state institutions.

5.5.3 The Office of Purchases shall establish and make available to participating agencies Master Pricing Agreements for goods and services where the nature and amount of demand is not specifically known in advance (e.g., office furniture, food, athletic equipment and emergency repair trades).

5.6 RULES FOR SOLICITATION

5.6.1 In general, solicitations will be sent only to those suppliers who have formally expressed a desire to bid on the particular types of items which are the subject of the bid solicitation; however, the Purchasing Agent may determine that competition would be enhanced by soliciting bidders who are not on the established Bidders List.

5.6.2 Small and small disadvantaged businesses shall be solicited to maximum extent determined by the Chief Purchasing Officer to be practicable.

5.6.2.1 All solicitations described elsewhere under Small Purchase Procedure shall include solicitation from at least one responsible supplier certified by the Department of Economic Development as a small disadvantaged business, where suppliers have been identified for the product or service in question.

5.6.2.2 For all awards of \$250 or less, agencies shall be encouraged to utilize small, disadvantaged businesses as suppliers.

5.6.3 Notification and Advertising

5.6.3.1 Notices shall be published in sufficient time to afford suppliers a fair opportunity to respond prior to the bid opening date and time.

5.6.3.2 Advertisements may be utilized in conjunction with requests for quotations or proposals for products or services at any estimated level of expenditure if the Purchasing Agent so determines:

5.6.3.2.1 that the commodity or service is of such special nature that opportunities for competition will be enhanced by extending invitations to other than known suppliers;

5.6.3.2.2 that a purchase will be of interest to supportive industries, e.g. construction projects;

5.6.3.2.3 that a purchase is unusually large or infrequent.

5.6.3.3 The Purchasing Agent may advertise in widely circulated newspapers and/or trade journals to promote effective competition.

5.6.3.4 The Purchasing Agent may place advertisements in publications directed to minority communities and/or women to enhance opportunities for disadvantaged businesses to participate in the bidding process.

5.6.3.5 The Purchasing Agent shall have the sole authority to place advertisements for contracts awarded under his aegis; however he may delegate such authority as circumstances dictate.

5.6.4 The Purchasing Agent may solicit offers from prospective suppliers who are not registered bidders upon written recommendation by a user agency, or where such solicitation is judged to be necessary in order to expand the field of competition.

5.6.5 The State of Rhode Island shall be under no obligation to consider an offer which has been submitted without solicitation.

5.7 BIDDER SECURITY

5.7.1 [37-2-40(1)] Bidder's security shall be a 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 state.

5.7.1.1 The bidder may submit a certified check, bank check (cashier's check or treasurer's check), or money order as surety instead of a bond.

5.7.1.2 All such sureties must be dated within 30 days of the bid opening date and shall be valid for no less than 60 days from the bid opening dates.

5.7.1.3 All such sureties shall be made payable to the State of Rhode Island General Treasurer.

5.7.1.4 All sureties shall contain an identification of the bid number for which the surety is intended.

5.7.2 [37-2-40(1)] Bidder security shall be required for all competitive sealed bidding for construction contracts when the estimated price exceeds twenty-five thousand dollars (\$25,000). Nothing herein prevents the requirement of such bonds on construction contracts under twenty-five thousand dollars (\$25,000) when circumstances warrant.

5.7.2.1 The Purchasing Agent may require bidder security for any procurement that he judges to be substantial, or where in his opinion the potential of capricious or artificial bidding exists, or where there is a risk of withdrawal of offers prior to an award being made, or where the interests of the State otherwise require protection.

5.7.2.2 Bidder security may be required for contracts involving blanket orders, services or high value items when the value of the contract exceeds two thousand five hundred dollars (\$2,500).

5.7.3 [37-2-40(2)] Bidder's security shall be in an amount equal to at least five percent (5%) of the amount bid.

5.7.4 [37-2-40(3)] When the invitation for bids requires that bid security be provided, noncompliance requires that the bid be rejected, provided, however, that the Chief Purchasing Officer may set forth by regulations exceptions to this requirement in the event of substantial compliance. If bid security is identified as mandatory in the invitation to bid pursuant to RIGL 37-2-18(a)-(h) "Competitive Sealed Bidding" and these regulations, the purchasing agent shall have no discretion to waive the bid security requirement.

5.7.5 [37-2-40(4)] 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 bid before award because of a mistake in the bid as allowed by law or regulation, no action shall be taken against the bidder or the bidder's surety.

5.7.6 After the bid opening the Purchasing Agent shall return the sureties of all but the three (3) apparent lowest bidders. When the evaluation of the bid has been completed, the Purchasing Agent shall return all but the lowest bidder's surety.

5.7.7 After the low bidder has been notified of the state's intent to proceed with a contract, the low bidder's bid surety shall be returned. When performance, labor and/or material bonds are required, the bid surety shall be returned upon receipt of the appropriate bond(s).

5.8 CANCELLATION OF INVITATION FOR BIDS AND REQUESTS FOR PROPOSALS. - [37-2-23] An invitation for bids, a request for proposals, and other solicitation may be cancelled, or all bids or proposals may be rejected, if it is determined in writing that the action is taken in the best interest of the state and approved by the Chief Purchasing Officer.

5.8.1 If a solicitation results in none of the proposals being reasonably close to expectations, the Purchasing Agent may with the written approval of the Chief Purchasing Officer declare all bids unacceptable and re-solicit the procurement.

5.8.2 Nothing in RIGL 37-2-18 (a)-(h) and these regulations shall be construed to interfere with or invalidate the results of the due diligence conducted by the division of purchases, the Chief Purchasing Officer, or the Chief Purchasing Agent to determine whether bids are responsive and responsible.

5.8.3 If a solicitation results in only one proposal, the price of which is not reasonably close to expectations, the Purchasing Agent may recommend that the Chief Purchasing Officer declare the bid unacceptable and either re-solicit the procurement or ask that the price be negotiated with the vendor.

5.8.4 The Purchasing Agent may eliminate bidders whose offers are clearly noncompetitive prior to re-solicitation.

5.9 CORRECTION OR WITHDRAWAL OF BIDS

5.9.1 [37-2-18(6)] Correction or withdrawal of bids may be allowed only to the extent permitted by regulations issued by the Chief Purchasing Officer.

5.9.2 The Purchasing Agent or his designee shall be the sole determiner of whether correction or withdrawal of bids may be made without penalty.

5.9.3 The Purchasing Agent shall respond to requests for correction or withdrawal within ten (10) working days, notifying the bidder of the status of his bid, bid surety and continued inclusion in the state's Bidders List.

5.9.4 Correction of a bid.

5.9.4.1 Correction of a bid at any time prior to bid opening may be permitted without penalty when a bidder requests that his bid be returned and he resubmits a corrected bid prior to the bid opening.

5.9.4.2 A vendor who fails to resubmit a corrected bid before the bid opening shall be considered non-responsive.

5.9.4.3 Requests by the apparent low bidder for correction of bids identifying all error(s) and specifying corrective action shall be submitted in writing to the Purchasing Agent and shall be re-evaluated with all other offers within five (5) working days after the bid opening.

5.9.5 Withdrawal of bids.

5.9.5.1 Requests for withdrawal of bids shall be submitted in writing to the Purchasing Agent, providing an explanation for the action and advising the Purchasing Agent as to why the bidder should not be suspended from the state's Bidders List.

5.9.5.2 Withdrawal of bids without the written consent of the Purchasing Agent shall result in forfeiture of bid sureties and shall result in suspension or debarment from the state's Bidders List, depending upon the severity of the violation.

5.10 SOLICITATION CRITERIA

5.10.1 [37-2-58] At least every three (3) years the Chief Purchasing Officer shall review the prevailing costs of labor and materials and may make recommendations to the next regular session of the General Assembly for the revision of the then current threshold amounts contained in this chapter [37-2] as justified intervening changes in the cost of labor and materials.

5.10.1.1 The Chief Purchasing Officer may make recommendations to the General Assembly for changes to solicitation criteria based on factors other than the cost of labor and materials.

5.10.2 [37-2-22] Small Purchases. Procurements not to exceed an aggregate amount of ten thousand (\$10,000.00) for construction and five thousand (\$5,000.00) for all other purchases may be made in accordance with small purchase regulations promulgated by the Chief Purchasing Officer. Procurement requirements shall not be artificially divided so as to constitute a small purchase under this section.

5.10.2.1 Competitive offers shall be solicited for all procurements with a value greater than \$250 except under specifically prescribed circumstances set forth herein.

5.10.2.2 Small construction purchases shall include building, altering, repairing, improving or demolishing buildings or other improvements to real property. Small construction purchases shall not include routine maintenance or repair of existing structures, buildings, or real property performed by salaried employees of the State in the usual course of their job.

5.10.3 Competitive bids shall be obtained from a sufficient number of suppliers to be considered representative of the industry cited. Although three bids shall be considered the minimum, the Purchasing Agent may in some instances declare the existence of two bids to be considered to provide adequate price competition. The determination shall be made in writing and placed in the bid file.

5.11 SOLICITATION METHODOLOGY FOR COMPETITIVE SEALED BIDDING

5.11.1 Public Competitive Sealed Bids. [37-2-18 (a)-(h)] Sealed written competitive bids shall be required for purchase orders exceeding the amount provided by RIGL 37-2-22 unless it is determined in writing that this method is not practicable or that the best value for the state may be obtained by using an electronic reverse auction as set forth in RIGL 37-2-18.1.

5.11.1.1 [37-2-18 (a)-(h)] Factors to be considered in determining if competitive sealed bidding is practicable shall include, but not be limited to 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, the time and place of performance, and other relevant circumstances appropriate for the use of competitive sealed bidding.

5.11.1.2 [37-2-18 (a)-(h))] Adequate public notice of the invitation for bids shall be given a sufficient time prior to the date set forth therein for the opening of bids. Such notice may consist of a written invitation soliciting quotations from suppliers on the State's approved vendors list. Such notice may include publication in a newspaper of general circulation in the state as determined by the Chief Purchasing Officer not less than seven (7) days nor more than twenty-one (28) days before the date set for the opening of the bids. The Chief purchasing officer may make a written determination that there is a need to waive the twenty-one (28) day limitation. The written determination shall state the reason why the twenty-one (28) day limitation is being waived and shall state the number of days, giving a minimum and maximum, before the date set for the opening of bids when public notice is to be given.

5.11.1.3 [37-2-18 (a)-(h)] Bids shall be opened publicly and read aloud at the time and place designated in the invitation for bids. Each bid, together with the name of the bidder, shall be recorded and an abstract made available immediately for public inspection. Subsequent to the awarding of the bid, all documents pertinent to the awarding of the bid that were not made public pursuant to RIGL 37-2-18 (e) shall be made available and open to public inspection pursuant to chapter 38-2, the Access to Public Records Act, and retained in the bid file. The copy of the bid proposal provided pursuant to RIGL 37-2-18 (b) shall be retained until the bid is awarded.

5.11.1.3.1 The term “immediately” for contracts awarded pursuant to RIGL 37-2-18 (a)-(h) “Competitive Sealed Bidding” and this regulation shall mean that a copy of the redacted bid proposal shall be available for public inspection by the close of business the day the subject bid(s) and/or contract(s) is opened by the division of purchases.

5.11.1.3.2 The burden to identify and withhold from the public copy that is released at the bid opening any trade secrets, commercial or financial information, or other information the bidder deems not subject to public disclosure pursuant to Chapter 38-2, the Access to Public Records Act, shall rest solely and exclusively with the bidder submitting the bid proposal.

5.11.1.3.3 A bidder has the sole and exclusive responsibility to provide a public copy of its bid to the division of purchases, so it can be made available for public inspection. At the time that a proposal is submitted, a bidder must submit a redacted copy of the bid proposal on a readable CD-R Media Disk (hereinafter referred to as a "CD"). Failure of the bidder to submit a public copy on a readable CD, as required by RIGL 37-2-18 as amended, shall result in the disqualification of said bid.

5.11.1.3.4 In order to comply with the public copy requirement, a bidder, at the time that a proposal is submitted, must submit a redacted copy of the bid proposal on a readable CD. The CD should contain: (1) the title of the solicitation as it appears on the RIVIP cover letter; (2) the name of the company and vendor identification as it appears on the RIVIP cover letter; (3) the bid response number as it appears on the RIVIP cover letter; and (4) the date of the bid as it appears on the RIVIP cover letter. Failure to provide the division of purchases with a readable CD with the above-cited information, as required, may result in the disqualification of the bid.

5.11.2 Formal Competitive Bids.

5.11.2.1 Except under emergency circumstances, competitive bids shall be obtained in the form of sealed written quotations for all procurements exceeding one thousand dollars (\$1,000), and except as otherwise provided for pursuant to RIGL 37-2-18 (a)-(h) "Competitive Sealed Bidding"..

5.11.2.2 A formal bid shall be distinguished by:

- (a) a specific date and time by which sealed written bids must be submitted;
- (b) an opening of all bids at a specified time at the Office of Purchases;
- (c) the solicitation of a minimum of three selected bidders who are potential suppliers for the commodity or service to be procured.

5.11.2.3 All Formal Competitive bids shall be issued by the Office of Purchases.

5.11.3 Informal Competitive Bids.

5.11.3.1 Oral quotations (including telephone) may be solicited for purchase orders with a value less than one thousand dollars (\$1,000). If the Office of Purchases is unable to verify prices using published lists/catalogs or by market analysis, the lowest quotation obtained by telephone solicitation for procurements exceeding two hundred and fifty dollars (\$250) shall be confirmed in writing.

5.11.3.2 An informal bid shall be distinguished by:

- (a) lack of a specific time by which bids must be submitted;
- (b) lack of sealed written bids; quotes may be oral on the spot or by telephone and confirmed at a later date in writing;
- (c) lack of an opening and reading of bids;
- (d) the solicitation of selected registered or unregistered bidders who are potential suppliers for the commodity or service to be procured and/or vendors suggested for consideration by the user agency.

5.11.3.3 Informal bids shall be solicited from a minimum of three suppliers.

5.11.3.4 All informal bid invitations shall be conducted in such fashion as to maximize the opportunity for participation of all responsible suppliers.

5.11.3.5 For those purchases not affected by regional considerations, requests for quotations (RFQ's) shall be distributed equitably among various responsible suppliers. Where practical, a quotation will be solicited from other than the previous supplier prior to placing a repeat order.

5.11.3.6 When informal competitive bids are received in accordance with the provisions contained herein and award is not made to the low bidder, the Purchase Order File shall be annotated with statements of how the supplier was selected and why the price is fair and reasonable.

5.11.3.7 Purchasing management shall audit the use of informal competitive bids. As a minimum, quarterly review of performance by buyers should be conducted to sample (on a random basis) the reasonableness and effectiveness of buyer use and documentation of the informal bid process.

5.11.4 Requests for Proposal

5.11.4.1 Requests for Proposal (RFP) shall be utilized to solicit competitive offers in all cases where:

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

5.11.4.1.2 Performance is neither specific nor objective, and open to the offeror's interpretation; or

5.11.4.1.3 It is otherwise anticipated that offers may be substantially different and that there is insufficient common ground for objective comparison; or

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

5.11.4.2 Wherever possible, the Request for Proposal shall define the performance or benefit required and shall set forth specific criteria to be utilized in evaluation of offers.

5.11.4.3 Offers shall be evaluated by a committee comprised of a representative of the Office of Purchases, representative of the user agency, and other appropriate parties on the basis of:

5.11.4.3.1 The qualifications of the offerors, established by professional accomplishment and previous experience;

5.11.4.3.2 Aspects of offers which provide benefit, other than those based on cost; and

5.11.4.3.3 Other provisions of offers which are determined to serve the best interests of the State.

5.11.4.4 Nothing herein shall be construed to preclude the possibility of determining an award solely on the basis of cost.

5.11.4.5 The evaluation of offers, including the weight assigned to various aspects of the offerors, and all award determinations, including the reasons for a selection recommendation, shall be fully documented.

5.12 SOURCE SELECTION AND CONTRACT AWARD

5.12.1 [37-2-18(5)] The contract shall be awarded with reasonable promptness by written notice to the responsive and responsible bidder whose bid is either the lowest bid price or lowest evaluated or responsive bid price.

5.12.1.1 Awards shall be made within sixty (60) days of the bid opening unless expressly provided for to the contrary in the solicitation. Bids may not be withdrawn during this period without penalty without the express permission of the Purchasing Agent.

5.12.1.2 In accordance with Chapter 37-14.1, RIGL, the Purchasing Agent may, after considering the overall cost to the state prior to making a final determination of award, apply special consideration to the offers of minority business enterprises when:

5.12.1.2.1 the solicitation provides for such consideration;

5.12.1.2.2 the offer is fully responsive to the terms and conditions of the solicitation; and

5.12.1.2.3 the price offer made by the MBE is determined to be within a competitive range (not to exceed five percent (5%) higher than the lowest responsive price offer) for the product or service; and

5.12.1.2.4 the firm making the offer conforms to the definition of a minority business enterprise as set forth in Section 4 herein (Vendor Qualification).

5.12.2 In accordance with the provisions of Chapter 37-14.1-7 ten percent (10%) of the dollar value of the work performed against contracts for construction exceeding five thousand dollars

(\$5000) shall be performed by Minority Business Enterprises where it has been determined that subcontract opportunities exist, and where certified MBE contractors are available.

5.12.2.1 Award of such contracts shall be subject to approval by the Director of Administration, based on the bidder's subcontracting plan. Such plan shall be submitted to the Director of Administration prior to or upon tentative notification of award by the Purchasing Agent.

SECTION 6 - NEGOTIATION

6.1 GENERAL PROVISIONS

6.1.1 Definitions

6.1.1.1 In accordance with [37-2-7(13)] "negotiation" shall mean contracting by the provisions set forth in sections 37-2-19, 37-2-20, and 37-2-21. These sections refer to competitive negotiation, noncompetitive negotiation, and sole source and emergency procurements.

6.1.1.2 "Negotiation" shall mean the process of establishing contractual provisions and of gaining contractual acceptance, other than solely as the result of normal competitive bidding (described elsewhere herein). For the purpose of this definition, two distinct categories of negotiation shall be recognized:

6.1.1.2.1 "Competitive negotiation" shall mean a specialized bidding procedure characterized by modifications to the offers of at least two vendors and/or alteration of the specifications for which, or the terms and conditions under which, the state has solicited offers.

6.1.1.2.2 "Noncompetitive negotiation" shall mean the establishment of contractual terms and conditions, including but not limited to contract price, by discussions with a single vendor, outside of the procedures established for competitive bidding.

6.1.2 The objective of negotiation shall be to secure advantageous terms and conditions, and/or to exact improvements in terms and conditions offered to the state, and/or to reduce potential cost to the state.

6.1.3 Negotiation shall be used to establish or modify contractual provisions in all cases where:

6.1.3.1 Responsive firm, fixed pricing is not the sole determinant for award;

6.1.3.2 Responses to competitive bidding suggest that lower pricing, or other improvements in offers, are achievable;

6.1.3.3 Single or sole source procurements are made;

6.1.3.4 Responses to Requests for Proposal do not permit effective comparison, due to the differing nature of the responses;

6.1.3.5 The scope of a contract changes during the performance period, such that modification of price, or of other provisions, may be called for; or

6.1.3.6 The Purchasing Agent has determined in writing that a product, or the market in which a product is sold, is noncompetitive in nature.

6.1.4 Delegation. The Chief Purchasing Officer may delegate authority for directing and negotiating change orders for highway and air transportation construction contracts to the Director of Transportation. Such delegation shall be in accordance with specific limitations defined by the Chief Purchasing Officer.

6.2 COMPETITIVE NEGOTIATION

6.2.1 Applicability [37-2-19(1)] When, under regulations issued by the Chief Purchasing Officer, the Purchasing Agent determines in writing that the use of competitive sealed bidding is not practicable, and except as provided in Sections 37-2- 21 and 37-2-22 of the General Laws of Rhode Island, a contract may be awarded by competitive negotiation. (See Exceptions to Competitive Bidding Requirements.)

6.2.2 [37-2-19(3)] Contracts may be competitively negotiated when it is determined in writing by the Purchasing Agent that the bid prices received by competitive sealed bidding either are unreasonable as to all or part of the requirements, or were not independently reached in open competition, and for which:

(a) Each competitive bidder has been notified of the intention to negotiate and is given reasonable opportunity to negotiate; and

(b) The negotiated price is lower than the lowest rejected bid by any competitive bidder; and

(c) The negotiated price is the lowest negotiated price offered by a competitive offeror.

6.2.2.1 "Competitive bidder/offeror" shall mean responsible bidder or offeror.

6.2.3 Competitive negotiation may be used in any case where the scope, term, or other requirements of the procurement has not been determined at the time that a requisition is issued, or where optional offers are desired and encouraged, or where the value of the procurement has not been definitively established.

6.3 PROCEDURES

6.3.1 Request for Proposal

6.3.1.1 [37-2-19(2)] Adequate public notice of the request for proposals shall be given in the same manner as provided for Competitive Sealed Bidding.

6.3.1.2 Requests shall describe and enumerate the item(s) covered, their specification(s), contract terms(s), and any other special provisions or requirements.

6.3.1.2.1 [37-2-19(4)] The request for proposals shall indicate the relative importance of price and other evaluation factors.

6.3.1.3 At a public opening of responses to RFPs, the Purchasing Agent shall not be required to reveal other than the names of those responding. The nature of responses shall not be subject to public disclosure until a contract has been awarded.

6.3.2 Review and Discussion

6.3.2.1 [37-2-19(6)] Written or oral discussion shall be conducted with all responsible offerors who submit proposals determined in writing to be reasonably susceptible of being selected for award. Discussions shall not disclose any information derived from proposals submitted by competing offerors. Discussions need not be conducted:

(a) With respect to prices, where such prices are fixed by law or regulation, except that consideration shall be given to competitive terms and conditions; or

(b) Where time of delivery or performance will not permit discussions; or

(c) Where it can be clearly demonstrated and documented from the existence of adequate competition or accurate prior cost experience with the particular supply, service, or construction item, that acceptance of an initial offer without discussion would result in fair and reasonable prices, and the request for proposals notifies all offerors of the possibility that award may be made on the basis of the initial offers.

6.3.2.2 Responses to the Request for Proposal shall be evaluated:

6.3.2.2.1 To determine non-responsive offers, which shall be eliminated from further consideration,

6.3.2.2.2 To determine the lowest-cost combination of options, terms, and conditions, establishing a base-line, and

6.3.2.2.3 To establish a cost ranking of responses to that base-line.

6.3.2.3 [37-2-20(2)] Where there is more than one bidder, competitive negotiations shall be conducted with the three (two if there are only two) bidders determined in writing to be the lowest responsive and responsible bidders to the competitive sealed bid invitation. Such competitive negotiations shall be conducted under the following restrictions:

(a) If discussions pertaining to the revision of the specifications or quantities are held with any potential offeror, all other potential offerors shall be afforded an opportunity to take part in such discussions.

(b) A request for proposals, based upon revised specifications or quantities, shall be issued as promptly as possible, shall provide an expeditious response to the revised requirements, and shall be awarded upon the basis of the lowest bid price or lowest evaluated bid price submitted by any responsive and responsible offeror.

6.3.2.3.1 The provisions of 37-2-20(2) may be waived in any case where the lowest-cost response is ten percent (10%) or more lower than the next lowest cost offered.

6.3.3 [37-2-54(2)] The Chief Purchasing Officer is not prohibited from negotiating with vendors who maintain a General Service Administration price agreement with the United States of America or any agency thereof, provided, however, that no contract executed under this provision shall authorize a price higher than is contained in the contract between General Service Administration and the vendor affected.

6.3.4 Request for Best and Final Offer

6.3.4.1 On the basis of discussions with offerors, a request for Best and Final Offer, which describes the requirements of the procurement in the final form, shall be issued to all offerors still under consideration.

6.3.4.2 Each offeror shall submit a Best and Final Offer, which defines their best price, and other terms, for the procurement.

6.3.4.3 Best and Final Offers shall be evaluated in the same fashion as a normal competitive bid.

6.3.4.3.1 [37-2-19(5)] Award shall be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to the state taking into consideration price and the evaluation factors set forth in the request for proposals.

6.4 NONCOMPETITIVE NEGOTIATION

6.4.1 [37-2-20(1)] In the event that all sealed bids submitted through a formal solicitation result in bid prices in excess of the funds available for the purchase, and the Chief Purchasing Officer determines in writing that there are no additional funds available from any source so as to permit an award to the lowest responsive and responsible bidder and the best interest of the state will not permit the delay attendant to a re-solicitation under revised specification, or for revised quantities, under competitive sealed bidding, then a negotiated award may be made as set forth in this Section.

6.4.2 Noncompetitive negotiation may be used to improve the price offered of the evaluated lowest-cost response to any competitive bid.

6.4.3 The Chief Purchasing Officer may authorize the award of a contract on the basis of noncompetitive negotiation, where the Purchasing Agent has determined in writing that:

6.4.3.1 A single or sole source procurement is involved, or

6.4.3.2 The product, or market in which a product is sold, is noncompetitive in nature, or

6.4.3.3 Collusive or exclusionary selling practices are in evidence.

6.4.4 Noncompetitive negotiation may be used to modify a contract during its performance, provided that no attempt is made to reduce the contractual obligations of the supplier, vendor, or contractor, or the contract term is not extended except in response to a request by the supplier, vendor, or contractor in consideration for other substantive changes, and where such extension of term of contract is determined in writing by the Purchasing Agent to be in the best interest of the state.

6.4.5 In all negotiation, the conduct of noncompetitive negotiation including, but not limited to, issues discussed, options considered, the rationale applied to decisions made and agreements reached shall be documented in summary form and placed in the purchase order file.

6.5 TRUTH IN NEGOTIATIONS REQUIREMENTS - COST OR PRICING DATA

6.5.1 [37-2-28(1)] A contractor shall submit cost or pricing data and shall certify that, to the best of his knowledge and belief, the cost or pricing data submitted were accurate, complete, and current as of a mutually determined specified date prior to the date of:

(a) The pricing of any negotiated contract where the total contract price is expected to exceed fifty thousand dollars (\$50,000); or

(b) The pricing of any change order or contract modification which is expected to exceed twenty-five thousand dollars (\$25,000), or such lesser amount in either instance as may be prescribed by the Purchasing Agent and approved by the Budget Office.

6.5.2 Applicability

6.5.2.1 The requirements of the law apply to all purchase order supplements over \$25,000 incorporating an aggregate of changes equal to this value, e.g., an additive charge of \$20,000 and a deductive change of \$11,000 are equal to an aggregate change value of \$31,000 and thus are subject to the requirements of this section.

6.5.2.2 [37-2-28(3)] The requirements of this section need not be applied to contracts where the price negotiated is based on adequate price competition, established catalogue or market prices of commercial items sold in substantial quantities to the general public, prices set by law or regulation, or in exceptional cases where it is determined in writing by the Chief Purchasing Officer that the requirements of this section may be waived, and the reasons for such waiver are stated in writing.

6.5.3 Cost or pricing data may include such verifiable factors as all vendor quotations, nonrecurring costs, changes in production methods and production or procurement volume, data in support of contractor projection of business prospects and objectives, together with related costs of operations, unit cost trends such as those associated with labor efficiency, make-or-buy decisions and estimated resources to attain business goals and any other management decisions which reasonably could be expected to have a significant bearing on costs under a proposed contract.

6.5.4 The requirement for submission of cost or pricing data is met when all data reasonably available to the contractor have been submitted or identified in writing at the time of agreement

on price. The availability of books, records, and other documents without specific identification and explanation shall not be considered submission for the purposes of verification and agreement.

6.6 SUBCONTRACTING REQUIREMENTS

6.6.1 Prime contractors shall require subcontractors to submit cost or pricing data for procurements in excess of fifty thousand dollars (\$50,000) unless exempted herein.

6.6.2 Certification - Prime contractors shall require subcontractors to certify that cost and pricing data submitted are accurate, complete, and current as of the date of agreement on price.

6.6.3 [37-2-28(2)] Any contract, change, or modification thereto under which a certificate is required shall contain a provision that the price to the state, including profit or fee, shall be adjusted to exclude any significant sums by which the Purchasing Agent finds that such price was increased because the contractor furnished cost or pricing data, as of the date agreed upon between the parties, was inaccurate, incomplete, or not current.

6.6.4 Prime contractors must agree that the prime contract price shall be reduced in any significant amounts by which the prime contract price was overstated because a subcontractor did not submit accurate, complete, and current cost or pricing data when required by law.

6.7 GUIDELINES IN NEGOTIATIONS

6.7.1 The purchasing official responsible for the negotiation shall prepare a written statement at the conclusion of each negotiation phase setting forth the principal elements of the price negotiation.

6.7.1.1 Sufficient detail shall be recorded to reflect the most significant considerations controlling the establishment of the price.

6.7.1.2 If cost and pricing data were not required, a statement detailing the basis for determining that the price was fair and reasonable and the extent to which the data submitted were not a factor in the price negotiated shall be recorded.

6.7.2 Contracts shall contain an audit clause which provides that if, after award, the Purchasing Agent obtains information that submitted data were inaccurate, incomplete or not current, or if the data were not adequately verified at the time of negotiation, then a post-award audit shall be undertaken.

6.7.3 Contracts shall contain to the extent possible language which provides for unit pricing for potential change orders.

6.7.4 The Office of Purchases shall conduct or shall obtain price analyses 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.

6.7.5 In the negotiation of settlements of contracts which have been terminated:

6.7.5.1 Contract settlement shall be made in accordance with terms specified in the purchase order.

6.7.5.2 In the absence of appropriate contract language, the vendor shall be paid for costs incurred, plus a reasonable profit, until the contract was terminated.

6.7.5.3 Penalties due to the state in accordance with a contract may be deducted from any payment to which a vendor is entitled.

6.7.6 To determine the allowability of incurred costs for the purpose of reimbursing costs under contract provisions which provide for the reimbursement of costs, reimbursements shall be made only upon the presentation of documented, auditable evidence to the State that the vendor has incurred an eligible expense.

SECTION 7 - SUPPLEMENTAL SERVICES

7.1 DEFINITIONS

7.1.1 In accordance with [37-2-7(26)] "Architect" shall mean a person who, under the provisions of Chapter 5-1-2, by reason of his knowledge of the mathematical and physical sciences, and the principles of architecture and architectural design, acquired by professional education, practical experience, or both, is qualified to engage in the practice of architecture as attested by his licensing as an architect in this state.

7.1.1.1 "Practice of architecture" shall mean rendering or offering to render any of those services normally provided by practicing architects. The services normally provided may include any of the following practices or professional services: advice, consultation, evaluation, site planning, aesthetic design, structural design, and the administration of construction contracts which require expert knowledge and skill in connection with the erection, enlargement, or alteration of any building or buildings, or the provision of equipment or utilities therefore, or accessories thereto, wherein the safeguarding of life, health, or property is concerned or involved also constitutes the practice of architecture.

7.1.1.2 "Licensure" as an architect shall mean the possession of an "architect's stamp" in accordance with Chapter 5-1-1, which indicates professional certification by the Rhode Island Board of Examination and Registration of Architects.

7.1.2 In accordance with [37-2-7(26)] "consultant", shall mean any person with whom the state and/or a public agency has a contract which contract provides for the person to give direction or information as regards [a] particular area of knowledge in which the person is a specialist and/or has expertise.

7.1.3 In accordance with [37-2-7(26)] "Engineer", shall mean a person who, under the provisions of Chapter 5-8-2, by reason of his special knowledge and use of the mathematical, physical and engineering sciences and the principles and methods of engineering analysis and design,

acquired by engineering education and engineering experience, is qualified to practice engineering, as hereinafter defined, and as attested by his registration as an engineer.

7.1.3.1 "Practice of Engineering", in accordance with Chapter 5-8-2, shall mean any service or creative work, the adequate performance of which requires engineering education, training and experience in the application of special knowledge of the mathematical, physical and engineering sciences to such services or creative work as consultation, investigation, evaluation surveys, planning and design of engineering systems, and the supervision of construction for the purpose of assuring compliance with specifications; and embracing those services or work in connection with any public or private utilities, structures, buildings, machines, equipment, processes, work, or projects wherein the public welfare or the safeguarding of life, health, or property is involved or concerned, and including such architectural work as is incidental to the practice of engineering.

7.1.3.2 "Professional Engineer" shall mean a person who has been duly registered and licensed by the state Board of Registration for Professional Engineers and Land Surveyors.

7.1.4 "A Professional Service Provider" shall mean an independent contractor who is a specialist and/or has the expertise, as demonstrated by professional licensing or certification and experience, necessary to carry out tasks regarding that particular field of expertise.

7.1.4.1 "Professional service products" shall mean activities which directly implement programs established by state officials.

7.1.4.2 Professional services shall be characterized by specific activities and/or the attainment of measurable outcomes.

7.1.4.3 Examples of professional services include: (1) client services (medical treatments, hospital staff coverage, counseling, therapy, individual rehabilitation plans), (2) legal representation in litigation and administrative advice (interpretation of law, contracts, etc.), (3) computer programming, (4) education (training, teaching), (5) construction management, and arbitration.

7.1.4.4 "Special services" shall mean services which the state deems necessary or desirable to purchase provided by individuals or firms possessing special knowledge or skills for which formal licensing or certification is not necessarily required. Examples of special services include: (1) expert witness testimony, (2) art, music, and dance, (3) interpretation (languages, deaf), (4) public information (drug and alcohol abuse), and (5) training (foster parenting).

7.1.4.5 "Personal services" shall mean services provided by persons who are paid directly by the state but are not on the state payroll. Personal services may consist of the following relationships:

7.1.4.5.1 [37-2-7(10)] "Employee" shall mean an individual drawing a salary from a governmental body or public agency, whether elected or not, and any non-salaried individual performing personal services for any governmental body or public agency.

7.1.4.5.2 A "leased employee" shall mean a person hired through a contract with an agency which is responsible for paying all salary and benefits compensation to which the individual is

entitled. Leased employees would usually be temporary replacements for, or supplements to, the existing workforce provided on an as needed basis.

7.1.4.5.3 An "employee contractor" shall mean a person on a state or public agency payroll who has been employed by a state agency in an advisory capacity. (An example of such employment would be URI professors employed by MHRH to develop policy analyses.)

7.1.4.5.4 An "employee service contractor" shall mean a person on a state or public agency payroll who has been employed by a state agency in a service capacity. (Examples of such employment include: Court stenographers employed by DEM to provide transcripts for public hearings, MHRH staff physicians paid for hospital coverage in addition to their assigned responsibilities, RIC professors hired by DCF to provide social worker training.)

7.1.5 "A Professional Consultant" shall mean an individual or a firm which is a specialist and/or has the expertise, as demonstrated by the possession of appropriate professional licensing, certification, and/or experience, necessary to give advice, direction or information regarding that particular area of knowledge.

7.1.5.1 "Professional consultant products" shall mean advisory opinions expressed as reports, written or oral, used by state officials to render policy decisions.

7.1.5.2 Consultant services shall be characterized by research and analysis, recommended courses of action, identification of priorities, and unspecified outcomes.

7.1.5.3 Examples of professional consultations include: (1) systems analysis (computer, personnel, management review), (2) program analysis (medical program planning), and (3) policy recommendations (abandonment or adoption of programs, establishment of decision criteria).

7.1.6 "Supplemental Services" shall mean all services performed in a capacity which supplements the basic staffing of state agencies.

7.2 GENERAL PROVISIONS

7.2.1 User agencies shall recommend the final selection of providers of legal, medical, and dental services. Agencies shall not commit funds for proposed services prior to receiving approval of the recommended provider from the Chief Purchasing Officer or his designee.

7.2.2 The Chief Purchasing Officer may delegate to the Office of Personnel all or a portion of responsibility for evaluation of the need for supplemental services and for verification/validation of qualifications of proposed service providers.

7.2.3 The Purchasing Agent shall review proposed change orders to professional consultant contracts (other than medical, dental and legal) which are (reasonably) estimated to exceed twenty thousand dollars (\$20,000) and shall determine whether such changes constitute a scope of service requiring open competition.

7.2.4 To the extent practicable, selection of supplemental service providers shall be based upon competition. The Purchasing Agent shall require that, whenever possible, a scope of services be defined in terms for which a bid or a response to a request for proposals may be solicited.

7.2.5 In accordance with the provision of Chapters 5-1 and 5-8 of the General Laws of Rhode Island, no contract shall be awarded to a person practicing architecture or engineering who has not been professional certified by the appropriate registration boards.

7.2.6 Requirements for the selection of construction management contractors shall be the same as those for the selection of architects and engineers.

7.3 PROCUREMENT PLANNING FOR SUPPLEMENTAL SERVICES. Annually, at a date which coincides with the development of the State Budget, user agencies shall submit to the Chief Purchasing Officer a Supplemental Service Utilization Plan.

7.3.1 Plans shall provide the following information about proposed services:

7.3.1.1 number of services;

7.3.1.2 estimated cost of each contract/relationship;

7.3.1.3 anticipated effective period of each relationship;

7.3.1.4 whether activities are ongoing or new endeavors;

7.3.1.5 whether the agency is proposing to continue each relationship into the next fiscal year; and

7.3.1.6 if an ongoing relationship, the initial date of the relationship.

7.3.2 Amendments to plans shall be submitted and approved by the Chief Purchasing Officer prior to the commitment of funds

7.3.3 Except for legal, medical, dental and special services (as defined herein), when a determination is made in writing by the Purchasing Agent that the scope of work for a professional services contract does not permit selection based upon competitive bidding or request for proposal procedures, the service shall be deemed to be of a consulting nature and subject to all requirements set forth for the selection of consultants.

7.4 ARCHITECTURAL, ENGINEERING AND CONSULTANT SERVICES SELECTION COMMITTEE. In accordance with Chapter 37-2-59(2) a committee shall select persons or firms to render professional consultant services other than medical, dental and legal services which are reasonably estimated to exceed twenty thousand dollars (\$20,000).

7.4.1 The State Architectural, Engineering and Consultant Services Selection Committee (Committee) shall consist of the following individuals: (1) the Chief Purchasing Officer or his designee, who shall be chairman of the Committee, (2) a representative of the user agency, and (3) a public member, who shall be appointed by the Governor to represent the interests of the

general public and whose term shall be concurrent with that of the Governor. The Public member shall be paid twenty-five dollars (\$25.00) for each meeting attended, not to exceed one thousand two hundred dollars (\$1,200) annually.

7.4.2 A quorum shall require the presence of the entire membership of the Committee and must be present to conduct business.

7.4.3 The Committee may utilize the services of such other persons it deems necessary to provide technical advice in evaluating consultant proposals.

7.4.3.1 Such technical advisors shall not be considered members of the Committee and shall not be entitled to vote on the selection of candidates to be recommended for consideration by the Chief Purchasing Officer.

7.4.3.2 Technical advisors shall not be entitled to payment for their services.

7.5 SUPPLEMENTAL SERVICES NOT EXCEEDING \$5000. The Chief Purchasing Officer may delegate authority for selection of supplemental service providers to agency chief executives when the total annual (fiscal year) value of any such relationship does not exceed five thousand dollars (\$5,000).

7.6 ARCHITECTURAL, ENGINEERING AND CONSULTANT SERVICES SELECTION PROCESS FOR SERVICES NOT EXCEEDING \$20,000. When a professional consultant contract is estimated (reasonably) to be between five thousand dollars (\$5000) and twenty thousand dollars (\$20,000) the Purchasing Agent may establish a technical review committee in conjunction with the user agency to evaluate the qualifications of potential suppliers. Membership shall be determined on a case by case basis. The technical committee shall recommend no more than three candidates to the Purchasing Agent, who shall forward his recommendations to the Chief Purchasing Officer.

7.7 ARCHITECTURAL, ENGINEERING AND CONSULTANT SERVICES SELECTION PROCESS FOR SERVICES EXCEEDING \$20,000

7.7.1 Solicitation

7.7.1.1 Public Announcement [37-2-60]. The Chief Purchasing Officer shall give public notice of the need for professional architectural, engineering or consultant services.

7.7.1.2 Such notice shall be published sufficiently in advance of the date when responses must be received in order that interested parties have an adequate opportunity to submit a statement of qualifications and performance data.

7.7.1.3 The notice shall: (1) contain a brief statement of the services required, (2) describe the project, (3) specify how specific information on the project may be obtained and, (4) be published in a newspaper of general circulation in the state and in such other publications as in the judgment of the Committee shall be desirable.

7.7.1.4 [37-2-61] The solicitation shall describe the state's requirements and set forth evaluation criteria for the selection of the successful candidate and shall be distributed to interested persons.

7.7.2 A bidder's conference shall be held at which the following shall be provided: (1) a description of the criteria to be used in evaluating a bidder's statement of qualification and performance data for the purpose of selecting a firm, (2) a discussion and further definition of the scope of work and (3) an on-site review, if appropriate.

7.7.3 Chapter [37-2-63] requires that the Committee shall select no more than three (3) firms evaluated as being professionally and technically qualified.

7.7.4 [37-2-63] The firms selected, if still interested in providing the services, shall make a representative available to the Chief Purchasing Officer at such time and place as he shall determine, to provide such further information as he may require.

7.7.5 [37-2-63] The Chief Purchasing Officer, or his designee shall negotiate with the highest qualified firm for a contract for architectural[,] engineering, or consultant services for state departments and agencies at [a level of] compensation which he determines to be fair and reasonable. In making such determination, the Chief Purchasing Officer shall take into account the following: professional competence, technical merits, and price.

7.7.6 Final Selection - In accordance with [37-2-63] the Chief Purchasing Officer shall be responsible for the final selection and shall so inform the user agency, the Division of Purchasing, and the Division of Budget.

7.8 EVALUATION FOR SELECTION

7.8.1 Criteria for evaluation of candidates for supplemental services shall include, but shall not be limited to:

7.8.1.1 Competence to perform the services as reflected by technical training and education, general experience, experience in providing the required services, and the qualifications and competence of persons who would be assigned to perform the services;

7.8.1.2 Ability to perform the services as reflected by workload and availability of adequate personnel, equipment, and facilities to perform the services expeditiously;

7.8.1.3 Past performance as reflected by the evaluation of private persons and officials of other governmental entities which have retained the services of the firm with respect to such factors as control of costs, quality of work, and ability to meet deadlines; and

7.8.1.4 In the case of consultant services, the vendor's proposed approach to the project/assignment shall be an additional criterion.

7.8.2 The Committee shall evaluate the following in light of the criteria set forth in the solicitation: statements submitted in response to the solicitation of consultant services and other required statements of qualifications and performance data.

7.9 REQUIREMENTS FOR OTHER SUPPLEMENTAL SERVICES

7.9.1 Independent Auditing

7.9.1.1 In accordance with [37-2-59(3)] independent auditing shall be subject to the provision of Section 22-13-6 of the General Laws of Rhode Island which requires that the Auditor General shall review and approve the proposed scope of services for an independent audit and the firm selected to conduct the audit.

7.9.1.2 Requisitions for independent audit services shall be submitted to the Office of Purchases with written verification of the Auditor General's approval of the proposed purchase of services. Copies of correspondence from the Auditor General to the Agency shall be considered sufficient authorization to proceed.

7.9.1.3 Contract amendments which increase the original approved scope of work shall also require the Auditor General's authorization.

7.9.2 Legal, Medical and Dental Services

7.9.2.1 In accordance with Chapters 37-2-69 and 37-2-71 of the RIGL, prior to procuring the services of an attorney, physician or dentist user agencies must provide to the Chief Purchasing Officer the following:

7.9.2.1.1 Justifications for need - which may include, but need not be limited to, consideration of: (1) legal mandates/court orders or consent decrees, (2) licensing/certification requirements, (3) health and safety concerns, (4) minimum standards of service and (5) union workload agreements.

7.9.2.1.2 Presentations shall include copies of relevant laws, standards or other citations used for justification.

7.9.2.1.3 The scope of services shall describe the time period for the proposed contract and services or outcomes (tasks, reports, or other products).

7.9.2.1.4 Presentations shall indicate whether the proposed contracted work involves supplemental functions or is for temporary staff coverage.

7.9.2.1.5 If such services are proposed to be provided on a supplemental basis by employees of the same or other state entities, the presentation shall indicate whether the services are in addition to, or an extension of, the employees' normal duties.

7.9.2.2 Demonstration to the satisfaction of the Chief Purchasing Officer that professionals meet minimum requirements may be accomplished using the following:

7.9.2.2.1 User agencies may obtain annual verification of the status of an attorney(s) from the Supreme Court listing of members of the Rhode Island Bar.

7.9.2.2.2 User agencies may obtain annual verification of the status of medical doctors and medical professionals from the Department of Health.

7.9.2.2.3 The Chief Purchasing Officer may delegate authority to determine the appropriateness of qualifications to agency chief executives subject to the following: (1) such delegation shall be at the request of and justified by the chief executive of the agency, (2) a complete description of the evaluation procedure is provided, (3) and the names, qualifications and official capacity of the persons participating in the evaluation process or as members of professional review boards are provided.

7.9.2.3 [37-2-70] Professional services -- Legal -- State.-- Before a state department procures the services of an attorney, it shall demonstrate to the satisfaction of the chief purchasing officer the following:

- (A) 1. The need for the services required including the scope of the services to be performed;
- 2. That no legal personnel employed by the state on a full-time basis is available to perform such services;
- 3. That funding is available, indicating from which sources such funding is to be provided;
- 4. That attorneys to be engaged meeting the following minimum requirements: (a) appropriate professional licensing and, (b) 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 (c) ability to perform the services as reflected by workload and availability of adequate personnel, equipment and facilities to perform the services expeditiously.

(B) The attorney shall enter into a letter of engagement with the state. The letter of engagement shall state the rate of compensation, the scope of the services to be performed for the compensation and 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 his/her preferred public or private clients. A letter of engagement shall not be for more than one (1) year.

7.9.2.4 37-2-72. Professional services -- Medical and dental services. -- Before a state department, board or commission or a public agency procures the services of a physician or dentist, it shall demonstrate to the satisfaction of the chief purchasing officer the following:

(A) For Medical/Dental Consultant Services:

- (1) The need for the services required including the scope of the services to be performed;
- (2) That no medical/dental personnel employed by the state on a full-time basis is available to perform such services;
- (3) That funding is available, indicating from which sources such funding is to be provided;

(4) That medical/dental consultants to be engaged meet the following minimum requirements: (a) appropriate professional license or certification and (b) competence to perform such services as reflected by formal training and education, general experience and experience in providing the required services.

(B) For medical/dental services where such services are readily defined and the required services are clearly defined:

(1) The need for such services, including the detailed scope of work, to be performed;

(2) That no full-time state employee(s) is/are available to perform such services;

(3) That funding is available, indicating from which sources such] funding is to be provided;

(4) That such medical/dental service providers meet the following minimum requirements: (a) possess appropriate professional Rhode Island licenses and certifications and (b) competence to perform such services as reflected by formal training and education, general experience and expertise in providing the required services

(C) For medical/dental services, or for temporary services, generally definable over a definite period of time but on an as needed basis to provide coverage for full-time state employees (doctors, dentists, nurses, etc.) during their absence. Such procurements for those services shall be obtained through the use of a blanket-type contract arrangement. Requesting agencies shall provide to Purchasing Division fully authorized, funded and described requirement via a blanket-type purchase requisition. Requesting agencies shall provide to the satisfaction of the chief purchasing officer or his designee the following:

(1) Rationale that such services are required; and

(2) certification that medical/dental personnel to be employed possess the appropriate state license or certification, competence to perform such services as reflected by formal training, education and experience in providing the required service.

(D) Nothing in this law shall prohibit nor shall anything in this law be interpreted to prohibit appropriate action by the director or his designee to provide needed medical services whether on a regular or emergency basis.

SECTION 8 - CONTRACTS

8.1 DEFINITIONS

8.1.1 [37-2-7(7)] "Change order" shall mean a written order signed by the purchasing agent, or the contractor directing or allowing the contractor to make changes which the changes clause of the contract authorizes the purchasing agent or contractor to order without the consent of the contractor or purchasing agent.

8.1.2 [37-2-7(5)] "Contract" shall mean all types of agreements, including grants and orders, for the purchase or disposal of supplies, services, construction, or any other items. It shall include awards, contracts of a fixed price, cost, cost-plus-a-fixed-fee, or incentive type; contracts providing for the issuance of job or task orders, leases, letter contracts, purchase orders and construction management contracts. It also includes supplemental agreements with respect to any of the foregoing. With respect to the procurement regulations set forth herein, "contract" shall not apply to labor contracts with employees of state agencies.

8.1.3 [37-2-7(6)] "Contract Modification" shall mean any written alteration in the specifications, delivery point, rate of delivery, contract period, price, quantity, or other contract 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. It shall include bilateral actions, such as change orders, administrative changes, notices of termination, and notices of the exercise of a contract option.

8.1.4 "Contract Addendum" shall mean an alteration in the terms and/or scope of an agreement accomplished by mutual action of the parties, permissible under emergency purchases, construction work, sole source procurement, and otherwise where competition is not required.

8.1.5 [37-2-7(7)] "Contractor" shall mean any person having a contract with a governmental body.

8.1.6 An "independent contractor" shall mean a person (individual or firm) who, in various degrees and/or combinations:

8.1.6.1 is available to the general public on a regular and consistent basis; and

8.1.6.2 is free to work when and for whom he/she pleases; and

8.1.6.3 is employed by more than one person or company at a time; and

8.1.6.4 makes a significant investment in facilities not typically maintained by an employee; and

8.1.6.5 can realize a profit or loss as a result of providing services or products.

8.1.7 In accordance with [37-2-15(1)] "cost-reimbursement contract" shall mean a contract under which the state reimburses the contractor for those contract costs, within a stated ceiling, which are allowable and allocable in accordance with cost principles established by the Chief Purchasing Officer herein, and a fixed fee.

8.1.8 "Prime contractor" shall mean a contractor who engages subcontractors in the course of satisfying the requirements of fulfilling a contract.

8.1.9 In accordance with Chapter 37-13-1 "Public works contract" shall mean a contract for grading, clearing, demolition, improvement, completion, repair, alteration or construction of any public road or any bridge, or portion thereof, or any public building or portion thereof, or any heavy constructions, or any public works projects of any nature or kind whatsoever.

8.1.10 "Punitive Termination" shall mean termination at the discretion of the state for failure of the contractor to perform with no liability on the part of the state.

8.1.11 "Renegotiation" shall mean deliberation, discussion, or conference to change or amend the terms of an existing agreement.

8.1.12 "Subcontractor" shall mean any person undertaking part of the work under the terms of the contract, by virtue of an agreement with the prime contractor, who, prior to such undertaking, receives in writing the consent and approval of the state.

8.1.13 [37-2-7(7)] "Supplemental Agreement" shall mean any contract modification which is accomplished by the mutual action of the parties.

8.2 FUNDAMENTAL REQUIREMENTS AND PRINCIPLES FOR STATE CONTRACTS - A contract shall mean a promise, or a set of promises, for breach of which the law gives a remedy, and the performance of which the law recognizes as a duty.

8.2.1 [37-2-54(3)] No purchase or contract shall be binding on the state or any agency thereof unless approved by the Department [of Administration] or made under general regulations which the Chief Purchasing Officer may prescribe.

8.2.1.1 The terms and conditions of a valid Purchase Order and its supplements, as issued by the Office of Purchases and signed by the Purchasing agent or his designee, shall constitute the primary contractual instrument of the state.

8.2.1.1.1 Unless specifically established by law, regulation or procedures published by the Chief Purchasing Officer, no other instrument shall constitute a state purchasing contract.

8.2.1.1.2 Oral Agreements - Any alleged oral agreement or arrangements made by a bidder or contractor with any agency or an employee of the Office of Purchases may be disregarded and shall not be binding on the state.

8.2.1.2 "Purchasing Contract Authority" shall mean the authority to act on behalf of the state to commit funds, enter into binding agreements or contracts, dispose of state property, or in any other manner control procurement or obligate the State.

8.2.1.2.1 No state agency official shall have the right (capacity) to exercise purchasing contract authority through written or oral agreements or contracts or, in any other way, financially or otherwise obligate the State without the express written consent of the Chief Purchasing Officer.

8.2.1.2.2 No state agency may place orders or negotiate with suppliers or potential suppliers without the participation or express approval of the Chief Purchasing Officer.

8.2.2 [37-2-13(4)] No state purchasing regulation shall change in any way a contract commitment by the state nor of a contractor to the state which was in existence on the effective date of the regulation.

8.2.3 [37-2-13(5)] The provisions of state purchasing regulations shall be considered to be incorporated by operation of law in all state contracts.

8.2.4 [37-2-13(6)] Contract provisions and contracts entered into in violation of state purchasing regulations shall be void "ab initio" [from inception].

8.2.5 Supplemental Principles of Law - Obligation of Good Faith.

8.2.5.1 [37-2-3(1)] Unless displaced by the particular provisions of this chapter [37-2], the principles of law and equity, including the uniform commercial code, the law merchant, and the law of contracts, including, but not limited to, agency, fraud, misrepresentation, duress, coercion, mistake, and bankruptcy, shall supplement these provisions.

8.2.5.2 [37-2-3(2)] Every contract or duty under this chapter shall impose upon both parts the obligation of good faith in its performance and/or enforcement. "Good faith" shall mean honesty in fact in the conduct or transaction concerned and the observance of reasonable commercial standards of fair dealing.

8.2.6 In accordance with Chapter 37-2-9(p), contractors must comply with state and federal Equal Opportunity requirements for all contracts for supplies and services exceeding ten thousand dollars (\$10,000). 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 and set forth herein.

8.2.7 [37-2-41] Contractor's Bonds. - The provisions of chapter 37-12 of the general laws shall apply to all construction contracts awarded under this chapter.

8.2.8 Pursuant to Executive Order 08-01 and Procurement Regulation 1.12 herein, Executive Branch departments, agencies and personnel shall require that any and all persons and businesses doing business with the Executive Branch shall register with and utilize the services of the E-Verify program to ensure compliance with federal and state law.

8.2.7.1 "Performance Bond" shall mean a contract of guaranty executed subsequent to award by a successful bidder to protect the state from loss due to contractor inability to complete a contract.

8.2.7.2 Chapter 37-12 requires that every person awarded a public works contract shall furnish to the state good and sufficient surety (performance bond) not less than fifty percent (50%) and not more than one hundred percent (100%) of the contract price conditioned that the contractor, principal in said bond, the person's executors, administrators or successors, shall keep and perform the covenants, conditions and agreements in the contract. However, provided that good cause is shown, the Director of the Department of Administration may waive the requirements for contracts not in excess of fifty thousand dollars (\$50,000).

8.2.7.3 In accordance with Chapter 37-13-14 a contractor's performance bond required for contracts exceeding one thousand dollars (\$1000) under 37-12 must be furnished by a surety company authorized to do business in the state.

8.3 GENERAL CHARACTERISTICS OF STATE CONTRACTS

8.3.1 General Terms and Conditions - The Office of Purchases shall develop and make available to potential suppliers and state officials a document stating the general terms and conditions applicable to all quotations and state purchasing contracts. The General Terms and Conditions shall (1) be referenced and made a part of all solicitations for proposals and quotations; all state purchase orders, contracts, and letters of authorization; and bidder registration documentation and (2) provide notice to bidders that contract award may be subject to the bidder signing an affirmation (certification) regarding certain legal requirements or restrictions relating to foreign corporations, goods produced in South Africa, disadvantaged business enterprises, labor rates, local product preference, etc., as required by the Purchasing Agent.

8.3.2 When a contract has been entered into between the state and another party, neither party shall have the legal right to add new terms or conditions without the consent of the other, unless the contract so specifies.

8.3.3 All contract pricing shall be firm and fixed unless contract language provides for reconsideration.

8.3.4 Issuance of purchase orders shall not be made on the basis of "advise pricing" (or "pricing to be determined") agreements. All commitments shall be on the basis of estimated prices with a "not to exceed" maximum authorization when firm, fixed pricing agreements are not possible.

8.3.5 Changes in scope, price, and length of contract period shall require contract amendments which are specified in writing.

8.3.5.1 Unanticipated changes may be considered with the express consent of both parties.

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

8.3.6 Termination - As appropriate, state contracts shall include clauses which address special conditions/procedures for termination of contract not contained in the state's General Terms and Conditions; e.g., provisions for penalties or forfeitures for contract noncompliance may be included; a convenience termination clause which permits the state to terminate, at its own discretion, the performance of work in whole or in part, and to make a settlement of the vendor's claims in accordance with appropriate regulations and applicable contractual conditions.

8.3.7 Mutual Agreement - The agreement shall consist of an offer by one party, called the offeror, and an acceptance by the other party, called the state.

8.3.7.1 When a purchase order is issued which does not differ from the bid submitted by an offeror, mutuality shall be assumed.

8.3.7.2 In accordance with the General Terms and Conditions which notify offerors that the Purchasing Agent reserves the right to make partial bid awards, mutuality shall be assumed when a purchase order does not differ from the elements of a bid submitted by an offeror.

8.3.7.3 Any offer, whether in response to a solicitation for proposals or bids, or made without a solicitation, which is accepted in the form of an order made by the Purchasing Agent, or a state official with purchasing authority delegated by the Purchasing Agent, shall be considered a binding contract.

8.3.8 Consideration - Although consideration to support a contract may assume other forms, generally it shall mean the agreement to pay a sum of money for the delivery of the desired item or services rendered. It shall not be essential that the consideration be of a substantial consequence, but shall have some value. Compensation shall be specified and shall include but not be limited to: (a) terms of payment for partial delivery or completion; (b) unit of cost (hourly rate, per report rate), if appropriate; (c) frequency/conditions for payment - weekly, monthly, upon completion of percentage of work, etc.; and (d) retainage, when appropriate.

8.3.9 Capacity of Parties - The contracting parties shall have the legal authority to enter into contracts.

8.3.10 Competence of Parties - The contracting parties shall be of legal age and of sound mind.

8.3.11 Length of contract period shall be specified.

8.3.12 A state official (or position) from whom the contractor shall obtain direction shall be named and/or a format for written authorization to deliver (e.g., request for delivery form for master pricing agreement) shall be specified.

8.3.13 Public Works/Construction Contracts shall provide for the following additional considerations:

8.3.13.1 Certificates of insurance to protect the general public or state property from injury or loss arising from actions or inaction of the contractor during the progress of a contract.

8.3.13.2 Each contractor shall be responsible for providing satisfactory evidence of complete coverage of all insurances, permits, and licenses required by state, city or town statutes, ordinances, and/or regulations.

8.4 THE PURCHASE ORDER CONTRACT

8.4.1 "Purchase Order" shall mean a document issued by the Purchasing Agent to formalize a purchase transaction with a vendor. The purchase order shall contain statements as to the quantity, description, and price of the goods or services ordered, applicable terms as to payment, discounts, date of performance, transportation, and other factors or suitable references pertinent to the purchase and execution by the vendor. Purchase orders shall include blanket orders, master pricing agreements, and utility purchase orders.

8.4.2 The entire agreement with the supplier shall, at all times, reside solely in the purchase order and its referenced supplements.

8.4.3 Purchase Order Supplements shall consist of all of the following documents:

8.4.3.1 The state's General Terms and Conditions;

8.4.3.2 The state's request for quotations or proposals, including specifications;

8.4.3.3 The contractor's offer which is responsive to the solicitation; and/or

8.4.3.4 As appropriate, additional contract provisions.

8.5 MULTI-YEAR CONTRACTS

8.5.1 [37-2-33(1)] Unless otherwise provided in the statute making appropriations therefore, multi-year contracts for supplies and services may be entered into for periods not extending beyond the end of the biennium in which the contract was made, if funds for the first fiscal year of the contemplated contract are available at the time of contracting. Payment and performance obligations for succeeding fiscal years shall be subject to the availability of funds therefore.

8.5.1.1 "Biennium" shall mean a period of time equal to two fiscal years.

8.5.1.2 "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.

8.5.1.3 Multi-year contracts which extend beyond a biennium shall be permitted provided that:

8.5.1.3.1 funds for the first year of the biennium have been appropriated; and

8.5.1.3.2 contracts shall contain a standard clause which states that implementation of the contract beyond the first fiscal year shall be subject to the availability of funds; and

8.5.1.3.3 a written justification is placed in the purchase order file or the category of procurement has by regulation or policy been identified by the Chief Purchasing Officer as appropriate for multi-year contracting, e.g., property leases.

8.5.1.4 Multi-year contracts shall specify the annual costs and total value of each contract.

8.5.2 [37-2-33(2)] Prior to the utilization of a contract as described in subsection 37-2- 33(1), it shall be determined in writing by the Chief Purchasing Officer:

(a) That estimated requirements cover the period of the contract and are reasonably firm and continuing; and

(b) That such contract will serve the best interests of the state by encouraging effective competition or otherwise promoting economics in state procurement.

8.5.2.1 The Chief Purchasing Officer may delegate to the Purchasing Agent all or a portion of the responsibility and authority to make such determinations.

8.5.3 In accordance with [37-2-33(3)] when funds are not appropriated or otherwise made available to support continuation of performance in a subsequent year of a [multi-year] contract, the contract for such subsequent year may be cancelled and the contractor shall be reimbursed for the reasonable value of 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:

- (a) Appropriations currently available for performance of the contract; or
- (b) Appropriations currently available for procurement of similar supplies or services and not otherwise obligated; or
- (c) Appropriations made specifically for the payment of such cancellation costs.

8.5.4 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:

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

8.5.4.2 Maintenance and repair of specialized equipment;

8.5.4.3 Special licensing agreements (computer, communication);

8.5.4.4 Special services for which the contract award is based on a request for proposals, such as residential treatment programs;

8.5.4.5 Supplemental services, the approval of which is based upon the recommendation of the State Architectural, Engineering and Consultant Selection Committee and selection by the Chief Purchasing Officer; and

8.5.4.6 Any other contractual relationship where it has been determined in writing by the Chief Purchasing Officer that a long-term agreement shall be the most cost effective method of procurement.

8.5.5 User agencies shall specify on requisitions and shall submit justification whether multi-year contracts should be considered by the Purchasing Agent for the supply or service requisitioned.

8.6 LETTER OF AUTHORIZATION - When the Chief Purchasing Agent determines in writing that it is absolutely essential 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 sufficient time, the Purchasing Agent may issue a Letter of Authorization.

8.6.1 A Letter of Authorization (LA) shall mean a written instrument binding only when signed by the Purchasing Agent, which authorizes immediate commencement of implementation of the delivery of supplies or the performance of services.

8.6.2 Such instrument shall:

8.6.2.1 Represent a preliminary authorization subject to the subsequent issuance of a Purchase Order.

8.6.2.2 Be superseded by a definitive contract at the earliest practicable date not later than the greater of the following: (1) the expiration of 180 days from the date of the LA or delivery of 40% of the contract.

8.6.2.3 Be specifically negotiated and shall address the following contractual requirements that:

8.6.2.3.1 The vendor will proceed immediately with performance of the contract, including procurement of necessary materials;

8.6.2.3.2 the extent and method of payments in the event of termination for the convenience of the state or for default;

8.6.2.3.3 the vendor is not authorized to expend monies or incur obligations in excess of the maximum liability of the state as set forth in the letter contract;

8.6.2.3.4 the type of definitive contract contemplated;

8.6.2.3.5 as many definitive contract provisions as possible;

8.6.2.3.6 the vendor shall provide such price and cost information as may reasonably be required by the state; and

8.6.2.3.7 the vendor and the state shall enter into negotiations promptly and in good faith to reach agreement and execute a definitive contract.

8.7 CHANGES TO PURCHASE ORDERS

8.7.1 All agreements and changes to scope of work, price, or other terms shall be incorporated into purchase orders via "change order" documents incorporating contract amendments.

8.7.2 Change Orders issued by the Office of Purchases shall be the only binding documents which may create a change in a purchase order.

8.7.3 Personnel shall not commit the state to technical/contractual changes to purchase orders without first securing all necessary approvals.

8.7.4 All discussions of potential changes (oral or written) may be disclaimed as not being binding on the supplier or the state until formally incorporated in the purchase order.

8.7.5 In general, change orders shall be issued by the Office of Purchases following receipt of quotations and discussions of price and delivery with the supplier. If circumstances preclude immediate issuance of a formal change order, interim direction to the supplier may be made via a letter of authorization signed by the Purchasing Agent.

8.8 TERMINATION OF CONTRACT

8.8.1 If required bidder certifications are determined to be invalid, the Purchasing Agent shall declare the purchase order void.

8.8.2 Notice of termination by either party shall be submitted in writing to the other party in accordance with the termination clause of the contract.

8.8.3 Cancellation of a Contract by the State

8.8.3.1 Cancellations of Purchase Order Contracts or Master Pricing Agreements shall require the signature of the Purchasing Agent or his designee.

8.8.3.2 A contract may be cancelled or annulled at the contractor's expense upon determination by the Purchasing agent that a condition of nonperformance exists.

8.8.3.3 "Nonperformance" shall mean lack of compliance with the contract specifications and/or terms and conditions.

8.8.3.4 Cancellation by the Purchasing Agent for nonperformance shall be subject to the following rules:

8.8.3.4.1 A formal complaint of nonperformance or unsatisfactory performance shall be submitted by an authorized state official to the Purchasing Agent. Such complaint shall provide a description of and justification for the complaint.

8.8.3.4.2 The Purchasing Agent shall direct the complaint to the Standards and Inspection Unit (SIU) of the Office of Purchases.

8.8.3.4.3 The SIU inspector, in conjunction with the Office of Purchases official (buyer) responsible for the contract, shall be authorized to attempt to resolve the problem to the satisfaction of the user agency.

8.8.3.4.4 The inspector and buyer shall report in writing to the Purchasing Agent whether the problem requires formal action, and if the problem has not been resolved, the Purchasing Agent shall notify the contractor in writing that he/she is not in compliance with the contract. Such notice of nonperformance shall: (1) specify the nature of the complaint, (2) direct the contractor to take corrective action, (3) direct the contractor to respond in writing to the notice of nonperformance within a specified time period, and (4) notify the contractor that failure to respond as directed may result in cancellation of the order.

8.8.3.5 If a contractor fails to take corrective action and/or respond to a notice of nonperformance, the Purchasing Agent may issue a change order canceling the contract.

8.8.3.6 If, after reviewing the contractor's response, the Purchasing Agent determines that the contractor is not out of compliance with the contract requirements, he shall so notify the user agency and the contractor in writing, providing a rationale for his decision.

8.8.3.7 If the Purchasing Agent determines that valid extenuating circumstances out of the control of the contractor have prevented compliance with the contract requirements, he shall so inform the user agency and may amend the contract to provide for a reasonable opportunity for the vendor to perform the contract, if necessary.

8.8.3.8 If the Purchasing Agent believes that a contractor's action or lack thereof presents a clear and immediate danger to the public interest, he may request in writing that the Chief Purchasing Officer authorize immediate termination of the contractual relationship.

8.8.3.9 Copies of all communications with a contractor regarding nonperformance shall be sent to the contractor's bonding company, power of attorney and the Department of Administration legal counsel.

8.8.3.10 If the Purchasing Agent determines that a contractor is unwilling or unable to perform a contract, he shall:

8.8.3.10.1 direct the contractor's bonding company to assume responsibility for the performance of the contract if a performance bond has been issued; and

8.8.3.10.2 so notify the user agency and contractor; and

8.8.3.10.3 notify the contractor whether he/she has been temporarily suspended or permanently debarred from the state Bidders List and shall be responsible for any costs incurred by the state in the completion of the contract.

8.8.3.11 Failure to register and utilize E-Verify as required in section 1.12 of these regulations is grounds for suspension or debarment of persons and businesses doing business with the Executive Branch. The severity of the sanction will be determined by the Purchasing Agent or his/her designee in accordance with the provisions below in this section.

8.8.3.12 Failure to certify to register and utilize the E-Verify system in accordance with the section 1.12 of these regulations.

8.8.3.13 False certification of registering and utilizing the E-Verify system in accordance with the section 1.12 of these regulations.

8.8.3.14 Persons and businesses failing to submit the required certifications from subcontractors shall not be allowed to continue to do business with the State of Rhode Island.

8.9 TYPES OF PURCHASE ORDER CONTRACTS

8.9.1 Fixed Price (FP)

8.9.1.1 The Firm Fixed Price (FFP) contract shall mean one which provides for a price which is not subject to any adjustment by reason of the seller's cost experience in the performance of the

contract. This type of contract should be used when the price is based on credible cost data for the completion of the order.

8.9.1.2 The Fixed Price with Economic Price Adjustment (FP W/EPA) contract shall mean one which provides for the upward or downward revision of the stated price upon the occurrence of certain economic conditions which are specifically defined in the contract. These conditions are limited to those beyond the control of the seller.

8.9.1.3 A Fixed Price Redeterminable (FPR) contract shall mean one which permits reconsideration of price at a stated time after contract initiation when the only supplier capable of performing a job cannot quote a fixed price with full assurance that it will be fair and reasonable.

8.9.1.4 The Fixed Price Incentive (FPI) contract shall mean one which provides for the adjustment of profit (fee) and price according to a sharing arrangement based on the relationship which final negotiated total cost bears to the negotiated target cost.

8.9.2 Cost Reimbursement

8.9.2.1 A Cost No Fee (CNF) contract shall mean one under which the seller receives no fee.

8.9.2.2 A Cost Sharing (CS) contract shall mean one under which the seller not only receives no fee but is reimbursed for only an agreed upon portion of its allowable costs.

8.9.2.3 A Cost Plus Fixed Fee (CPFF) contract shall mean one which provides for the payment of a fixed fee to the seller. The fixed fee negotiated does not vary with actual cost, but may be adjusted as a result of any subsequent changes in the work or service to be performed under the purchase order.

8.9.2.4 A Cost Plus Incentive Fee (CPIF) contract shall mean one which provides for a fee which is adjusted by formula in accordance with the relationship which total allowable costs bear to target costs, a target fee, a minimum and maximum fee, and a fee adjustment formula. Upon completion of the order, the fee is determined in accordance with the established formula as an incentive for performance efficiency; however, there is no ceiling price specified and the seller is under no obligation to complete the order once the funds obligated have been exhausted.

8.9.2.5 A Cost Plus Percentage of Cost (CPPC) contract shall mean one which provides for a fee which is adjusted by percentage formula in accordance with the relationship to total cost. The percentage formula may be fixed, but fee paid may be adjusted as a result of any subsequent changes in the work or service to be performed under the purchase order.

8.9.2.6 A Time and Materials (T/M) contract shall mean one which provides for the purchase of supplies or services on the basis of (1) direct labor hours at specified fixed hourly rates (which rates include direct and indirect labor, overhead and profit) and (2) material at cost. Material handling costs may be included to the extent they are clearly excluded from any factor of the charge computed against direct labor hours (L/H).

8.9.3 A To Be Determined (TBD) contract shall mean one which enables the buyer and the seller to enter into a relationship with no predetermined terms at the initiation of the contract.

8.9.4 A Blanket Order shall mean an arrangement under which a purchaser contracts with a vendor to provide the purchaser's requirements for an item(s) or a service, on an as-required and often over-the-counter basis. Such an arrangement sets a limit on the period of time it is valid and the maximum amount of money which may be spent at one time or within a specified period. (Usually, but not always, the funds for agency blanket orders will be encumbered.)

8.9.4.1 A Pricing Agreement (PA) shall mean a special blanket order which establishes the terms and conditions under which a specific item or a specific category of items in an indefinite quantity, are to be purchased for a specific period of time, usually one year.

8.9.4.2 A Master Pricing Agreement (MPA) shall mean a pricing agreement which has been established on behalf of more than one entity. (Usually, funds for MPA contracts are not encumbered.)

8.9.4.3 A "Term Contract" shall be synonymous with an MPA contract.

8.10 PRINCIPLES FOR SELECTION OF TYPE OF PURCHASE ORDER CONTRACT -

The selection of the appropriate type of contract is a matter which requires the exercise of judgment in order to obtain fair and reasonable prices in accordance with the circumstances of the procurement.

8.10.1 In determining the type of contract to be used, consideration shall be given but not limited to such factors as:

8.10.1.1 Type and complexity of the item or scope of work to be performed;

8.10.1.2 Urgency of the requirement;

8.10.1.3 Prospective period of contract performance;

8.10.1.4 Degree of competition present;

8.10.1.5 Extent of completion of baseline and detail design; which in turn may influence other considerations as the adequacy and firmness of specifications, and the availability of relevant historical pricing data and prior experience;

8.10.1.6 Availability of comparative price data, or lack of firm market prices or wage levels;

8.10.1.7 Prior experience with the supplier;

8.10.1.8 Extent and nature of subcontracting contemplated;

8.10.1.9 Assumption of business risk;

8.10.1.10 Supplier technical capability and financial responsibility;

8.10.1.11 Administrative costs;

8.10.1.12 Adequacy of the supplier's accounting system; and

8.10.1.13 Other concurrent contracts.

8.10.2 [37-2-32] Approval of Accounting System. - Except with respect to firm fixed price 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 that the contractor's accounting system is adequate to allocate costs in accordance with generally accepted accounting principles.

8.10.2.1 The firm fixed price contract shall be used in applications and under limitations hereinafter set forth, unless the use of another type of contract is more appropriate.

8.10.3 [37-2-31] Subject to the limitations on entering into cost plus percentage of cost and cost reimbursement contracts set forth herein, any type of contract which will promote the best interests of the state may be used.

8.10.4 Cost Reimbursement Contracts.

8.10.4.1 [37-2-29] The Cost Plus a Percentage of Cost (CPPC) contract is prohibited.

8.10.4.2 [37-2-30(1)] No contract providing for the reimbursement of the contractor's cost plus a fixed fee (cost reimbursement) may be made through negotiation or in sole source or emergency procurements unless it is determined in writing by the Chief Purchasing Officer that such contract is likely to be less costly to the state than any other type of contract, or that it is impracticable to obtain supplies or service of the kind or quality required except under such a contract.

8.10.4.3 [37-2-30(2)] Each contractor under a cost reimbursement type contract shall obtain consent from the Chief Purchasing Officer, as provided for in the contract, before entering into:

(a) a cost reimbursement subcontract; or

(b) any other type of subcontract involving more than ten thousand (\$10,000) or ten percent (10%) of the estimated cost of the prime contract[whichever is greater].

8.10.4.4 [37-2-30(3)] All cost reimbursement contracts shall contain a provision that only costs recognized as allowable, in accordance with cost principles set forth in regulations issued by the Chief Purchasing Officer will be reimbursed.

8.10.5 When a FP W/EPA contract is employed, provisions shall be included for downward adjustment of the contract price in those instances where the prices or rates may be expected to fall below the base price agreed to by contract.

8.10.5.1 Types of economic adjustments shall include but shall not be limited to:

8.10.5.1.1 Price Adjustment - a modification of the base purchase order price on the basis of increases or decreases in published or established prices of specific items.

8.10.5.1.2 Labor and Material Adjustment - a modification of the contract base price on the basis of increases or decreases of wage rates, specific material costs, or both, using agreed upon standards or indices.

8.10.5.2 This type of contract may be appropriate where valid doubt exists as to the predictability of economic conditions which will exist during a multi-year contract period. Price adjustment provisions shall not be used to provide protection to contractors against contingencies which arise from inaccurate estimates of the quantities of labor or materials required for completion of a contract.

8.10.6 When FPR contracts are employed the basis for adjustments shall be established when the contract is negotiated and a cost baseline shall be established.

8.10.6.1 The following data shall be secured from each source before placing a re-determinable order: number of estimated hours and method used in arriving at hours; direct labor rates per hour; material cost, including both quantities and unit prices; overhead rates (categorized by element); profit, any other data deemed pertinent for analysis of the prices quoted.

8.10.6.2 The establishment of a re-determinable type of contract shall require the written authorization of the Chief Purchasing Officer. Upon analysis conducted jointly by the user agency and the Purchasing Agent, a request and justification for considering re-determinable pricing provisions shall be submitted in writing by the Purchasing Agent to the Chief Purchasing Officer.

8.10.7 When FPI contracts are employed:

8.10.7.1 There shall be an initially negotiated firm target cost, a target profit, a price ceiling and a final profit and price adjustment formula. After completion, a final cost shall be negotiated and a final price established in accordance with the predetermined formula.

8.10.7.2 The circumstances must be such that targets are reasonably free of contingencies and provided that a fair and reasonable incentive formula can be established at the time of initial contract negotiation and the contract is of sufficient duration to permit achievement of substantial cost reductions.

8.10.7.3 The same supplier cost data shall be required as for a re-determination contract.

8.10.8 A CNF contract may be used for research and development work – particularly with nonprofit organizations and educational institutions.

8.10.9 A CS contract is suitable for:

8.10.9.1 Jointly sponsored research and development with educational institutions or other nonprofit organizations or

8.10.9.2 Other research and development work where the results of the contract may have commercial benefit to the seller.

8.10.10 A CPFF contract is suitable when:

8.10.10.1 The scope and nature of work cannot be definitely specified.

8.10.10.2 Definite specifications exist but the seller lacks a valid basis for estimating costs because the supplies called for are not items regularly manufactured, or the services called for have not been previously performed, or partial experience will not reveal a proper pricing basis for the remainder of the contract.

8.10.10.3 Specifications are not complete or major changes substantially affecting the scope of production or construction work are expected.

8.10.10.4 Work is to be performed in a state-owned facility with the use of state-owned equipment, materials, or personnel.

8.10.11 A T/M contract shall include the establishment of a cost limitation which the seller may not exceed (except at his/her own risk). A T/M contract shall be used only in situations when:

8.10.11.1 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: (1) engineering and design services, (2) certain repair, maintenance or overhaul work, (3) emergencies.

8.10.11.2 Provision is made for appropriate surveillance by state personnel during performance.

8.10.12 L/H contracts based solely on labor hours shall be considered a subcategory of T/M contracts, subject to the same restrictions as the T/M contract and shall be used only after the Purchasing Agent has determined that no other type of contract is suitable for meeting the needs of the requisitioner.

8.10.13 Employment of TBD contracts shall be prohibited.

8.10.14 Considerations for use of a MPA contract:

8.10.14.1 The MPA shall specifically state the term and probable volume consideration of the agreement.

8.10.14.2 The seller shall be authorized to ship to the state only those items specified by a delivery request (on a form to be provided) issued under the authority of the Master Pricing Agreement. The state is obligated for payment only to the extent of the specific quantities set forth in the delivery request or for express considerations applicable to the contract itself.

8.10.14.3 The specific category of items to be purchased may be listed in a catalog prepared specifically for the agreement, 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, from time to time, be determined as being a legally sufficient description of the item or items being purchased.

8.11 Selection of Methods of Construction Contracting Management

8.11.1 Construction Contract Management. The intent of Rule 8.11 is to specifically identify alternative methods of management of construction and the criteria to be used in selecting such methods. In addition, the intent of this Rule is to clarify that the method of source selection used to award a state contract for a particular construction project shall continue to be governed by all the applicable provisions of chapter 2 of title 37, entitled “State Purchases”, also referred to as the “State Purchases Act”. These provisions include but are not limited to sections 37-2-17 “Methods of source selection”; 37-2-18 “Competitive sealed bidding”; 37-2-19 “Competitive negotiation”; 37-2-20 “Negotiations after unsuccessful competitive sealed bidding”; 37-2-21 “Noncompetitive procurements”; 37-2-22 “Small purchases” and 37-2-59 “Professional services – Architectural, engineering, and consultant services – Committee”. Provided, however, the provisions of Rules 8.11.3 and 8.11.4 shall not apply to road, bridge and heavy construction projects which are funded in whole or in part by federal funds.

8.11.2 Road, Bridge and Heavy Construction Projects. The provisions of Rules 8.11.3 and 8.11.4 shall not apply to road, bridge and heavy construction projects that are managed by the Rhode Island Department of Transportation and are funded in whole or in part by federal funds. Road, bridge and heavy construction projects are subject to the methods of management of construction contracting, including the criteria for selecting such methods, that are set forth in applicable federal law, including but not limited to 23 U.S.C. 112(b)(i) as amended, and regulations promulgated there under.

8.11.3 Construction Contract Management Methods and Criteria. For all other construction projects not included in Rule 8.11.2, the methods below, along with the criteria for each method, are the alternative methods of construction contract management deemed feasible by the Chief Purchasing Officer. The methods below are not mutually exclusive and may be combined on a project.

8.11.3.1 General Contractor Method. The general contractor method is typified by one business, acting as a general contractor, contracting with the State to timely complete an entire construction project in accordance with drawings and specifications provided by the State. Generally the drawings and specifications are prepared by an architectural or engineering firm under contract with the State. Further, while the general contractor may take responsibility for successful completion of the project, much of the work may be performed by specialty contractors with whom the general contractor has entered into subcontracts.

The general contractor method is the generally preferred method of construction work and may be selected for a project when it is determined that the following criteria will be met:

- (a) the project requires timely completion of the construction work in accordance with drawings and/or specifications provided by the

State and/or the State's agent.

- (b) the project work may be performed by specialty sub-contractors under the control and supervision of a general contractor.
- (c) the project does not require direct supervision or coordination between the contractor and project engineering/design professionals other than as normally performed by State employees.
- (d) the construction project is estimated to cost in excess of ten thousand dollars (\$10,000).
- (e) sufficient time exists to complete the design, bid the project and construct the work by the desired occupancy date.

8.11.3.2 Multiple Prime Contractors. Under the multiple prime contractor method, the State or its agent contracts directly with any number of contractors, often representing different trades, to complete portions of the project in accordance with the State's drawings and specifications. The State and/or its agent shall have primary responsibility for successful completion of the entire project.

The multiple prime contractor method may be selected for a project when it is determined that the following criteria will be met:

- (a) the State or its agent is able to coordinate job site activities of any number of contractors and/or subcontractors with varying areas of construction expertise to complete portions of the project in accordance with the State's drawings and specifications, and the State or its agent will contract directly with such contractors and/or subcontractors.
- (b) the State and/or its agent is able to assume primary responsibility for successful completion of the entire project.
- (c) the construction project is for the rehabilitation or renovation of a building or buildings.
- (d) the contract(s) for the rehabilitation or renovation of any building(s) in the aggregate are estimated to cost less than two million dollars (\$2,000,000).

8.11.3.3 Design-Build. In a design-build project, a person or firm contracts directly with the State to meet the State's requirements as described in a set of design or engineering specifications, bridging documents, or scope of work. Final design and construction are both the responsibility of the

design-build contractor. This method can include projects where the design-build contractor supplies the site as part of the design-build package.

The design-build method may be selected for a project when it is determined that the following criteria will be met:

- (a) the State does not have the ability to prepare the requisite design or engineering specifications, bridging documents, or scope of work.
- (b) the State cannot manage or supervise the work of specialty trade contractors and it is not in the State's best interest to contract directly with such specialty contractors.
- (c) the State determines that it is in its best interest for a design-build firm to assume responsibility for both final design and construction of the project.
- (d) due to time constraints and the need to complete the project on an expedited basis, it is in the State's best interest to select a design-build contractor rather than a general contractor for the project.
- (e) construction work on the project has an estimated cost equal to or greater than two-million five-hundred thousand dollars (\$2,500,000).
- (f) the State desires to have a single firm responsible for both design and construction.

8.11.3.4 Construction Manager at Risk. A Construction Manager at Risk is a person or firm experienced in construction that has the ability to evaluate and to implement drawings and specifications as they affect time, cost, and quality of construction and the ability to coordinate the construction of the project, including the administration of change orders. Without limitation, the construction manager at risk shall guarantee that the project will be completed on time and will not exceed a specified maximum price, and/or may obtain subcontractors through the issuance of multiple competitively negotiated bid packages as the design is developed. The construction manager at risk may provide for any and all services as deemed necessary by the state which may include, but not be limited to, construction services, management services, accounting services, design services and, the employment of specialty subcontractors to the construction manager at risk as deemed necessary to successfully complete the project.

The Construction Manager at Risk method may be selected for a project when it is determined that the following criteria will be met:

- (a) the State lacks the resources to evaluate and implement drawings and specifications as they affect time, cost, and quality of construction and lacks the ability to coordinate the construction of the project, including the administration of change orders.
- (b) the State requires professional assistance in the development of a cost effective design (also known as the construction document phase) for the project.
- (c) it is in the State's best interest to hire a construction manager who can guarantee that the project will be completed on time and will not exceed a specified guaranteed maximum price for construction for the scope of the work, as defined by the drawings, specifications, and other pertinent information known at the time the guaranteed maximum price was set.
- (d) it is in the State's best interest not to retain the services of a general contractor for the project and not to directly hold contracts with subcontractors, but rather to retain the services of a construction manager, who shall be required to directly retain subcontractors through issuance of multiple, competitively negotiated bid packages.
- (e) it is in the State's best interest to pay a single management fee which may be either a lump sum or a combination of other fees, except that said fees shall not be calculated as a percentage of construction costs, with a guaranteed maximum cost for construction.
- (f) it is in the State's best interest to hire a construction manager who can provide construction services, management services, accounting services, and retain specialty subcontractors as deemed necessary to successfully complete the project.
- (g) the project has an estimated cost equal to or greater than twenty-five million dollars (\$25,000,000).

8.11.3.5 Owner Program Management. Owner Program Management is a method of procurement in which the program manager acts as the owner's agent in all aspects of the construction project including architectural programming, planning, design and as well as construction. The owner's program manager provides services ranging from early feasibility studies to post-construction facilities management. The program manager typically provides services that include: a) the establishment and management of cost and time parameters, b) value engineering input and cost analysis, c) preparation of bid packages, d) establishment and maintenance of quality control standards, e) project reporting and, f)

project accounting services. Other specific services may be contracted to the owner's program manager.

The Owner Program Management method may be selected for a project when it is determined that the following criteria will be met:

- (a) the State does not have the ability to prepare the requisite design or engineering specifications, bridging documents, or scope of work;
- (b) the State cannot manage or supervise the work of specialty trade contractors and will not contract directly with such specialty trade contractors;
- (c) it is in the State's best interest to retain a program manager to supervise and or monitor the activities of a general contractor; and/or
- (d) it is in the State's best interest to retain a program manager to supervise and or monitor the engineering and architectural services for a project;
- (e) the construction project has an estimated cost equal to or greater than ten thousand dollars (\$10,000).

8.11.4 Construction Contract Management Selection Information. In addition to criteria set forth in Rule 8.11.3, the following information for a particular project shall be submitted to the Chief Purchasing Officer under Rule 8.11.5:

- 8.11.4.1 when the project must be completed or ready for occupancy or use;
- 8.11.4.2 the specific nature of the project and its specialized needs, e.g. housing, offices, laboratories, and specialized construction;
- 8.11.4.3 the extent to which the requirements of the procuring agency and the ways in which said requirements are to be met are known;
- 8.11.4.4 the location of the project;
- 8.11.4.5 the size, scope, complexity, and economics of the project;
- 8.11.4.6 the amount and type of financing available for the project, including whether the budget is fixed and the source of funding, e.g., general or special appropriation, federal assistance moneys, general obligation bonds or revenue bonds;
- 8.11.4.7 the availability, qualification, and experience of State personnel to be assigned to the project and how much time the State personnel can devote

to the project;

8.11.4.8 the availability, experience and qualifications of outside consultants and contractors to complete the project under the various methods being considered;

8.11.4.9 the method of source selection under the State Purchases Act that will be used to award a contract to a vendor for this particular project.

8.11.5 Documentation of Selection Determination. Using and including the information in Rule 8.11.4, the purchasing agent or purchasing agency responsible for carrying out the construction project shall set forth in writing to the Chief Purchasing Officer the facts that led to the selection of a particular method of construction contract management pursuant to the criteria set forth in Rule 8.11.2 or 8.11.3 and the information required in Rule 8.11.4. The Chief Purchasing Officer shall include in the contract file a written statement setting forth the facts that led to the selection of a particular method of management of construction in each instance. The Chief Purchasing Officer's written statement may adopt, in whole or in part, any written statements provided by the purchasing agent or the purchasing agency.

8.11.6 Protest. Any actual or prospective bidder, offeror, or contractor, who is aggrieved in connection with the solicitation or selection for award of a contract, may file a protest with the Chief Purchasing Officer pursuant to RIGL section 37-2-52.

8.12 CONTRACT ADMINISTRATION - Subsequent to the award of any contract for goods or services and continuously over the life of any contract, each agency shall determine and verify that service(s) provided or goods received match exactly all contract specifications as to kind, quality, quantity, or frequency and price. Each Agency shall document in detail all deviation(s) and submit formal complaint(s) to the Office of Purchases for followup action.

8.12.1 Attestation and approval of payment vouchers by duly authorized agents of the agency shall constitute acceptable evidence of such verification.

SECTION 9 - EXCEPTIONS TO COMPETITIVE BIDDING REQUIREMENTS

9.1 AUTHORITY TO MAKE EXCEPTIONS TO THE REQUIREMENT FOR COMPETITION. In certain circumstances competitive bidding for purchases may not be the most cost-effective approach to procurement. The Purchasing Agent may, with the approval of the Chief Purchasing Officer, waive requirements for competitive sealed bidding in accordance with the grounds permitted by law.

9.2 CIRCUMSTANCES PRESCRIBED BY LAW: In accordance with Chapter [37-2- 54], the following exceptions to competitive bidding are permitted by statute; however, the Chief

Purchasing Officer may require competitive bidding in any circumstance where he deems that competition may enhance the state's ability to attain cost savings:

9.2.1 Contractual services where no competition exists, such as telephone service, electrical energy, and other public utility services;

9.2.2 When, in the judgment of the Department of Administration, food, clothing, equipment, supplies, or other materials to be used in laboratory and experimental studies can be purchased otherwise to the best advantage of the state;

9.2.3 Instructional materials available from only one source;

9.2.4 Where rates are fixed by law or ordinance;

9.2.5 Library books;

9.2.6 Commercial items purchased for resale;

9.2.7 Professional, technical, or artistic services; (Contracts exempted by this provision shall be referred to the Governor for review and approval.)

9.2.8 Interests in real property.

9.3 GOODS OR SERVICES OBTAINED BY ONE STATE AGENCY FROM ANOTHER, such as printing from Prison Industries or use of Central Service Accounts, shall be exempt from competition. However, internal service fund purchases shall be made in accordance with all policies and procedures for competitive procurements. NOTE: Purchases of services from state higher educational institutions are subject to competitive review and require the submission of requisitions.

9.4 SMALL PURCHASES NOT EXCEEDING \$250: Competitive bids shall not be required for purchase orders up to \$250 in value if the prices are considered to be reasonable; however, agency officials shall be encouraged to obtain informal quotes.

9.4.1 It shall be the responsibility of agency personnel to exercise good judgment as to what is a fair and reasonable price.

9.4.2 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 price paid or personal knowledge of the item involved.

9.4.3 Agency Chief Executives shall establish guidelines to evaluate periodically the reasonableness of pricing for purchase orders up to \$250.

9.4.4 Purchase orders up to \$250 in value shall be distributed equitably among suppliers. Quotations should be solicited from the previous supplier and other bidders prior to placing a repeat order so as to ensure equitable distribution and enhance competition. Additional bidders

should be different from previously unsuccessful bidders. When practicable, effort shall be made to solicit small disadvantaged minority or women-owned businesses.

9.4.5 Under no circumstance shall purchases exceeding \$250 be artificially divided into component parts to circumvent the competitive process. User agency abuses of this limitation will be reported to the Chief Purchasing Officer who will hold agency chief executives accountable for violations.

9.5 SOLE SOURCE. [37-2-21(a)] A contract may be awarded for a supply, service, or construction item without competition when, under published regulations, the Chief Purchasing Officer or member of the executive department, above the level of purchasing officer determines, in writing, that there is only one source for the required supply, service, or construction item.

9.5.1 The Chief Purchasing Officer may delegate the authority for determination of sole source to the Purchasing Agent.

9.5.2 Sole source categories may include:

(a) items of a unique nature which are unavailable from other sources due to patents or proprietary processes;

(b) books, maps, periodicals, and technical pamphlets, films, video and audio cassettes obtained from publishers;

(c) certain computer software;

(d) licenses - computer software, electronic transmittal;

(e) specialized replacement/repair parts or expansion parts necessary to maintain the integrity of system or function, e.g. scientific research;

(f) works of art for museum or public display;

(g) specialized services for which there is only one documented accepted source, such as transactions involving unique professional services and/or educational institutions, e.g., visiting speakers or professors, and performing artists; repair/maintenance agreements with manufacturers;

(h) advertisements, public notices in magazines, trade journals, newspapers, television;

NOTE: Purchase of advertising and public relations campaign services must be established through a competitive selection process.

9.5.3 This provision excepting sole source procurements from competitive bidding shall not be interpreted to reduce the responsibility of the Office of Purchases and/or user agencies to evaluate the market continuously to research product alternatives and develop additional sources (distributors).

9.5.4 In attempting to achieve the goal of maximizing competition to the greatest extent possible, alternative distributors and manufacturers shall be pursued to sole source items by using compatible replacement parts as long as warranties are not affected by substitution.

9.5.5 Because certain manufacturers may not be either a sole source for obtaining an item nor offer the most competitive price, agencies shall submit requisitions for sole source purchases in excess of \$250 unless specifically delegated such authority by regulation or by the Purchasing Agency.

9.5.6 Maintenance contracts based upon sole source determination shall be subject to the following:

9.5.6.1 Annual maintenance contracts in excess of \$1000 shall require approval by the Office of Purchases.

9.5.6.2 All multi-year contracts shall require approval by the Office of Purchases.

9.5.6.3 To achieve better pricing, when the total amount for all contracts with the same supplier exceed one thousand dollars (\$1000), the agency shall submit a single purchase requisition consolidating all requirements.

9.5.7 The Chief Purchasing Officer or his designee may, at his initiation or upon the review of a justified request and/or recommendation from the chief executive officer of an agency, make a determination that a category of nonprofit providers constitutes sole source suppliers for certain types of service.

9.6 EMERGENCIES [37-2-21(b)] Notwithstanding any other provision of Chapter 37- 2, the Purchasing Agent may make or authorize others to make emergency procurements when there exists a threat to public health, welfare or safety under emergency conditions as defined in regulations; 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.

9.6.1 In accordance with procedures established by the Purchasing Agent, authorized officials in user agencies shall be permitted to react quickly to critical situations when the cost for a remedy or repair is in excess of \$250 and there is not sufficient time to undertake a public, formal, or informal bidding process.

9.6.2 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.

9.6.3 Inadequate anticipation of need shall not be considered justification for "emergency" purchases.

9.6.4 Commitments which extend beyond the immediate response to the dysfunctional emergency shall be prohibited, i.e. prevention of future problems by corrective measures other

than the immediate restoration of function must be pursued through the Office of Purchases competitive purchasing process.

9.6.5 The Office of Purchases shall establish, through competitive bidding, a list of emergency response vendors and shall make such list available to user agencies.

9.6.5.1 When possible, agencies shall obtain services from a list of vendors selected by competitive process to provide specialized trade in emergencies.

5.5.5.2 If an emergency cannot be addressed by a designated vendor, the Office of Purchases shall assist in obtaining names and telephone numbers of responsible vendors.

9.6.6 Under determination of the existence of an emergency, the user agency's designated emergency response officer shall consult with the Office of Purchases before committing to a particular vendor. Office of Purchases officials shall maintain logs of all oral confirmations of authorization to proceed.

9.6.7 If the emergency occurs outside of business hours for the Office of Purchases, the user agency shall be authorized to proceed in accordance with the principles and policies of sound procurement practices outlined herein.

9.6.8 All emergency purchases shall be documented in accordance with procedures established by the Purchasing Agent. The user agency shall submit documentation for the emergency situation and response action in writing to the Purchasing Agent with the voucher for payment. All emergency documentation forms shall be signed by either the agency director or the designated emergency response official.

9.6.9 In the event of an emergency procurement in accordance with R.I. Gen. Laws 37-2-21(b) and Purchasing Regulation section 9.6, the Purchasing Agent may waive the E-Verify requirements for the Executive Branch to any extent practicable with the understanding that any ongoing relationship that occurs after the emergency has ceased shall require compliance.

9.7 STANDARD OR ESTABLISHED CATALOGUE ITEMS may be identified by the Chief Purchasing Officer as exceptions to competitive bidding. Agencies officials may submit requests and justification for Delegated Purchase Authority for the acquisition of such items to the Purchasing Agent, who shall recommend an appropriate course of action to the Chief Purchasing Officer.

9.8 SPOT PURCHASES of certain items (e.g., food, heating oil) sold on the basis of posted market prices may be exempted from competition by the Purchasing Agent when market analysis indicates that such procurements are in the best interest of the state. Opportunities to take advantage of seasonal and supply/demand influences shall be taken into account when determining whether to pursue formal competitive procedures.

SECTION 10 - EXPENDITURES WHICH ARE NOT PROCUREMENTS

10.1 DEFINITIONS

10.1.1 "Benefits" shall mean monies or gifts provided by the state to or on behalf of individuals or entities (clients, patients, inmates, employees, nonprofit service providers) the distribution of which may not be prescribed by statute, regulation, or program provisions.

10.1.2 "Concession" shall be defined as the granting of a license to a commercial entity for the conduct of a commercial enterprise on state premises, in consideration of which the state receives a regular rent and/or a percentage or other share in net proceeds.

10.1.3 "Grants" shall mean monies provided by the state to or on behalf of individuals or entities to underwrite specific costs of services or programs. Although grants may be distributed for specific purposes, payment is not based upon supply of specific units of service or products.

10.1.4 "Entitlements" shall mean monies or gifts provided by the state as part of subsidy programs for which the distribution of funds is determined in accordance with specific eligibility criteria or by formula. Examples included but shall not be limited to: food stamps, general public assistance, medical assistance payments, and school aid formula funds.

10.1.5 "Purchase of Services" shall mean monies expended for the provision of specific units of time and effort rather than an end product.

10.1.6 "Reimbursement" shall mean monies paid to a beneficiary, client, or claimant to make restoration for expenses such person has undertaken.

10.1.7 "Subsidies" shall mean monies provided by the state to or on behalf of individuals or entities to assist in defraying general expenses.

10.2 RESPONSIBILITY TO PROMOTE COMPETITION IN AWARDING CONTRACTS

10.2.1 Concessions. In general, awards on concession agreements shall be made to the offeror whose proposal represents the greatest cash benefit to the state. The Purchasing Agent shall be responsible for the issuance of publicly advertised solicitations for such opportunities, and shall refer the responses to the requesting agency chief executive and the State Properties Committee for review, selection, endorsement, and execution of a concession agreement.

10.2.2 Grants. State agencies may obtain services or provide programs on behalf of clients through grants to nonprofit or other entities; however, when the payment of "grant" funds is subject to the provision of services or programs, determination of contract award shall be obtained by a request for proposal procedure to obtain the advantages of competition.

10.2.2.1 Nonprofit status shall not automatically exempt organizations from being subject to competitive purchasing principles.

10.2.2.2 Agencies may utilize the Office of Purchases to undertake Request for Proposal procedures; however, agency representatives shall be responsible for assisting in the

establishment of evaluation criteria and shall participate in the review and evaluation of responses to the RFP.

10.2.2.3 All grant contracts entered into by agencies shall be subject to an audit of competitive practices.

10.2.2.4 Grants in the form of subsidies or general assistance shall be administered by state agencies in accordance with legal mandates restricting or defining the use of such funds.

10.3 EXCEPTIONS TO COMPETITION. For the purpose of administering Chapter 37-2, grants, benefits, entitlements, subsidies and reimbursements shall not be considered procurements. The following types of expenditures shall not be subject to the provisions of Chapter 37-2 for competitive procurement:

10.3.1 Reimbursement to local governments (e.g., for educational expenses or public works projects).

10.3.2 Reimbursements of third parties for client-demand services, e.g., payments for medical services when the client selects the physician shall be considered benefits for which competitive solicitation is not required.

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

10.3.4 Grants, subsidies, entitlements or benefits purchased.

10.3.5 Grants in the form of subsidies or general assistance shall be administered by state agencies in accordance with legal mandates restricting or defining the use of such funds.

10.3.6 Grants, subsidies, entitlements or benefits purchased on behalf of, or paid directly to, individuals. Examples include but shall not be limited to:

(a) transportation services - public bus, taxicab, ferry);

(b) education and recreation benefits;

(c) fees - tuition costs, registration; and

(d) medical, dental, food stamps, etc.

10.3.7 Employee expenses, subsidies and benefits. Examples include but shall not be limited to:

(a) meals, parking, mileage and travel not covered by state contract;

(b) allowances (e.g., tools, clothing) per union contract;

(c) fees - dues/membership, tuition costs, conference registration.

(d) tuition; and

(e) tests/examinations/certifications.

10.3.8 Claims - reimbursement for damages. Vouchers for tort claims authorized by the General Assembly, accompanied by a copy of the appropriate legal decision and authorized by the Budget Office may be submitted directly to the Controller for payment.

10.4 SPECIAL PROVISIONS AND REQUIREMENTS FOR GRANTS.

10.4.1 Contracting Authority.

10.4.1.1 Grantor agency directors may request delegation of contracting authority to enter into agreements for the purpose of distributing grants.

10.4.1.1.1 Such authority shall be subject to written documentation/explanation as to why the nature of the relationship between the agency and the payee does not constitute a procurement.

10.4.1.1.2 Delegated contracting authority does not require the issuance of a purchase order.

10.4.1.2 Grants for the provision of programs, services, and facility improvements shall not be authorized without agreements or contracts which:

10.4.1.2.1 specify the purpose for the grant;

10.4.1.2.2 specify method and terms of payment;

10.4.1.2.3 define service or product, if required;

10.4.1.2.4 outline any legal limitations on the funding;

10.4.1.2.5 set a time limit for distribution of funds;

10.4.1.2.6 require maintenance of records for a specified period of time;

10.4.1.2.7 provide for auditing; and

10.4.1.2.8 provide for termination of the agreement/contract.

SECTION 11 - INVENTORY WAREHOUSING MANAGEMENT

11.1 Authority for the centralization of management and control of warehousing is set forth in RIGL [37-2-12(1)].

11.1.1 Under the jurisdiction of the Chief Purchasing Officer or his designee, action as appropriate shall be taken and continuously maintained to assure least cost availability of

supplies, foodstuffs, and other commodities necessary to the efficiency of Agency services and State Government.

11.1.2 A decision to classify a storage facility as a storeroom or as a warehouse shall be at the discretion of the Chief Purchasing Officer.

11.2 Each agency, within its jurisdiction, shall be responsible for assessment of current systems and procedures and to assure compliance with these regulations. Requests for assistance in the implementation of these procedures shall be addressed to the Chief Purchasing Officer.

11.3 Cost effective controls, either manual or computerized, shall be implemented and maintained to achieve appropriate inventory and warehousing objectives.

11.3.1 The following inventory control techniques, as defined in a glossary published by the American Production and Inventory Control Society (APICS), and held to be widely accepted practices relative to inventory control, shall be implemented where appropriate.

11.3.1.1 Reorder point determination based on factors of delivery lead time and safety stock to assure timely order without incurring stock-outs of critical supplies, foodstuffs, or other commodities.

11.3.1.2 Inventory classification procedure to stratify inventory items by value based on factors of unit cost and usage, with controlling inventory policy dependent upon value. Such inventory classification is known as "ABC" inventory classification or "Pareto" distribution.

11.3.1.3 Economic lot sizing for determination of replenishing order quantity utilizing one or more of a variety of proven techniques and incorporating factors of usage, lead time, acquisition cost inventory, carrying costs, and unit cost.

11.3.1.4 Safety stock calculation based upon inventory cost and criticality of stock-out situations. Factors of even/uneven usage and varying replenishment lead time shall be determined and applied as appropriate.

11.3.2 Efficient warehouse operation shall require, but is not limited to, the following procedures as appropriate:

11.3.2.1 Physical lot control procedures or methods shall be used to prevent or minimize economic loss of inventory due to deterioration in storage, obsolescence, or expired data code or shelf life.

11.3.2.2 Cycle counting of inventory or periodic physical inventories as prescribed shall be taken to reconcile inventory balances and assure highest inventory accuracy.

11.3.2.3 Inventory Accuracy objectives shall be established based upon inventory stratification by value (ABC analysis) and accuracy levels. These shall be published and monitored. Any required corrective action as a result of these procedures shall be taken by appropriate supervisory personnel.

11.3.2.4 Inventory location systems as appropriate shall be implemented to maximize space utilization and efficiency of order picking, inventory accessibility, and prevention of accidental injury.

11.3.2.5 Safety rules shall be developed, communicated and enforced to prevent accidental injury due to improper operation of material handling equipment, to ensure routine use of personal safety equipment, and to preclude other breach of safety rules.

11.3.2.6 Housekeeping and general warehouse cleanliness shall be maintained to a high standard.

11.3.2.7 Security of warehouse facilities shall be of a quality to prevent loss of inventory due to theft or pilferage, or damage or destruction to facility due to fire or other external causes resulting from failure to properly secure the facility.

11.4 At any time, the Chief Purchasing Officer may direct or require reports, presentations, or field audits to measure levels of compliance and shall direct correction of deficiencies discovered.

11.5 As required under routine established procedure or as directed by the Chief Purchasing Officer or his designee, user agencies of supplies, foodstuffs and other warehoused commodities 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 12 – RHODE ISLAND DEPARTMENT OF TRANSPORTATION PROJECTS

12.1 Introduction.

12.1.1 The Rhode Island Department of Transportation (RIDOT) is responsible for the majority of road, bridge, and heavy construction transportation projects within the State of Rhode Island. RIDOT possesses specialized knowledge and expertise in all aspects of projects for which it is primarily responsible including, but not limited to, procurement activities, planning, contracting, engineering, contract administration and construction. Many RIDOT projects are performed with Federal-aid funding and pursuant to federal regulation and oversight.

As an example, Volume 23, Section 1.3 of the Code of Federal Regulations mandates that state transportation departments be authorized to make all final decisions in all matters relating to, and to enter into, all contracts and agreements for projects (i.e. an undertaking by the state for road, bridge, heavy construction, or other work utilizing Federal-aid funding) and to take such other actions on behalf of the state as may be necessary to comply with federal laws and regulations. In light of the unique nature of RIDOT's projects and the federal and state oversight attendant to such projects, it is appropriate to delegate certain authority to the Director of RIDOT or his/her designee.

12.2 Delegation of Authority to RIDOT to enter into Contract Amendments (as defined in RIGL 37-2-7(6)).

12.2.1 Due to the nature of RIDOT projects, it is customary and usual for changes occurring during the project to require Contract Amendments.

12.2.2 The Chief Purchasing Officer together with the Purchasing Agent, through the Rhode Island General Laws 37-2-7(6) can delegate to the Director of RIDOT the delegated Purchasing Authority to enter into binding Contract Amendments on behalf of the State, as authorized by the Chief Purchasing Officer by written determination, for all RIDOT projects that were originally solicited by the Chief Purchasing Officer or his/her designee. Notwithstanding the foregoing, this delegation of authority to the Director of RIDOT to enter into Contract Amendments shall be limited to the amount of State and/or FHWA funds that have been allocated to the particular project.

12.3 Incorporation of Additional Provisions.

12.3.1 Historically, the Chief Purchasing Officer has adopted and utilized the Rhode Island Department of Transportation Standard Specifications for Road and Bridge Construction (as amended) (hereinafter referred to as the “Blue Book”) in and as a part of the solicitation for bids for RIDOT projects as well as making them an integral and essential part of all DOA contracts relating to RIDOT projects.

12.3.2 RIDOT, in furtherance of meeting the State’s obligations with the Federal Highway Administration (FHWA) and to address the specialized needs of this type of procurement, has referred to and incorporated the Blue Book into its Purchase Requisitions, as defined in RIGL § 37-2-7(17), submitted to the Chief Purchasing Officer and/or Purchasing Agent.

12.3.3 The Chief Purchasing Officer has determined that, as a matter of policy, the specifications contained in the Blue Book, as amended and as may be amended, having been revised and adopted by the FHWA and having established the specialized criteria for properly administering state road, bridge, and heavy construction transportation projects, shall be utilized in and made a part of all DOA solicitations for bids for RIDOT projects.

12.3.4 All other sections of these Regulations shall apply to RIDOT unless they are inconsistent with any provision of this Section 12, in which event the provisions of this Section 12 shall control. If any provision of this Section 12 is determined to be unenforceable, the remainder of this Section 12 shall continue to be in full force and effect. This Section 12 shall also be interpreted so as to be consistent with all applicable State and Federal statutes and regulations.

12.3.5-12.100 [reserved]

SECTION 12.101

DEFINITIONS AND TERMS

12.101.01 ABBREVIATIONS. Wherever the following abbreviations are used in the Contract, they mean:

AAN	American Association of Nurserymen
AAR	Association of American Railroads
AASHTO	American Association of State Highway and Transportation Officials
ACI	American Concrete Institute
AGC	Associated General Contractors of America
AIA	American Institute of Architects
AISI	American Iron and Steel Institute
ANSI	American National Standards Institute
ARA	American Railway Association
AREA	American Railway Engineering Association
ARTBA	American Road and Transportation Builders Association
ASCE	American Society of Civil Engineers
ASLA	American Society of Landscape Architects
ASTM	American Society for Testing and Materials
AWPA	American Wood Preservers' Association
AWWA	American Water Works Association
AWS	American Welding Society
FHWA	Federal Highway Administration; U.S. Department of Transportation
FSS	Federal Specifications and Standards
IMSA	International Municipal Signal Association
MIL	Military Specifications
MUTCD	Manual on Uniform Traffic Control Devices (For Streets & Highways)
NEC	National Electrical Contractors
NEMA	National Electrical Manufacturers Association
OSHA	Occupational Safety and Health Administration
SAE	Society of Automotive Engineers
TMP	Transportation Management Plan
UL	Underwriters Laboratory

12.101.02 ACTUAL COST. The cost actually incurred by the Contractor or subcontractor in the performance of work. Actual costs will include labor, material, actual ownership cost of equipment or invoiced rental rates, verified payroll burdens, verified general and administrative overhead, and profit. While the Contractor is required to establish such costs with competent documentation (i.e., invoices, certified payrolls, financial statements) the Department may rely upon an audit of the Contractor's financial records by a Department appointed auditor.

12.101.03 AWARD. The written acceptance by the State of the successful Proposal consisting of the executed Contract Agreement and Purchase Order.

12.101.04 BIDDER. An individual, partnership, corporation or joint venture submitting a Proposal for the advertised work. (The terms "Bidder" and "Contractor" are frequently used synonymously.)

12.101.05 BID DOCUMENTATION. The term "bid documentation" as used in this clause means all writings, working papers, computer printouts, charts, computer data files associated with the preparation and/or submittal of a bid proposal, and all other data compilation which contains or reflects information, data or calculations used by the Contractor to determine its bid submitted for a project. The term "bid documentation" includes material relating to the determination and application of equipment rates, overhead rates, labor rates, efficiency or productivity factors, arithmetic extensions, schedules for time or any determination of time related to project overhead, as well as quotations from subcontractors and material suppliers to the extent that such rates and quotations were used by the Contractor in formulating and determining the amount of the bid. The term "bid documentation" also includes any manuals which are standard to the industry used by the Contractor in determining the bid for a project. These manuals may be included in the bid documentation by reference, and will show the name and date of the Publication and the Publisher. The term does not include bid documents provided by the Department for use by the Contractor in bidding on a project.

12.101.06 BRIDGE. A structure, including supports, erected over a depression or an obstruction, such as water, highway or railway, and having a track or passageway for carrying traffic or other moving loads and having a length measured along the center of roadway of more than twenty (20) feet between undercopings of abutments or extreme ends of openings for multiple boxes.

a. Bridge Length. The length of a bridge structure is the over-all length measured along the line of survey stationing back to back of backwalls of abutments, if present, otherwise end to end of the bridge floor; but in no case less than the total clear opening of the structure.

b. Bridge Roadway Width. The clear width measured at right angles to the longitudinal centerline of the bridge between the bottom of curbs or in the case of multiple height of curbs, between the bottom of the lower risers or in the case of no curbs, between the inner faces of parapet of railing.

12.101.07 CALENDAR DAY. Each and every day shown on the calendar, beginning and ending at midnight.

12.101.08 COMPENSABLE DELAY. An excusable delay for which the Contractor may be entitled to additional monetary compensation.

12.101.09 COMPLETION. Completion of the project occurs when; 1) The work has been satisfactorily completed in all respects in full accordance with the Contract, and; 2) the Contractor has satisfactorily executed and delivered to the Engineer all documents, certificates, and proofs of compliance as required by the Contract.

12.101.10 CONSTRUCTION AND MAINTENANCE AGREEMENT/UTILITIES. An agreement between the State, acting through its Department of Transportation, and the Owners of Utilities. Owners may be either Municipalities or private Utility Companies. The agreements establish conditions for removing, relocating, or otherwise altering the location of utilities to facilitate proposed highway construction work. They divide responsibility for such alterations between the two parties and establish payment procedures by which the State will reimburse the Owners for costs they incur in performing their respective portions of the work.

12.101.11 CONTRACT. The agreement between the State and the Contractor for the performance of the prescribed work and consisting of the following:

a. Contract Agreement. The written statement, executed by the State through the State Purchasing Agent and the Contractor; and approved by the Director, Department of Transportation, setting forth the obligations of the parties for the performance of the work.

b. Contract Documents. The Notice to Contractor (advertisement for bids); Proposal; Contract Bond(s); Standard Specifications; Supplemental Specifications; Special Provisions; General and Detailed Plans; Notice of Award; Notice to Proceed; and any subsequently executed Contract Addenda that are required to complete the construction of the work in an acceptable manner, including authorized Contract Time Extensions.

c. One Instrument. The executed Contract Agreement and the Contract Documents constitute one instrument; i.e., the Contract.

12.101.12 CONTRACT ADDENDUM. Any change to the Contract made after its initial execution, which change shall become part of the Contract Agreement. Contract Addenda must be set forth in writing and executed by the original signatories, or their successors in interest, or their designees. Each Contract Addendum must be preceded and documented by a corresponding Report of Change.

12.101.13 CONTRACT BONDS. The approved form of securities, executed by the Contractor and its Surety or Sureties, guaranteeing complete execution of the Contract and all supplemental agreements pertaining thereto, and the payment of all legal debts pertaining to the construction of the project.

12.101.14 CONTRACT ITEM (PAY ITEM). A specific item of work for which a price is provided in the Bid Schedule.

12.101.15 CONTRACT TIME. The number of work days or calendar days allowed for completion of the Contract including authorized time extensions. When a calendar date of

completion is specified in the Proposal, the Contract shall be substantially completed on or before that date.

12.101.16 CONTRACTOR. The individual, partnership, corporation, or any combination thereof, or joint venture contracting with the State for performance of the prescribed work. (The terms "Contractor" and "Bidder" are frequently used synonymously.)

12.101.17 COUNTY. The county in which the work specified is to be performed.

12.101.18 CULVERT. Any structure which provides an opening under the roadway but which does not meet the classification of a "bridge" as defined in **Subsection 12.101.06.**

12.101.19 DAILY CHARGE. The per diem rate for liquidated damages specified in the Contract and so established in accordance with the "Schedule of Liquidated Damages."

12.101.20 DEPARTMENT. The Department of Transportation, as constituted under the laws of this State.

12.101.21 DIG SAFE. A one-call damage prevention system, established and funded by public utilities that own and operate underground facilities within the State, for the purpose of receiving and giving notice of proposed excavation activity pursuant to Chapter 39-1.2 of the General Laws of Rhode Island entitled, EXCAVATION NEAR UNDERGROUND UTILITY FACILITIES.

12.101.22 DIVISION OF PURCHASES. A division in the Department of Administration of the State of Rhode Island, the head of which is the State Purchasing Agent.

12.101.23 ENGINEER. The Chief Engineer of the Division of Public Works, acting directly or through his or her duly authorized representatives, who is responsible for engineering and administrative supervision of the Contract.

12.101.24 EQUIPMENT. All machinery, tools, and apparatus, together with the necessary supplies for upkeep and maintenance, necessary for the construction and completion of the Contract.

12.101.25 EQUITABLE ADJUSTMENT. An adjustment in the Contract price and time occasioned by the performance of work beyond that required by the original Contract, including extra work, changes, differing site conditions and changes in quantities. The equitable

adjustment of Contract price will be based on an agreed upon lump sum, agreed upon unit prices, force account, or the actual cost of the work. The equitable adjustment of the Contract time will be based on a comparison of the time demonstrated by the Contractor's schedule and the time required for the execution of the work.

12.101.26 EXCUSABLE DELAY. A delay to the Contract or Milestone/phase completion date which was unforeseeable and beyond the Contractor's control and not caused by the Contractor's fault or negligence and for which a Contract or Milestone time extension may be granted by the Department.

12.101.27 EXTRA WORK. Work not provided for in the Contract as awarded but considered essential to the satisfactory completion of the Contract.

12.101.28 FINANCIAL STATEMENTS. A set of reports detailing, on an annual, semi-annual or other prescribed time period, the financial activity of a company, corporation or other business venture. For purposes of Post Qualification and Award, these shall include a complete set of audited financial statements certified by a Certified Public Accountant (CPA) or, in the case of contracts valued at \$500,000 or less, a bidder's financial references and an original copy of its current financial statement.

12.101.29 FORCE ACCOUNT. A method of payment for extra work ordered by the Engineer when no other method of payment is provided for in the Contract and when the Contractor and the Engineer are unable to agree upon an acceptable method. The force account method of payment provides for reimbursing the Contractor for those actual costs it incurred in performing such work.

12.101.30 GEOTEXTILE. Any permeable textile material used with foundation, soil, rock, earth, drainage, or any other geotechnical engineering related material, as an integral part of a man-made project, structure, or system.

12.101.31 HIGHWAY, STREET, OR ROAD. A general term denoting a public way for purposes of vehicular and pedestrian travel, including the entire area within the Right-of-Way.

12.101.32 HOLIDAYS. In the State of Rhode Island legal holidays occur on New Year's Day; Martin Luther King Day; Memorial Day; Independence Day; Victory Day; Labor Day; Columbus Day; Veteran's Day; Thanksgiving Day; and Christmas. If any holiday listed above falls on a Sunday, the following Monday shall be considered a holiday.

12.101.33 INCLEMENT WEATHER. Any day or days for which the Engineer decides that weather conditions are so extreme and/or severe that normal construction operations should not proceed.

12.101.34 LABORATORY. The testing laboratory of the Department or any other testing laboratory which may be designated by the Engineer.

12.101.35 LIQUIDATED DAMAGES. Deductions from monies due the Contractor, assessed on a daily basis, to compensate the State for losses incurred because of the failure of the Contractor to complete the work within the time established by the Contract.

12.101.36 MAJOR AND MINOR CONTRACT ITEMS. Any item having an original value in excess of 5 percent of the original Contract amount shall be considered to be a major item. All other original Contract items shall be considered minor items. In addition, any minor item which increases by 100 percent will be considered a major item. The revised quantity will then be considered the original Contract quantity for purposes of determining a major item of work under **Subsection 12.104.07; Significant Changes in the Character of Work.**

12.101.37 MATERIALS. Any substances specified for use in the construction of the project.

12.101.38 NONCOMPENSABLE DELAY. An excusable delay for which the Contractor may be entitled to an extension of time but no additional monetary compensation.

12.101.39 NON-EXCUSABLE DELAY. A delay to the Contract or Milestone/phase completion date which was reasonably foreseeable and within the control of the Contractor for which no time extension will be granted.

12.101.40 NOTICE TO CONTRACTORS. A public announcement inviting bids for work to be performed and/or materials to be furnished. Such notice will indicate with reasonable accuracy the nature and location of the work to be performed; the time and place of the opening of Proposals; and any Contract statutory provisions required by the Federal Government.

12.101.41 NOTICE TO PROCEED. Written notice from the Engineer to the Contractor to commence the Contract work and which designates the date of beginning of Contract time.

12.101.42 NOTICE OF TENTATIVE AWARD. A written communication from the State to the successful bidder indicating the conditional intention of the State to award the Contract. This

communication instructs the successful bidder to arrange a meeting with the appropriate State official within 15 days of the receipt of said notice for the purpose of executing the Contract Agreement and Contract Bonds, and for the delivery of the required Certificates of Insurance.

12.101.43 PAVEMENT STRUCTURE. The combination of subbase, base course and surface course placed on a subgrade to support the traffic load and distribute it to the roadbed.

a. Subgrade. The top surface of a roadbed upon which the pavement structure, shoulders, and curbs are constructed.

b. Subgrade Treatment. Modification of roadbed material by stabilization.

c. Subbase. The layers of specified or selected material of designed thickness placed on a subgrade to support a base course.

d. Base Course. The one or more layers of specified material and thickness placed on a subbase or a subgrade to support a surface course.

e. Surface Course. One or more layers of a pavement structure designed to accommodate the traffic load, the top layer of which resists skidding, traffic abrasion, and the disintegrating effects of climate. The top layer is sometimes called the "wearing surface."

12.101.44 PLANS. The approved plans, profiles, typical cross sections, working drawings and supplemental drawings, or exact reproductions thereof, which show the location, character, dimensions, and details of the work to be performed.

12.101.45 PRECONSTRUCTION CONFERENCE. A meeting between the Contractor and the Engineer prior to the actual commencement of work for the purpose of reviewing the following:

- a. The Contractor's submission of construction schedules.
- b. The Contractor's involvement with public and private utilities.
- c. The Contractor's proposed methods and procedures for prosecuting the work.
- d. Any questions the Contractor may wish to ask relative to the prosecution of the work.

12.101.46 PROFILE GRADE. The trace of a vertical plane intersecting the top surface of the proposed wearing surface, usually along the longitudinal centerline of the roadbed. Profile grade means either elevation or gradient of such trace according to the context provided.

12.101.47 PROJECT. The specific section of the highway or other specific property on which construction is to be performed as described in the Contract.

12.101.48 PROPOSAL. The written offer of a bidder, on prescribed forms generated by the Department of Transportation's approved proposal preparation computer software, to perform the stated work at the prices quoted. As used herein, "Proposal" is synonymous with "bid."

12.101.49 PROPOSAL FORM. The prescribed form, generated by the Quest Lite bid preparation software, on which the offer of a bidder is submitted.

12.101.50 PROPOSAL GUARANTY. The security furnished with a Proposal to assure that the bidder will enter into the Contract if the Proposal is accepted.

12.101.51 PURCHASE ORDER. A document issued by the State Purchasing Agent, and transmitted to the Contractor with copies of the executed Contract, that indicates that appropriate accounts have been established and that funds have been assigned to those accounts for the purpose of reimbursing the Contractor for its work in implementing the Contract.

12.101.52 QUEST LITE. The computer software used by bidders to prepare a bid proposal.

12.101.53 RESIDENT ENGINEER. The Engineer's authorized representative at the site of the work whose main responsibility is to insure Contract compliance.

12.101.54 RESPONSIVE BID. A Proposal which complies with all material requirements of the Notice to Contractors.

12.101.55 REPORT OF CHANGE. A written order to the Contractor covering contingencies, extra work, increases or decreases in Contract quantities, and additions or alterations to the Plans or Specifications, within the scope of the Contract, and establishing the basis of payment and time adjustments for the work affected by said changes. A Report of Change provides the required documentation for the execution of a Contract Addendum.

12.101.56 RIGHT-OF-WAY. A general term denoting land, property, or interest therein, usually in a strip, acquired for or devoted to transportation purposes.

12.101.57 ROADBED. The graded portion of a highway within top and side slopes, prepared as a foundation for the pavement structure and shoulders.

12.101.58 ROADSIDE. A general term denoting the area adjoining the outer edge of the roadway. Extensive areas between the roadways of a divided highway may also be considered roadside.

12.101.59 ROADSIDE DEVELOPMENT. Those items necessary for the preservation of landscape materials and features; the rehabilitation and protection against erosion of all areas disturbed by construction through seeding, sodding, mulching and the placing of other ground covers; such suitable planting and other improvements as may increase the effectiveness and enhance the appearance of the highway.

12.101.60 ROADWAY. The portion of a highway within limits of construction.

12.101.61 SHOULDER. The portion of the pavement structure contiguous with the traveled way for accommodation of stopped vehicles, for emergency use, and for lateral support of base and surface courses.

12.101.62 SIDEWALK. That portion of the roadway primarily constructed for the use of pedestrians.

12.101.63 SPECIALTY ITEMS. Those specific work items listed in either the Bid Schedule or elsewhere in the Contract whose Item Numbers are designated by the prefix "S." The work required to implement specialty items is considered to be a type that a Contractor would not generally perform with its own organization.

12.101.64 SPECIFICATIONS. The compilation of provisions and requirements for the performance of the prescribed work and consisting of the following:

a. Standard Specifications; a book of specifications approved for general application and repetitive use. Specifically, the Rhode Island Standard Specifications for Road and Bridge Construction of latest revision.

b. Supplemental Specifications; approved additions and revisions to the Standard Specifications.

c. Special Provisions; additions and revisions to the Standard and Supplemental Specifications applicable for an individual project.

d. The Required Contract Provisions for Federal-Aid Projects, when applicable.

e. Federal Wage Rates; a schedule of prevailing rates of wages of labor for the geographical area in which the work of the Contract is to be performed; compiled by, and issued from time to time by the Secretary of the United States Department of Labor.

12.101.65 SPECIFICATION BOOKLET. [DEFINITION DELETED]

12.101.66 SPECIFIED COMPLETION DATE. The date stated in the Proposal on which the Contract work, or specified portion thereof, is to be substantially completed.

12.101.67 STABILIZATION. Modification of soils or aggregates by incorporating materials that will increase load-bearing capacity, firmness, and resistance to weathering or displacement.

12.101.68 STATE. The State of Rhode Island and Providence Plantations acting through its authorized representatives.

12.101.69 STRUCTURES. Bridges, culverts, catch basins, drop inlets, retaining walls, cribbing, manholes, endwalls, buildings, sewers, service pipes, underdrains, foundation drains and other features which may be encountered in the work.

12.101.70 SUBCONTRACTOR. An individual or legal entity with whom the Contractor sublets part of the work.

12.101.71 SUBSTANTIAL COMPLETION. Substantial completion of a unit, or portion of the work such as a structure, an interchange, or section of road or pavement occurs at the point at which the portion of the work is complete such that it can be safely and effectively used by the public and when the following criteria are realized: **1)** All courses of pavement are complete; **2)** curbing and sidewalks are placed; **3)** all project drainage is complete; **4)** guardrail and terminal sections are properly installed; **5)** pavement markings are in place; **6)** traffic signal systems meet the following requirements: (a) isolated traffic signals - the signal control equipment is fully programmed, detectors are installed and functioning, and the signal is in actuated operation, (b) coordinated traffic signal systems - the requirements of condition (a) are met, the interconnect is installed and functioning, and the signals are operating as a coordinated system, (c) closed loop signal systems - the conditions of (a) and (b) are met, the communications link is operating, and the monitoring functions, including system and intersection graphics, are installed and operating at the Department's monitoring stations; **7)** regulatory and warning signs are installed; and, **8)** highway lighting is operational; and **9)** only corrective or repair work remains for the physical completion of the Contract.

12.101.72 SUBSTRUCTURE. All of the structure below the bearings of simple and continuous spans, skewbacks of arches, and tops of footings of rigid frames, and including backwalls, wingwalls and wing protection railings.

12.101.73 SUPERINTENDENT. The Contractor's authorized representative in responsible charge of the work.

12.101.74 SUPERSTRUCTURE. The entire structure except the substructure as defined in Subsection 12.101.72.

12.101.75 SUPPLEMENTAL AGREEMENT. A Contract Addendum signed by the Department and the Contractor for the performance of work which is beyond the scope of the original Contract but which the Department elects to perform in conjunction with the existing Contract.

12.101.76 SURETY. The legal entity, or individual other than the Contractor, executing a bond or bonds furnished by the Contractor.

12.101.77 TITLES (OR HEADINGS). The titles or headings of the sections and subsections herein are intended for convenience of reference and shall not be considered as having any bearing on their interpretation.

12.101.78 TOWNSHIP, TOWN, CITY OR DISTRICT. A subdivision of the State used to designate or identify the location of the proposed work.

12.101.79 TRAVELED WAY. The portion of the roadway provided for the movement of vehicles, exclusive of shoulders and auxiliary lanes.

12.101.80 WINTER SHUTDOWN. The period from December 15th through the following April 15th.

12.101.81 WORK. The furnishing of all labor, materials, equipment, and other incidentals necessary for the successful completion of the project in accordance with the Contract.

12.101.82 WORKING DAY. A calendar day during which normal construction operations could proceed for a major part of a shift, normally excluding Saturdays, Sundays and holidays.

12.101.83 REPETITION OF EXPRESSIONS. In order to avoid cumbersome and confusing repetition of expressions in these Specifications, it is provided that whenever anything is, or is to be, done, if, as, or, when, or where "contemplated, required, determined, directed, specified, authorized, ordered, given, designated, indicated, considered, necessary, deemed necessary,

permitted, reserved, suspended, established, approval, approved, disapproved, acceptable, unacceptable, suitable, accepted, satisfactory, unsatisfactory, sufficient, insufficient, rejected or condemned," it shall be understood as if the expression were followed by the words "by the Engineer" or "to the Engineer."

12.101.84 CONTRACT AWARD BOOKLET. A document provided to the Contractor after the award of the Contract containing the following elements of the Contract Documents: Notice to Contractors; the Bidder's Proposal; executed copies of both the Contract Agreement and Contract Bonds; and a Contract Award compact disk (CD) containing the RI Standard Specifications for Road and Bridge Construction, Supplemental Specifications, Special Provisions, Required Contract Provisions for Federal-Aid Projects, Federal Wage Rates, all Contract Addenda issued prior to the date of the opening of proposals, Distribution of Quantities, Plans, Appendices and Bid Analysis Reports.

12.101.85 CONTRACT BID PACKAGE. A compact disk (CD) containing the following items, provided to prospective bidders for bid preparation purposes: RI Standard Specifications for Road and Bridge Construction, Supplemental Specifications, Special Provisions, Required Contract Provisions for Federal-Aid Projects, Federal Wage Rates, Distribution of Quantities, Plans, Appendices, the Quest Lite installation software and the Quest Lite bid file.

12.101.86 TRANSPORTATION MANAGEMENT PLAN. THE DOCUMENT THAT LAYS OUT THE SET OF COORDINATED TRANSPORTATION MANAGEMENT STRATEGIES THAT WILL BE USED TO MANAGE THE WORK ZONE SAFETY AND MOBILITY IMPACTS OF THE PROJECT.

12.101.87 TMP IMPLEMENTATION MANAGERS. The project managers with the primary responsibility and authority for implementation of the Transportation Management Plan. The Department and the Contractor must each designate on the Transportation Management Plan their respective TMP Implementation Manager for the project.

SECTION 12.102

BIDDING REQUIREMENTS AND CONDITIONS

12.102.01 PREQUALIFICATION OF BIDDERS. Prequalification of bidders shall be in accordance with 23 CFR 635 and Rhode Island General Law 37-2, together with regulations and procedures promulgated thereunder.

12.102.02 CONTENTS OF PROPOSAL FORMS. The completed Proposal Form is generated by the Department's Quest Lite bid preparation software, which is furnished to the prospective bidder on compact disk (CD) as part of the Contract Bid Package with the Plans, Specifications and additional contract bid documents in accordance with the instructions set forth in the Notice to Contractors.

The Proposal Form consists of three parts. The first part, the "Preamble," outlines the various understandings and agreements required of the prospective bidder as conditions to its offer to perform the stated work. The second part, the "Bid Schedule," is that portion of the form

where the various items of work are listed in a numbered sequence, and includes the unit prices entered by the bidder and total bid amounts of each item, which are computed by Quest Lite. The third part of the form is the "Signature Page," which includes the "Total, or Gross Sum of Bid" and which must be signed by the bidder or his authorized signatory. This signature signifies the bidder's acceptance of all requirements and conditions of the Contract and its agreement to substantially complete the work by a calendar date certain.

The Plans, Specifications and other contract bid documents designated in the Proposal Form will be considered a part of the Proposal.

When applicable, prospective bidders will be required to pay the Department the sum stated in the Notice to Contractors for each set of Contract Bid Packages taken out by said bidders.

In the case of joint ventures, Contract Bid Packages must be taken by the Joint Venture; this does not, however, preclude entities comprising the Joint Venture from taking out Contract Bid Packages independently. In addition, the Joint Venture must be independently registered as a user of the Department's Electronic Bidding System known as Quest Lite.

12.102.03 INTERPRETATION OF QUANTITIES IN BID SCHEDULE. The quantities appearing in the Bid Schedule are estimated and are used for the comparison of Proposals. Payment to the Contractor will be made for the actual quantities of work performed and accepted or materials furnished in accordance with the Contract. The estimated quantities of work to be performed and the materials to be furnished may be increased, decreased, or omitted as deemed necessary or advisable by the Engineer, or as hereinafter provided.

12.102.04 EXAMINATION OF PLANS, SPECIFICATIONS, SPECIAL PROVISIONS, AND SITE OF WORK. The bidder is expected to carefully examine the site of the proposed work, the Proposal, the Plans, the Rhode Island Standard Specifications for Road and Bridge Construction, Supplemental Specifications, Special Provisions, Distribution of Quantities and Contract Forms before submitting a Proposal. The submission of a Proposal will be considered conclusive evidence that the bidder has made such an examination and is satisfied as to the conditions to be encountered in performing the work and as to the requirements of the Contract as defined in the Contract Documents.

Boring logs and other records of subsurface investigations are available for inspection by bidders. It is understood that such information was obtained and used for Department design and estimating purposes only. It is made available to bidders so all have access to identical subsurface information available to the Department. Furthermore, this information is not intended as a substitute for personal investigation, interpretations, and judgment of the bidders.

The locations of all utilities as shown on the Plans are approximate. The Contractor shall seek to determine the exact location of all existing utilities, both underground and overhead, by notifying Dig Safe in accordance with State law. Damage to utilities which are shown on the Plans or located by the respective utilities in accordance with the Dig Safe process shall be the responsibility of the Contractor. Damage to utilities and their associated service connections

which are not shown on the Plans or located by the respective utilities in accordance with the Dig Safe process, will be paid for by the Department.

12.102.05 PREPARATION OF PROPOSAL. The bidder's attention is directed to the fact that all Proposals must be generated by the Department of Transportation's Quest Lite software, and the Proposal must be submitted to the Purchasing Division of the Department of Administration in the form of an electronic file on a compact disk (CD), which should be labeled and identified, at a minimum, with the bidder's name and the Rhode Island construction contract number of the project being bid. In addition, the bidder shall submit its Proposal in hard copy format on forms generated by the Department of Transportation's Quest Lite program.

The bidder shall specify a unit price in words and figures, for each pay item for which a quantity is provided. All pay items for which a bidder is required to specify a unit price shall have a bid price of at least one cent. The Quest Lite software requires a unit price to be entered for each pay item and will not allow a unit price of less than one cent to be entered as a bid price for an individual pay item. The bidder shall show the products of the respective unit prices and quantities written in figures in the column provided for that purpose and the total amount of the Proposal obtained by adding the amounts of all items. The total bid price is to be based on the unit prices written in words, correctly extended and added. In case of a discrepancy between the unit prices written in words and those written in figures, the unit prices written in words shall govern. The State reserves other rights as noted in **Subsection 12.103.01; Consideration of Proposals.**

When the Proposal contains a choice to be made by the bidder, the bidder shall indicate its choice in accordance with the instructions for that particular item. Thereafter, no further choice will be permitted.

Erasures and alterations to the Proposal shall not be permitted.

A copy of the Joint Venture agreement must be included with the Proposal when submitted. The Joint Venture agreement must clearly identify the entities which comprise the Joint Venture and the Officers of the Joint Venture.

The bidder's hard copy Proposal generated from the Quest Lite software must be signed in ink by an authorized signatory of the partnership, joint venture, corporation, or by such other agent of the Contractor legally qualified and acceptable to the State as hereinafter provided.

If the Proposal is made by an individual, his/her name and mailing address shall be shown; by a partnership, the name and mailing address of each partnership member shall be shown; as a joint venture, the name and mailing address of each member or officer of the firms represented by the joint venture shall be shown; by a corporation, the name of the corporation and the business address of its corporate office shall be shown. In the case of Partnership and/or Joint Venture, the names and addresses of each member or officer of the partnership or joint venture must be listed in a separate attachment to be included with the submitted proposal.

All certification documents are contained within the bid file that is used by the Quest Lite program. By utilizing Quest Lite, bidders are agreeing that they have executed all required certifications enumerated in the Proposal Report labeled "DOCUMENT(S)" which is located at

the end of the Proposal Form. Failure to comply with the requirements of the Quest Lite software will not enable the bidder to successfully complete the preparation of a bid proposal.

12.102.06 PROPOSAL GUARANTY. A Proposal will not be accepted or considered unless accompanied by a guaranty in the form of an original Bid Bond made payable to the State of Rhode Island. Bid bonds must be provided by surety companies licensed and authorized to conduct business in the State of Rhode Island. All surety companies must be listed with the Department of the Treasury, Fiscal Services, Circular 570, (Latest Revision published by the Federal Register). The amount of the Proposal Guaranty shall be as designated in the Notice to Contractors.

When the bidder is a joint venture, the Proposal Guaranty must be made out to the name of the Joint Venture and all parties of the Joint Venture must be named in the execution of the Proposal Guaranty made by the same thereon. If there is more than one surety to the Bid Bond, each surety shall be named and execution made by same thereon.

Execution of the Bid Bonds will not be considered complete unless accompanied by a certified copy of the power of attorney for the surety's attorney-in-fact.

12.102.07 IRREGULAR PROPOSALS.

a. Mandatory Reasons for Disqualification. The Department will declare a proposal non-responsive and shall disqualify a bidder for any of the following irregularities:

1. If the Proposal Form is obtained from any party other than the Department. (Proposal Forms are non-transferable.)
2. If the Proposal is on a form other than that generated by the Department of Transportation's Quest Lite software; or if the form is altered or any part thereof is detached or incomplete;
3. If there are unauthorized additions, unauthorized conditional or alternate bids, or irregularities of any kind which may tend to make the Proposal incomplete, indefinite, or ambiguous as to its meaning;
4. If the bidder adds any provisions reserving the right to accept or reject an award;
5. If the Proposal is not completed using the Quest Lite software;
6. If the Department determines that the low bid is both mathematically and materially unbalanced;
7. If the Proposal is received after the time designated for the opening of bids;
8. If the bidder fails to execute the required certifications enumerated in the Proposal Report labeled "DOCUMENT(S)" located at the end of the Proposal;

9. If the bidder fails to submit an original Bid Bond, properly executed.

10. If the compact disk (CD) data files and the hard copy submission do not match, unless such a discrepancy is determined to be the result of an error or malfunction within the Department's Quest Lite software.

11. If a compact disk (CD) is not submitted; or

12. If the Proposal pages generated by the Quest Lite software have been altered in any way.

b. Other Reasons for Disqualification. The Department and the Division of Purchases reserve the right to declare a proposal non-responsive and may disqualify a bidder for any of the following irregularities:

1. If the bidder fails to include at least a minimum amount where required for a particular item;

2. If the Proposal does not contain a "total or gross sum of bid," written in words and figures, in the space provided;

3. If the Proposal is not properly signed;

4. If the bidder fails to comply in every detail with the instructions provided in **Subsection 12.102.05; Preparation of Proposal;**

5. If the Proposal is not submitted in a sealed envelope and clearly labeled as to its contents;

6. If the compact disk (CD) containing the bidder's Proposal is unreadable by the Department of Transportation's bid proposal software.

12.102.08 DELIVERY OF PROPOSALS. Proposals shall be submitted in sealed envelopes. The envelope shall be labeled to clearly indicate its contents. When sent by mail, the sealed Proposal shall be addressed in care of the official in whose office the bids are to be received, all as indicated in the Notice to Contractors. Proposals shall be filed prior to the time and at the place specified in the Notice to Contractors.

12.102.09 WITHDRAWAL OR REVISION OF PROPOSALS. A bidder may withdraw or revise a Proposal after it has been deposited with the Division of Purchases, provided the request for such withdrawal or revision is received by the Division of Purchases, in writing or by telegram, not later than two (2) hours before the time set for opening proposals. Upon presentation of its written request at the proper time, a bidder's Proposal will be returned unopened. If a Proposal is withdrawn in accordance with this provision, the proposal guaranty shall be returned to the bidder.

Whether or not Proposals are opened exactly at the time set for such opening, a Proposal will not be received, nor may any be withdrawn, after the time set for the opening of proposals.

The Department reserves the right to revise the Plans, Specifications, other Contract Documents, the Proposal, and bid opening date for any project at any time prior to the time set for opening of Proposals. Such revisions will be made by addendum, duly numbered and dated, and made accessible to bidders through the RIDOA, Division of Purchases' website known as the R. I. Vendor Information Program (RIVIP) at <http://www.purchasing.state.ri.us/>.

12.102.10 COMBINATION OR CONDITIONAL PROPOSALS. If the Department so elects, Proposals may be issued for projects in combination or separately, so that Proposals may be submitted either on the combination or on separate units of the combination. The Department and Division of Purchases reserve the right to make awards on combination bids or separate bids to the advantage of the State. No combination of Proposals, other than those as specified by the Department, will be considered. Separate contracts will be written for each individual project included in the combination.

Conditional proposals will be considered only when specified in the Special Provisions.

12.102.11 PUBLIC OPENING OF PROPOSALS. Proposals will be opened and read publicly at the time and place indicated in the Notice to Contractors or as amended by duly authorized Contract Addenda. Bidders, their authorized agents, and other interested parties are invited to be present at the opening of Proposals.

12.102.12 DISQUALIFICATION OF BIDDERS AND REJECTION OF PROPOSALS.

a. Mandatory Reasons for Disqualification. The Department will declare a Proposal unresponsive and shall disqualify a bidder for any of the following reasons:

1. More than one Proposal for the same work from an individual, partnership, corporation or joint venture under the same or different name;
2. Evidence of collusion among bidders. Participants in such collusion will not be considered for future proposals until re-qualified by the Department;
3. The making of false statements on prequalification documents and/or other required bidder's certifications;
4. Failure to comply with any prequalification requirements as set forth in **Subsection 12.102.01**;
5. Debarment by Federal or State authorities; or
6. Failure to provide a properly executed Contract Bond.

b. Other Reasons for Disqualification. The Department and the Division of Purchases reserve the right to declare a Proposal unresponsive and may disqualify a bidder for any of the following reasons:

1. Lack of competency and adequate machinery, plant and other equipment;
2. Uncompleted work under Contract which, in the judgment of the Department, might hinder or prevent the prompt completion of additional work, if awarded;
3. Failure to pay, or satisfactorily settle, all bills due for the Prime Contractor's labor and material on Contracts in force with the Department at the time of the Bid Opening;
4. Failure to pay or satisfactorily settle Subcontractor Payments as provided for under Section 12.109.12, Subcontractor Prompt Payment where good cause, as determined by the Department of Transportation, has not been accepted. Determination of failure to pay or satisfactorily settle Subcontractor Payments will be made within 30 days of bid opening; provided however that the bidder shall have the right to either pay or settle any such claims within said 30-day period.
5. Failure to comply with any post qualification regulations or requirements of either the Department or the Division of Purchases;
6. Default under previous contracts;
7. Unsatisfactory performance on a previously awarded contract; or
8. Failure to reimburse the State for monies owed on any previously awarded contracts including those where the prospective bidder is a party to a joint venture and the joint venture has failed to reimburse the State for monies owed.

12.102.13 MATERIAL GUARANTY. The successful bidder may be required to furnish a complete statement of the origin, composition, and manufacture of any or all materials to be used in the construction of the work, together with samples to be tested for conformance with Contract provisions.

a. Domestic Steel Products. The bidder is advised of the "Buy American" requirements that apply to domestic steel products as set forth in **Subsection 12.106.01(a)** of these Specifications.

12.102.14 BIDDING CERTIFICATIONS.

a. Non-Collusive Bidding Certification.

1. The Certificates. Every Proposal submitted to the Department shall contain an Anti-Collusion Certificate for Contract and Force Account (Unsworn Declaration), duly subscribed to and affirmed by the bidder as true under the penalties of law.

2. Certifications. By submission of a Proposal, each bidder and each person signing the Proposal, which includes the Anti-Collusion Certificate on behalf of the bidder, certifies as to its own organization, under penalty of perjury, that to the best of their knowledge and belief:

(a) The prices in this Proposal have been arrived at independently without collusion, consultation, communication, or agreement with any other bidder or with any competitor for the purpose of restricting competition.

(b) Unless required by law, the prices which have been quoted in this Proposal have not been knowingly disclosed and will not knowingly be disclosed by the bidder, directly or indirectly, to any other bidder or competitor prior to opening of Proposals.

(c) No attempt has been made or will be made by the bidder to induce any other person, partnership, or corporation to submit or not to submit a proposal for the purpose of restricting competition.

3. Non-Compliance. The Quest Lite software will not enable a prospective bidder to complete the preparation of a Proposal unless the bidder certifies that he is in compliance with **Paras. 2(a), 2(b), and 2(c)**, above.

The fact that a bidder; (1) has published price lists, rates, or tariffs covering items being procured, (2) has informed prospective customers of proposed or pending publication of new or revised price lists for such items, or (3) has sold the same items to other customers at the same prices being bid, does not constitute a disclosure within the meaning of **2(a)**.

The Proposal submitted to the Department will be considered as authorized by the board of directors of the bidder. Such authorization will be deemed to include the signing and submission of the Proposal and the inclusion therein of the certificate as to non-collusion on the part of the corporation.

The signers of the Proposal hereby tender to the Department a statement that the named Contractor has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action to restrain free competitive bidding in connection with the Proposal.

b. Certification Regarding Debarment, Suspension and Other Responsibility Matters.

1. The Certificate. Every Proposal submitted to the Department shall contain a Certification Regarding Debarment, Suspension and Other Responsibility Matters, duly subscribed to and affirmed by the bidder as true under the penalties of law.

2. Certification. By submission of a Proposal, each bidder and each person signing the Proposal, which includes the Debarment Certification on behalf of the bidder, certifies as to its own organization, under penalty of perjury, that to the best of their knowledge and belief:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not, within a three-year period preceding the submission of a Proposal been convicted of or had a civil judgment rendered for commission of fraud or a criminal offense in connection with obtaining or performing a public contract or transaction;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity;

(d) Have not, within the prior three-year period, had one or more public transactions terminated for cause or default.

3. Non-Compliance. In the event a prospective bidder is unable to certify to one or more of the conditions above, the bidder must attach a list of exceptions to the hard copy proposal generated by the Quest Lite program. Exceptions listed will not necessarily result in denial of award, but will be considered in determining contractor responsibilities.

The Quest Lite software allows a prospective bidder to either certify that he is in compliance with the provisions outlined in **Paras. 2(a), (b), (c), and (d)**, above, or to not certify these provisions and instead provide with his Proposal a list of exceptions to document the reason(s) why he is unable to certify his compliance with these provisions. In the latter case, the software will generate a statement on the signature page of the Proposal that additional documentation is attached in support of the bidder's inability to fully certify to the provisions.

c. Disadvantaged Business Enterprise Affirmative Action Certificate.

1. The Certificate. For all contracts containing provisions for the participation of Disadvantaged Business Enterprises (DBEs), prospective bidders shall be required to complete a Certification affirming compliance with the U.S. Department of Transportation and applicable State of Rhode Island regulations regarding participation by Disadvantaged Business Enterprises in the contract as contractors, subcontractors and/or suppliers of materials and services.

2. Certification. By submission of a Proposal, each bidder and each person signing a Proposal which includes the DBE Certification certifies that the organization shall affirmatively seek out and consider Disadvantaged Business Enterprises to participate in the contract, and develop and submit for approval to the Department, within ten days from the receipt of bids, a Disadvantaged Business Enterprise Program in accordance with the provisions of the DBE Certification.

3. Non-Compliance. The Quest Lite software will not enable a prospective bidder to complete the preparation of a bid Proposal unless the bidder completes the DBE Certification form in the Proposal.

d. Disclosure of Lobbying Activities.

1. The Certificate. Every bidder shall be required to certify and disclose, through the bid preparation process, any lobbying of Federal agencies, employees, officers, Members of

Congress, or officers or employees of Congress or Members of Congress in connection with a covered Federal action.

2. Certification. By submission of a Proposal, each bidder and each person signing a Proposal certifies that, to the best of their knowledge and belief:

(a) No Federal appropriated funds have or will be paid, by or on behalf of the prospective bidder, to any individual or entity for the purpose of influencing or attempting to influence any Federal agency, employee or officer thereof in connection with the awarding of any Federal contract, the making of a Federal grant or loan, or any other form of a contractual nature.

(b) If any funds other than Federal appropriated funds have been paid for the purpose of influencing any Federal agency, employee or officer thereof, the prospective bidder shall complete and submit as part of the bid Proposal submission, Standard Form LLL "Disclosure Form to Report Lobbying" in accordance with its instructions.

The prospective bidder also acknowledges by submitting a bid Proposal, that the requirements of this certification shall also apply to all lower tier subcontracts which exceed \$100,000, and that all subcontractors shall certify and disclose accordingly.

3. Non-Compliance. The Quest Lite software will not enable a prospective bidder to complete the preparation of a bid Proposal unless the bidder certifies that he has met the requirements of **Paras. 2 (a) and (b)**, above. In order to complete a bid Proposal, the bidder is required to certify that no Federal appropriated funds have been used for lobbying purposes, to certify whether other sources of funds have been used for lobbying and if so, to report this activity on Standard Form LLL, which is included in the Quest Lite software.

SECTION 12.103

AWARD AND EXECUTION OF THE CONTRACT

12.103.01 CONSIDERATION OF PROPOSALS. After the Proposals are opened and read, they will be compared on the basis of the summation of the products of the estimated quantities shown in the Proposal by the unit bid prices. The results of such comparisons will be made available to the public.

The State reserves the right to correct arithmetic errors in the Proposals prior to comparison of said Proposals. In the event of a discrepancy between unit bid prices and extensions, the unit bid price shall govern.

The State reserves the right to reject any or all Proposals, to waive technicalities or to advertise for new Proposals.

12.103.02 POST-QUALIFICATION REQUIREMENTS AND AWARD OF CONTRACT.

a. Submission of Post Qualification Requirements. All post qualification requirements shall be submitted as specified in the Contract Documents. This includes, but is

not limited to, all documentation and requirements referenced under Part II: ACTION REQUIRED BY CONTRACTOR, as contained in the Special Provision entitled, "Disadvantaged Business Enterprise Affirmative Action Certification for Contractors and Consultants." This Special Provision is located in the section of the Contract Documents entitled, REQUIRED CONTRACT PROVISIONS FOR FEDERAL-AID PROJECTS.

As part of the post qualification submission, the Contractor must designate on the Transportation Management Plan the Contractor's TMP Implementation Manager for the Contract. The Contractor's TMP Implementation Manager, together with the Department's TMP Implementation Manager are the persons with the primary responsibility and authority for implementation of the Transportation Management Plan.

b. Financial Statements. The successful bidder will be required to submit a complete set of audited financial statements certified by a Certified Public Accountant (CPA). For contracts valued at \$500,000 and under, the successful bidder is required to submit only its financial references and an original copy of its current financial statement.

c. Award of Contract. Contract award, if it be awarded, will be made within sixty (60) calendar days following the opening of Proposals, or within the time specified in the Notice to Contractors, to the lowest responsible and qualified bidder who submits the lowest responsive Proposal.

The successful bidder will first receive a Notice of Tentative Award. This written communication will indicate the conditional intention of the State to award the Contract and instruct the successful bidder to arrange for the execution of the Contract Agreement and Contract Bond and for the delivery of the Certificates of Insurance, all as hereinafter provided.

On Contracts jointly bid, Contractors will be held jointly and severally liable for the entire Contract.

Corporate bidders must furnish documentary evidence that they have met all legal requirements to transact business in the State of Rhode Island as a condition precedent to approval of the Contract.

12.103.03 CANCELLATION OF AWARD. Both the Department and Division of Purchases reserve the right to cancel the award of any Contract before the execution thereof by all parties without any liability against the State.

12.103.04 RETURN OF PROPOSAL GUARANTY. The State reserves the right to retain the surety of all bidders until either the successful bidder enters into the Contract or until such time as the award or cancellation of the Contract is announced. At this point sureties will be returned to all bidders.

A Contractor will not be released from the bidding obligation because of an alleged error in the preparation of the Proposal unless the State returns the Contractor's Proposal Guaranty.

12.103.05 CONTRACT BOND. At the time of the execution of the Contract, the successful bidder shall furnish a Contract Bond in a sum equal to the full amount of the Contract. The Contract Bond shall guarantee the following; complete performance of the Contract; full payment for all materials and equipment; and full payment of all wages of labor.

The form of the Contract Bond shall be acceptable to both the Department and the Division of Purchases. In the event the surety fails or becomes financially insolvent, the successful bidder shall file a new Bond in the amount designated by the Department within thirty (30) days of such failures or insolvency.

The Bond submitted to the Department shall be provided by a surety both acceptable to the Department and licensed and authorized to conduct business in the State of Rhode Island. All surety companies must be listed with the Department of the Treasury, Fiscal Services, Circular 570, (Latest Revision published by the Federal Register). Subsequent to award of Contract, the Department or Division of Purchases may call for additional security as required. Changes, additions, and modifications to the Contract may be made without the consent of surety.

12.103.06 EXECUTION AND APPROVAL OF THE CONTRACT. The Contract shall be executed by the successful bidder, hereinafter referred to as the Contractor, in accordance with the instructions contained in the Notice of Tentative Award. At the specified time and place, the Contractor shall deliver the Contract Bond and required Certificates of Insurance, execute the Contract Agreement, and comply with all other stipulations set forth in said notice.

Receipt by the Contractor of the executed Contract Agreement and a Purchase Order signed by the Director of the Department and/or the Purchasing Agent and the State Controller constitutes the official "Award" of the Contract.

The Contract execution date may be extended by mutual agreement of the Department and the successful bidder.

12.103.07. FAILURE TO EXECUTE CONTRACT.

a. Failure of State to Execute Contract. If the Contract is not executed within fifteen (15) calendar days following execution of the Contract Agreement and Bond by the Contractor, said Contractor shall have the right to withdraw its Proposal without penalty.

b. Failure of the Bidder to Execute Contract. Failure of the successful bidder to execute the Contract Agreement and Contract Bond, deliver the required Certificates of Insurance; and comply with other stipulations within fifteen (15) calendar days of receipt of the Notice of Tentative Award shall be considered revocation of said notice and require forfeiture of the Proposal Guaranty to the State. Such forfeiture shall not be considered a penalty, but rather a liquidation of damages sustained by the State.

Furthermore, the Department will not issue or receive subsequent proposals for construction work from a bidder who fails to execute a Contract until said bidder demonstrates its ability to obtain the necessary bonding and insurance coverage to the complete satisfaction of the Department.

In the event a Contract is not executed with the first-designated responsible bidder, the Department may either award the Contract to the next lowest responsible bidder or reject all bids and re-advertise the Project for the purpose of soliciting new Proposals.

12.103.08 ESCROW OF BID DOCUMENTATION. The placing in escrow of bid documentation in accordance with this Section shall be required only when specifically called for in the Notice to Contractors. Otherwise, this Section shall not apply.

a. Scope and Purpose. The purpose of this Specification is to preserve the bid documents of the Contractor for use by the parties in any claims or litigation between the Department and Contractor arising out of this Contract.

The Contractor shall submit to the Department a legible copy of bid documentation used to prepare the bid for this Contract. Such documentation shall be placed in escrow with a banking institution or other bonded document storage facility and preserved by that institution/facility as specified in the following Sections of this clause.

b. Submittal and Return of Bid Documentation. Prior to execution of the Contract, the Contractor shall submit to the Department the required bid documentation in a sealed container. The container shall be clearly marked "Bid Documentation" and shall also show on the face of the container the Contractor's name and address, the date of submittal, the Project Number, the Contract Number, and Project Name.

c. Affidavit. In addition to the bid documentation, the Contractor shall submit an affidavit, signed under oath by a representative of the Contractor authorized to execute bidding proposals, listing each bid document submitted by author, date, nature, and subject matter. The affidavit shall attest that the affiant has personally examined the bid documentation, that the affidavit lists all of the documents relied upon by the Contractor in preparing its bid for this project, and that all such bid documentation is included in the submission to the Department.

d. Duration and Use. The Department and the Contractor will jointly deliver the sealed container and affidavit to a banking institution or other bonded document storage facility selected by the Department for placement in a safety deposit box, vault or other secure accommodation.

The agreement with the document depository shall reflect that the bid documentation and affidavit shall remain in escrow during the life of the Contract or until the Contractor notifies the Department of his intention to file a claim or initiate litigation against the Department related to the Contract. Notification of the Contractor's intention to file a claim, or initiation of litigation against the Department, shall be sufficient grounds for the Department to obtain the release and custody of the bid documentation. In the absence of such action and provided that the Contractor has signed the final Standard Release Form, the Department shall instruct the document depository to release the sealed container to the Contractor.

In accordance with its representation that the sealed container placed in escrow contains all of the materials relied upon by the Contractor in preparing its bid, the Contractor agrees to waive its right to use any bid documentation other than that placed in escrow in disputes arising out of this Contract.

e. Refusal or Failure to Provide Bid Documentation. Failure to provide bid documentation in accordance with the requirements of this Section shall be considered revocation of the notice of award and forfeiture of the Proposal Guaranty to the State.

f. Confidentiality of Bid Documentation. The bid documentation and affidavit in escrow are, and will remain, the property of the Contractor. The Department has no interest in, or right to, the bid documentation unless notification of the intention to file claim is received or litigation ensues between the Department and Contractor. In the event of such notification or litigation, the bid documentation and affidavit shall become the property of the Department; provided, however, that these materials, and all copies made by the Department, shall be returned to the Contractor at the conclusion of litigation, or final resolution of all outstanding claims, upon execution of a final release. Moreover, the Department shall make every reasonable effort to insure that bid documentation to which it has gained access will remain confidential within the Department and will not be made available to anyone outside the Department, or used by a former Department employee.

g. Cost and Escrow Instructions. The cost of the escrow will be borne by the Department. The Department will provide escrow instructions to the document depository consistent with this clause.

There will be no separate payment for compilation of the data, container or cost of verification of the bid documentation. All costs shall be included in the overall Contract bid price.

SECTION 12.104

SCOPE OF WORK

12.104.01 INTENT OF CONTRACT. The intent of the Contract is to provide for the construction and completion in every detail of the work as described. The Contractor shall furnish all labor, materials, equipment, tools, transportation and supplies required to complete the work, all in accordance with the Plans, Specifications and terms of the Contract.

12.104.02 CHANGES IN THE CONTRACT.

a. Right to Change. The Engineer reserves the right to make changes in the Contract at any time during the progress of the work as are necessary to satisfactorily complete the Project. Such changes shall not invalidate the Contract nor release the Surety. The Contractor agrees to perform the work as directed by the Engineer. Any costs applicable to such changes will be paid for by the execution of an appropriate Contract Addendum.

b. Causes for Changes. Changes in the Contract may result from any of the following causes:

1. Differing site conditions.

2. Alterations in the Plans or Details; additions to, reductions in, or elimination of an existing item of work contained in the Proposal.
3. Extra or unforeseen work for which there is no item of work in the Proposal.
4. Suspension of the work for any reason.
5. Significant changes in the character of the work.

12.104.03 DIFFERING SITE CONDITIONS. During the progress of the work, if subsurface or latent physical conditions are encountered at the site differing materially from those indicated in the Contract or if unknown physical conditions of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in the work provided for in the Contract, are encountered at the site, the party discovering such conditions shall promptly notify the other party in writing of the specific differing conditions before the site is disturbed and before the affected work is performed.

Upon written notification, the Engineer will investigate the conditions, and if it is determined that the conditions materially differ and cause an increase or decrease in the cost or time required for the performance of any work under the Contract, an adjustment, excluding anticipated profits, will be made and the Contract modified in writing accordingly. The Engineer will notify the Contractor of the determination whether or not an adjustment of the Contract is warranted.

No Contract adjustment which results in a benefit to the Contractor will be allowed unless the Contractor has provided the required written notice.

No Contract adjustment will be allowed under this clause for any effects caused on unchanged work.

12.104.04 ALTERATIONS IN THE PLANS OR DETAILS. The Engineer may order changes in the Plans or Details, increase, reduce, or eliminate any Contract work item deemed necessary to satisfactorily complete the Project. Should such alterations in the Contract result in changes in the quantities of work to be performed, the Contractor shall complete such altered quantities in the same manner prescribed for the corresponding unaltered quantities. Unless otherwise provided for under **Subsection 12.104.07; Significant Changes in the Character of the Work**, such altered work shall be paid for at the same unit prices as for the corresponding unaltered items of work.

a. Prefabricated Materials. The Engineer may find it necessary to decrease or eliminate items of work that involve prefabricated materials which are not considered stock commercial items. In the event fabrication of such materials was started or completed before the Contractor is advised of the decrease or elimination of the items in question, the Department may:

1. Upon verification, reimburse the Contractor for the fabrication cost, including material cost less salvage value; or

2. Instruct the Contractor to have the fabricated material delivered to the project to be placed in the care of the Engineer for subsequent use by the State on other work. Payment for such material will be made in accordance with **Subsection 12.109.06; Partial Payments.**

12.104.05 EXTRA WORK. The Contractor shall perform extra work, for which there is no price included in the Contract, whenever it is deemed necessary or desirable to complete the work as contemplated. Such work shall be performed in accordance with the Specifications and as directed, and will be paid for as provided under **Subsection 12.109.04; Differing Site Conditions, Changes, Extra Work, and Force Account Work.**

12.104.06 SUSPENSIONS OF WORK ORDERED BY THE ENGINEER. If the performance of all or any portion of the work is suspended or delayed by the Engineer in writing for an unreasonable period of time (not originally anticipated, customary, or inherent to the construction industry) and the Contractor believes that additional compensation and/or Contract time is due as a result of such suspension or delay, the Contractor shall submit to the Engineer in writing a request for adjustment within seven calendar days of receipt of the notice to resume work. The request shall set forth the reasons and support for such adjustment.

Upon receipt, the Engineer will evaluate the Contractor's request. If the Engineer agrees that the cost and/or time required for the performance of the Contract has increased as a result of such suspension and the suspension was caused by conditions beyond the control of and not the fault of the Contractor, its suppliers, or subcontractors at any approved tier, and not caused by weather, the Engineer will make an adjustment (excluding profit) and modify the Contract in writing accordingly. The Contractor will be notified of the Engineer's determination whether or not an adjustment of the Contract is warranted.

No Contract adjustment will be allowed unless the Contractor has submitted the request for adjustment within the time prescribed.

No Contract adjustment will be allowed under this clause to the extent that performance would have been suspended or delayed by any other cause, or for which an adjustment is provided for or excluded under any other term or condition of this Contract.

12.104.07 SIGNIFICANT CHANGES IN THE CHARACTER OF THE WORK. The Engineer reserves the right to make in writing at any time during the work, such changes in quantities and such alterations in the work as are necessary to satisfactorily complete the project. Such changes in quantities and alterations shall not invalidate the Contract nor release the surety, and the Contractor agrees to perform the work as altered.

If the alterations or changes in quantities significantly change the character of the work under the Contract, whether such alterations or changes are in themselves significant changes to the character of the work or by affecting other work cause such other work to become significantly different in character, an adjustment, excluding anticipated profits, will be made to the Contract. The basis for the adjustment shall be agreed upon prior to the performance of the work. If a basis cannot be agreed upon, then an adjustment will be made either for or against the Contractor in such amount as the Engineer may determine to be fair and equitable.

If the alterations or changes in quantities do not significantly change the character of the work to be performed under the Contract, the altered work will be paid for as provided elsewhere in the Contract.

a. Circumstances for Significant Change. The term "significant change" shall be construed to apply only to the following circumstances:

1. When the character of the work as altered differs materially in kind or nature from that involved or included in the original proposed construction or;

2. When a major item of work, as defined elsewhere in the Contract, is increased in excess of 125 percent or decreased below 75 percent of the original Contract quantity. Any allowance for an increase in quantity shall apply only to that portion in excess of 125 percent of original Contract item quantity, or in case of a decrease below 75 percent, to the actual amount of work performed.

12.104.08 MAINTENANCE OF TRAFFIC. Unless otherwise provided, the Contractor shall maintain the road undergoing improvement open to all traffic during the work of the Contract. Where so provided on the Plans, the Contractor may bypass traffic over an approved detour route. Additional detours not shown on the Plans may be employed only if plans for the detours are designed, submitted, reviewed, approved, and implemented in accordance with the requirements indicated in the Transportation Management Plan and such plans receive the written approval of the local City/Town Public Works Director. Detours of a short-term nature, which may be implemented only during the Contractor's scheduled hours of operation, and which must be removed at the close of the day's operations, shall require a 24-hour advance notice and approval of the Engineer. The Contractor shall keep the portion of the project being used by public traffic, whether it be through or local traffic, in a condition that shall safely and adequately accommodate such traffic. The Contractor shall furnish, erect and maintain all temporary traffic control devices in accordance with the Manual on Uniform Traffic Control Devices for Streets and Highways, latest Edition.

The Contractor shall bear all expense of maintaining traffic over the section of road undergoing improvement without direct compensation, except as provided below:

a. Special Detours. When the Contract contains items for "maintenance of detours" or "removing existing structures and maintaining traffic," the payment for such items shall cover all cost of constructing and maintaining detour or detours, including the construction of temporary bridges and accessory features and the subsequent legal removal of the same. The failure or refusal of the Contractor to construct detours at the proper time and to maintain same in working condition shall be sufficient cause for suspending the work until such detours are provided in satisfactory condition for use by public traffic. Right-of-way for temporary roads or bridges will be furnished by the Department.

b. Maintenance of Traffic During Suspension of Work. During any suspension of the work, the Contractor shall make passable and shall open to traffic those sections of the project, together with temporary roadways or portions thereof as may be agreed upon between the Contractor and the Engineer, for the temporary accommodation of traffic during the anticipated period of suspension. Thereafter, and until an issuance of an order for the resumption of

construction operations, the maintenance of the temporary roadways and sections of the project will be the responsibility of the Department. When work is resumed, the Contractor shall replace or renew any work or materials lost or damaged because of such temporary use of the project; remove to the extent directed by the Engineer any work or materials used in the temporary maintenance thereof by the State; and complete the project in every respect as though its prosecution had been continuous and without interferences. Additional work caused by such suspension, for reasons beyond the control of the Contractor, will be paid for by the State in accordance with **Subsection 12.109.04; Differing Site Conditions, Changes, Extra Work and Force Account Work.**

c. Maintenance Directed by the Engineer. If the Engineer directs special maintenance for the benefit of the traveling public, then the Contractor will be paid on the basis of prevailing unit prices or in accordance with **Subsection 12.104.05; Extra Work.** The Engineer will be the sole judge of work to be classed as special maintenance.

Detours or routes used exclusively by the Contractor for hauling materials and equipment shall be constructed and maintained at its own expense. In order to provide for the safety, comfort, and well-being of residents of heavily populated residential areas, the Contractor shall select haul routes between the project and material sources that will minimize disturbance to such residents. The Contractor shall submit for the Engineer's review its planned route of haul and its plan for minimizing the adverse effect of such hauling operations on local residents. It shall be the responsibility of the Contractor to obtain all necessary permits, approvals and licenses and to comply with the ordinances, rules and regulations of the local community concerning haul routes and detours, all at no expense to the Department.

The Department reserves the right to select alternative haul routes, to divide the hauling traffic over several routes, and to impose such other restrictions it deems necessary to minimize the impact of the hauling operation on local residents.

The Contractor shall not store barricades, material, or equipment in a manner that would impede or impair the safety of the traveling public.

d. Maintenance for Traffic Flow-Utility Work. The Contractor shall provide, as part of the Contract, construction signing in accordance with the Manual on Uniform Traffic Control Devices for all utility work performed directly by utility companies, municipalities, or their respective subcontractors. Also included is the provision by the Contractor of flaggers, traffic persons, and the setting up, maintaining, and moving of signs, all in accordance with applicable provisions contained in **PART 900** of the Standard Specifications (Blue Book).

12.104.09 MAINTENANCE OF PUBLIC ACCESS. Unless otherwise provided, the Contractor shall maintain existing streets, highways, roads, private walks and sidewalks which may be involved with the Project, open for vehicular and/or pedestrian traffic. The Contractor shall also provide and maintain in a safe condition temporary approaches, crossings, and intersections with trails, roads, streets, businesses, parking lots, residences, garages, farms, and other features as may be necessary, and at its own expense and as directed by the Engineer.

With respect to maintaining public access as described above, the Contractor will not be required to remove snow.

If the Engineer decides that the interests of the public and/or abutting property owners so-require, the Contractor shall construct plank crossings, or other such approved temporary crossings, over trenches in streets, roads, or private ways. All such temporary crossings shall be provided as directed by the Engineer.

12.104.10 RIGHTS IN AND USE OF MATERIALS FOUND ON THE PROJECT. The Contractor, with the approval of the Engineer, may use on the project such stone, gravel, sand, or other material determined suitable by the Engineer, as may be found in the excavation and will be paid both for the excavation of such materials at the corresponding Contract unit price and for the pay item for which the excavated material is used. The Contractor shall replace at its own expense with other acceptable material all of that portion of the excavation material so removed and used which was needed for use in the embankments, backfills, approaches, or otherwise. No charge for the materials so used will be made against the Contractor. The Contractor shall not excavate or remove any material from within the highway location which is not within the grading limits, as indicated by the slope and grade lines, without prior written authorization from the Engineer.

12.104.11 FINAL CLEANING-UP. Prior to any inspections performed subsequent to the Contractor's "Notice of Substantial Completion," all areas occupied by the Contractor in connection with the work shall be cleaned of all rubbish, excess materials, temporary structures, and equipment. All parts of the work shall be left in an acceptable condition.

The cost of the final clean-up shall be incidental to other items of work and no separate payment shall be made.

The Contractor shall remove its equipment, materials and other obstacles from the project right-of-way and from property adjacent to the project site which is not owned or controlled by the Contractor within thirty (30) days after completion of the Project. The Contractor shall clean and remove all cement streaks or drippings, paint smears or drippings, rust stains, oil, grease, bituminous materials, dirt, and other foreign materials on or in any structure, curb, gutter, median or gore marker due to its operation.

12.104.12 RAILWAY-HIGHWAY PROVISIONS. If the Contract requires that materials be hauled across the tracks of any railway, the Department will arrange with the railway for new crossings or for the use of any existing crossings. If the Contractor elects to use crossings other than those specified in the Contract, the Contractor shall make arrangements for the use of the crossings.

Work to be performed by the Contractor on the railway Right-of-Way shall be performed to avoid interference with the movement of trains or traffic of the railway company. The Contractor shall avoid accidents, damage, or unnecessary delay or interference with railway trains and other property.

12.104.13 CONSTRUCTION OVER OR ADJACENT TO NAVIGABLE WATERS. Work over, on, or adjacent to navigable waters shall be so conducted so that free navigation of the waterways will not be interfered with and that the existing navigable depths will not be impaired except as allowed by permit issued by the U.S. Coast Guard or the U.S. Army Corps of Engineers, as applicable.

12.104.14 CONTRACTOR'S RESPONSIBILITY FOR THE WORK. Until substantially complete, the Contractor shall be responsible and shall protect all work against injury or damage from all causes whether arising from the execution or the non-execution of the work. At the Contractor's expense, the Contractor shall rebuild, repair, restore, and make good all losses, injuries, or damages to any portion of the work from any cause except those beyond the control of and without the fault or negligence of the Contractor, including but not restricted to acts of God, such as earthquake, tidal wave, tornado, hurricane, or other cataclysmic phenomenon of nature, or acts of the public enemy or of governmental authorities.

In case of suspension of work from any cause, the Contractor shall be responsible for the work under the Contract and shall prevent damage to the project, provide for normal drainage, and shall erect necessary temporary structures, signs, or other facilities. During the suspension period, the Contractor shall also maintain in an acceptable growing condition all living material in newly established planting, seedings, and soddings furnished under the Contract, and shall protect new tree growth and other important vegetative growth against injury.

All costs associated with the work described in this Subsection shall be borne by the Contractor, unless otherwise provided, under **Subsection 12.104.03; Differing Site Conditions**.

12.104.15 ENVIRONMENTAL PROTECTION. The Contractor shall comply with all Federal, State, and local laws and regulations controlling pollution of the environment. Pollution of streams, lakes, ponds, and reservoirs with fuels, oils, bitumens, chemicals, or other harmful materials, and pollution of the atmosphere from particulate and gaseous matter shall be avoided.

When work areas or pits are located in or adjacent to live streams, such areas shall be separated from the main stream by a dike or barrier to keep sediment from entering a flowing stream. Care shall be taken during the construction and removal of such barriers to minimize siltation of the stream.

Water from aggregate washing or other operations containing sediment shall be treated by filtration, settling basins, or other means sufficient to reduce the sediment content to not more than that of the stream or lake into which it is discharged.

Other requirements relating to temporary and permanent erosion and water pollution controls are set forth in **SECTIONS 206 through 210**, respectively, of the Specifications (Blue Book).

a. Plant and Pest Control Requirements. The United States Department of Agriculture has advised that soil and soil-moving equipment operating in regulated areas of certain counties will be subject to plant and pest quarantine regulations. In general, these regulations provide for cleaning soil from equipment before it is moved from regulated areas. Complete information may be secured from appropriate divisions of the Rhode Island Department of Environmental Management and the United States Department of Agriculture.

Contractors shall comply with these regulations where applicable to the State of Rhode Island.

SECTION 12.105

CONTROL OF WORK

12.105.01 AUTHORITY OF THE ENGINEER. The Engineer will decide all questions related to the quality and acceptability of materials furnished; work performed; and the rate of progress of the work; questions regarding the interpretation of the Contract Documents; and questions as to the acceptable fulfillment of the Contract by the Contractor.

The Engineer will have the authority to suspend the work completely or in part due to the failure of the Contractor to correct conditions unsafe for the workers or the general public; for failure to carry out provisions of the Contract; for failure to carry out orders; for such periods necessary due to unsuitable weather; for failure to correct damages to public or private properties caused by the Contractor and/or its Subcontractors, for conditions considered unsuitable for the prosecution of the work or for any other condition or reason determined to be in the State's interest.

12.105.02 PLANS AND SHOP DRAWINGS. Plans will show details of all structures, lines, grades, typical cross sections of the roadway, location and design of all structures and a summary of items appearing on the Proposal. Bridge plans will either show all dimensions and details necessary for complete construction or such information that when supplemented by additional field data gathered by the Contractor will enable the Contractor to prepare complete shop drawings.

The Contractor shall keep one set of plans available at the site at all times, and shall provide approved shop drawings to the Engineer upon request.

All shop drawings will be submitted in a timely fashion such that the Contractor's approved schedule will not be adversely impacted by the submittal process. Shop drawings shall consist of such detailed plans required to control the work that are not included in the Plans furnished by the Department. They shall include, but not be limited to, stress sheets, erection plans, false work plans, sheeting plans, cofferdam plans, bending diagrams for reinforcing steel or any other supplementary plans or similar data required of the Contractor. The Contractor shall submit eight (8) sets of shop drawings to the Engineer and one set to the design consultant of record. Shop drawings shall be accompanied by eight (8) sets of design computations, cuts from manufacturers' catalogs, and/or supporting technical bulletins.

Engineering shop drawings and design computations shall be stamped only by a Rhode Island Registered Professional Engineer. The stamping of Plans for professional design shall be in accordance with the applicable requirements of the Rhode Island Board of Registration for Professional Engineers, or other Boards of Professional Registration, as applicable.

Within forty-five (45) calendar days of submission, all shop drawings shall be reviewed by the Engineer and returned to the Contractor for appropriate action. Shop drawings that are found to be erroneous, lacking information necessary to control construction, or not in conformance with accepted design criteria will be disapproved and returned to the Contractor. The Contractor shall address the Engineer's comments and resubmit revised shop drawings

and/or design computations. The Contractor will not be allowed any increase in Contract time for the time taken by the Contractor to submit revised shop drawings caused by an erroneous submission, or by a previous submission either lacking the information necessary to control construction, or not conforming to accepted design criteria. Also, the time taken by the Engineer to review the revised shop drawings does not constitute justification for additional Contract time.

Shop drawings must be approved by the Engineer prior to performance of the work involved. Such approval shall not relieve the Contractor of any responsibility under the Contract for the successful completion of the work.

Unless otherwise specified in the Contract Documents, the Contract price will include the cost of furnishing all shop drawings.

12.105.03 CONFORMITY WITH PLANS AND SPECIFICATIONS. Work performed and materials furnished shall be in reasonably close conformity with the lines, grades, cross sections, dimensions and material requirements, including tolerances, specified in the Contract Documents.

In the event the Engineer finds the materials furnished, work performed, or the finished product are not within reasonably close conformity with the Contract Documents, but that reasonably acceptable work has been produced, the Engineer shall determine if the work should be accepted and remain in place. If accepted, the Engineer will document the basis of acceptance by Contract modification which will provide for an appropriate adjustment in the Contract price for such work or materials as necessary to support this determination.

In the event the Engineer finds the materials furnished, work performed or the finished project are not in reasonably close conformity with the Contract Documents, and have resulted in an inferior or unsatisfactory product, the work or materials shall be removed and replaced or otherwise corrected by and at the expense of the Contractor.

"Reasonably close conformity" means compliance with reasonable and customary manufacturing and construction tolerances where working tolerances are not specified. Where working tolerances are specified, reasonably close conformity means compliance with such working tolerances. Without detracting from the complete and absolute discretion of the Engineer to insist upon such tolerances as establishing reasonably close conformity, the Engineer may accept variations beyond such tolerances as reasonably close conformity where such variations will not materially affect the value or utility of the work or the interests of the State.

12.105.04 COORDINATION OF PLANS, SPECIFICATIONS, SUPPLEMENTAL SPECIFICATIONS, AND SPECIAL PROVISIONS. The Standard Specifications, Supplemental Specifications, Plans, Special Provisions, and Contract Addenda are essential parts of the Contract; and a requirement occurring in one is as binding as though occurring in all. They are intended to be complementary and to describe and provide for a complete work. In case of discrepancy, calculated dimensions will govern over scaled dimensions; Plans will govern over Standard and Supplemental Specifications; Supplemental Specifications will govern

over Standard Specifications; and Special Provisions will govern over Standard Specifications, Supplemental Specifications and Plans.

The Contractor shall take no advantage of any apparent error or omission in the Contract Documents. If the Contractor discovers such an error or omission, the Engineer shall be promptly notified. The Engineer will then make such corrections and interpretations necessary to fulfill the intent of the Contract Documents.

12.105.05 COOPERATION BY CONTRACTOR. The Department will supply the Contractor with a Contract Award Booklet containing a Contract Award compact disk (CD), from which the plans, specifications, contract addenda and other contract documents may be printed. The Contractor will be required to keep one set of printed copies of the Contract Documents available on the project site at all times.

The Contractor shall give the work the constant attention necessary to facilitate progress and shall cooperate fully with the Engineer, the Department's Resident Engineer and inspectors, and other Contractors.

The Contractor shall have on the project site as its agent, a competent superintendent capable of reading and thoroughly understanding the Contract Documents and experienced in the type of work being performed. The superintendent shall receive orders or instructions from the Engineer, shall be authorized to act for the Contractor on the work, and shall have full authority to execute orders or directions of the Engineer without delay.

The Contractor shall promptly supply, irrespective of the amount of work sublet, the necessary materials, equipment, tools, labor, and other incidentals to complete the Contract.

a. Causes for Removal. The Engineer may remove the superintendent from the project at any time if:

1. The performance of the superintendent is unsatisfactory; or
2. The superintendent is uncooperative in his relationship with the Engineer.

12.105.06 COOPERATION WITH UTILITIES. The Department will notify all utility companies, all pipe line owners, or other parties affected, and endeavor to have all necessary adjustments of public or private utility fixtures, pipe lines, and other appurtenances within or adjacent to the limits of construction, made as soon as practicable.

Water lines, gas lines, wire lines, service connections, water and gas meter boxes, water and gas valve boxes, light standards, cableways, signals, and all other utility appurtenances within the limits of the proposed construction in which the respective owners hold no private easements are to be relocated or adjusted by said owners in accordance with executed Construction and Maintenance Agreements/Utilities.

It is understood that the Contractor has considered in its Proposal all of the permanent and temporary utility facilities in their present or relocated positions as specified in the Contract and as revealed by site investigation. No additional compensation will be allowed the Contractor for any delays, inconvenience, or damage sustained by it due to any interference caused by such

facilities or the operation of relocating them, unless otherwise provided for in **Subsection 12.104.03; Differing Site Conditions**.

In general, the Contract will indicate those various utility items which are to be relocated or adjusted by the utility owner in accordance with Construction and Maintenance Agreements, and those which are to be relocated or adjusted by the Contractor. In this latter case, all underground construction required under the Contract for new or existing electric and/or telephone related facilities shall be performed by a contractor approved by the respective utility company. The Contractor may perform this work if it has been so-approved; otherwise, the Contractor shall retain a firm that has been approved for such work. The work involved would include all adjustments to utility manholes, frames and grates, as well as the utility lines themselves. Prior to the preconstruction conference, the Contractor shall submit to the Engineer written statements from the respective utility companies that the firm or firms selected by the Contractor are approved for such work. See **Special Provision Code 105.2000**.

Prior to commencing work, the Contractor shall make arrangements to protect the properties of railway, telegraph, telephone, water, gas, and power companies, or other property, from damage that could result in considerable expense, loss, or inconvenience.

In addition, the Contractor shall notify each utility owner and/or municipality whose facilities might be affected by its work 24 hours in advance of the commencement of such work. This notification shall also request the respective utility owner and/or municipality to assign a representative to be present at the site of the work during the period of the Contractor's operations.

The locations and depths of existing utilities as shown on the Plans are approximate and should not be relied upon by the Contractor. The Contractor shall check and verify the location of all existing utilities, both underground and overhead, before proceeding to commence the work or order materials. Excavation shall be in accordance with all statutes, ordinances, and regulations of the Municipality, State or Federal Government that may be applicable. The Contractor is specifically required to follow the Dig Safe process. Damage to existing utilities which are shown on the Plans or located by the respective utilities in accordance with the Dig Safe process shall be the sole responsibility of the Contractor.

The Contractor shall cooperate with the utility owners in the removal and rearrangement of any underground or overhead utilities in order that these operations may progress in a reasonable manner; that duplication of rearrangement work may be reduced to a minimum; and that services rendered by the utility owners will not be unnecessarily interrupted.

In the event of interruption to water or utility services as a result of accidental breakage or of being exposed or unsupported, the Contractor shall promptly notify the proper authority and shall cooperate fully in the restoration of such services.

If water service is interrupted, repair work shall be continuous until the service is restored. No work shall be undertaken around fire hydrants until provisions for continued service have been approved by the local fire authority.

The Contractor shall prevent damage to pipes, cables, and other utilities. Repairs to damaged utilities caused by carelessness or omissions on the Contractor's part will be corrected at the Contractor's expense. The damaged facilities shall be restored to a condition similar or

equal to that existing before the damage occurred. If the Engineer determines that adjustment or relocation of utilities is necessary to accommodate construction, the Engineer will make necessary arrangements with the owner if the work is not otherwise provided for in the Contract.

If the Engineer determines that adjustment of utility facilities is necessary to accommodate construction, and the adjustment work is not provided for in the Contract, the Contractor will be paid for the work in accordance with **Subsection 12.109.04; Differing Site Conditions, Changes, Extra Work, and Force Account Work.**

a. Contractor Coordination with U.S. Postal Service. The Contractor shall notify and coordinate with the U.S. Postal Service in situations where existing U.S. Postal Boxes (mail drop/collection boxes) within the limits of the Contract are to be removed and reset to allow for sidewalk/curbing construction. This requirement applies only in the case of standard U.S. Postal Service main drop boxes; it is not applicable for the removal and resetting or replacement of private mailboxes. The removal and resetting of U.S. Postal Service mail drop boxes must be conducted only by the U.S. Postal Service, and therefore, a reasonable time allowance must be provided by the Contractor to allow the Postal Service to complete the removal prior to start of construction. Finally, the Contractor shall coordinate with the Post Office when construction is complete and acceptable such that the boxes may be reset.

b. Contractor Coordination with Narragansett Bay Commission. The Contractor must obtain a sewer facility alteration permit from the Narragansett Bay Commission prior to undertaking any work that affects sanitary sewer facilities that fall within NBC jurisdiction. The permit will be issued through the NBC and can be obtained at the location indicated in **Special Provision Code 105.1000** of the Contract.

12.105.07 COOPERATION BETWEEN CONTRACTORS. The Department reserves the right to contract for, and perform other or additional work on or near the work covered by the Contract.

When separate contracts are let within the limits of any one project, each Contractor shall conduct its work without interfering or hindering the progress or completion of the work being performed by other contractors. Contractors working on the same project shall cooperate with each other as directed by the Engineer.

Each Contractor involved shall assume all liability, financial or otherwise, in connection with its contract and shall protect and save harmless the Department from any and all damages or claims that may arise because of inconvenience, delay, or loss experienced because of the presence and operations of other contractors working within the limits of the same project unless otherwise provided for under **Subsection 12.104.03; Differing Site Conditions.**

The Contractor shall arrange the work and shall place and dispose of the materials being used without interfering with the operations of the other contractors within the limits of the same project. The work shall be coordinated with that of the others in an acceptable manner and shall be performed in proper sequence with that of the other contractors.

12.105.08 CONSTRUCTION STAKES, LINES, AND GRADES. The Contractor will set construction stakes establishing lines, slopes, profile grades, centerline and benchmarks for roadwork, bridge work, culvert work, protective and accessory structures, and appurtenances. These stakes and marks shall constitute the field control by which the Contractor shall establish other necessary controls and perform the work.

The contractor will maintain construction lines, points and grade staking to assure accurate and proper control of the work and to verify final grades and construction lines. The Contractor shall be held responsible for preserving all stakes and marks, and if the stakes or marks are destroyed or disturbed by the Contractor, the responsibility of replacing them will be borne by the Contractor at his own expense.

The Contractor will be responsible for the accuracy of lines, slopes, grades, and other engineering work set forth under the contract documents and the provisions of **SECTION 934; FIELD CONTROL AND CONSTRUCTION LAYOUT** of the Specifications (Blue Book).

12.105.09 AUTHORITY AND DUTIES OF RESIDENT ENGINEER. As the representative of the Engineer, the Resident Engineer has immediate charge of the engineering details of each construction project, and is responsible for the administration and satisfactory completion of the project. The Resident Engineer is delegated commensurate authority by the Department and is, thereby, authorized to reject defective material and to suspend any work that is being improperly performed. The Resident Engineer is authorized to make changes that involve increases or decreases in quantities not greater than ten-percent of the corresponding values that appear in the Proposal. The Resident Engineer is not authorized to make changes in any design element or project specification; or to make increases or decreases in quantities greater than ten-percent of the corresponding values that appear in the Proposal.

12.105.10 INSPECTION OF WORK. All materials and each part or detail of the work shall be subject to inspection by the Engineer. The Engineer shall be allowed access to all parts of the work and shall be furnished with such information and assistance by the Contractor as is required to make a complete and detailed inspection.

If requested by the Engineer, the Contractor, before acceptance of the work, shall remove or uncover such portions of the finished work as may be directed. After examination, the Contractor shall restore said portions of the work to the standard required by the Contract. Should the work thus exposed or examined prove acceptable, the uncovering, removing, and replacing the covering, or making good of the parts removed will be paid for as Extra Work. Should the work so exposed or examined prove unacceptable, the uncovering, removing, and replacing of the covering, or making good of the parts removed, shall be at the Contractor's expense.

Work performed or materials used without supervision or inspection by an authorized Department representative as a result of failure of the Contractor to notify the Engineer may be ordered removed and/or replaced at the Contractor's expense.

When any unit of government or political subdivision, utility or railroad corporation is required to accept and/or pay a portion of the cost of the work covered by this Contract, its

representatives shall have the right to inspect the work. Such inspection shall not make any unit of government or political subdivision, utility, or railroad corporation a party to this Contract, and shall in no way interfere with the rights of either such party.

12.105.11 REMOVAL OF UNACCEPTABLE AND UNAUTHORIZED WORK. Work which does not reasonably conform to the requirements of the Contract will be considered unacceptable, unless otherwise determined acceptable under the provisions of **Subsection 12.105.03; Conformity with Plans and Specifications.**

Unacceptable work, whether the result of poor workmanship, use of defective materials, or damage through carelessness, found to exist prior to the final acceptance of the work, shall be removed immediately and replaced in an acceptable manner at the Contractor's expense.

Work performed contrary to the instructions of the Engineer; work performed beyond the lines and grades shown on the Plans, or as otherwise provided; or any extra work performed without authority, will be considered as unauthorized work and will not be paid for under the provisions of the Contract. Work so performed may be ordered removed and/or replaced at the Contractor's expense.

If the Contractor fails to promptly comply with any order of the Engineer made under the provisions of this Subsection, the Engineer is authorized to require unacceptable work to be remedied or removed and replaced, and unauthorized work to be removed, and to deduct the costs incurred thereby from any monies due or to become due the Contractor.

12.105.12 LOAD RESTRICTIONS. The Contractor shall comply with all legal load restrictions in the hauling of equipment or materials on public roads beyond the limits of the project. A special permit will not relieve the Contractor of liability for damage which may result from the moving of such equipment or materials.

The operation of equipment on hauling loads which cause damage to structures or the roadway, or to any other type of construction, will not be permitted. Handling or hauling of materials over the base course or surface course under construction shall be limited as directed by the Engineer to prevent damage to the pavement structure. No loads will be permitted on a concrete pavement, base or structure before the concrete has attained its required strength unless otherwise authorized in writing by the Engineer.

12.105.13 MAINTENANCE DURING CONSTRUCTION. The Contractor shall maintain the work during construction and until the project is substantially complete. This maintenance shall constitute continuous and effective work prosecuted day by day, with adequate equipment and forces to the end that the roadway or structures are kept in satisfactory condition.

If the Contract requires the placing of a course upon a course or subgrade previously constructed, the Contractor shall maintain the previous course or subgrade during all construction operations.

Cost of maintenance work during construction and before the project is substantially completed shall be included in the Contract unit prices of the various pay items and the Contractor will not be paid an additional amount.

12.105.14 OPENING SECTIONS OF PROJECT TO TRAFFIC. Opening of sections of the work to traffic prior to completion of the entire Contract may be desirable from a traffic service standpoint; or may be necessary due to conditions inherent in the work, or by changes in the Contractor's work schedule; or necessary due to conditions or events unforeseen at the time of the Contract award. Such openings to traffic shall be made when ordered by the Engineer. Under no condition shall the openings constitute acceptance of the work or a waiver of any provisions of the Contract.

The Contract will state which sections shall be opened to traffic prior to completion of the Project. On any section opened by order of the Engineer, whether covered in the Contract or not, the Contractor shall not be required to assume any expense in maintaining the road for such traffic. Such expense will be borne by the Department, or compensated for in accordance with **Subsection 12.109.04; Differing Site Conditions, Changes, Extra Work and Force Account Work.**

If, however, the Contractor is dilatory in completing shoulders, drainage structures, or other features of the work, the Engineer may notify the Contractor in writing and establish a period of time in which the work should be completed. If the Contractor is dilatory, or fails to make a reasonable effort toward completion in this period of time, the Engineer may order all or a portion of the project opened to traffic. On sections which are so ordered to be opened, the Contractor shall conduct the remainder of the construction operations to cause the least obstruction to traffic. Costs incurred due to the dilatory nature of the Contractor's response to instructions of the Engineer shall be borne solely by the Contractor.

On any section opened to traffic under the above conditions, whether stated in the Contract or opened by necessity of Contractor's operations, or unforeseen necessity, damage to the highway not attributable to traffic that occurs (except slides) shall be repaired at the expense of the Contractor. The removal of slides shall be done by the Contractor on a basis determined by the Engineer prior to removal.

Unless otherwise specified, the Contractor shall schedule pavement removal such that no location shall remain unpaved for longer than ten (10) working days. This means that once the Contractor commences with the removal of existing full depth pavement from any location where traffic flow is to be maintained, he must restore the roadway with no less than a full depth bituminous base course at that particular location within 10 working days. In the case of partial depth pavement removal (cold planning/milling), the Contractor shall schedule the pavement removal such that no location shall remain without a new bituminous asphalt layer for longer than seven (7) calendar days.

12.105.15 FURNISHING RIGHT-OF-WAY. The Department is responsible for securing Rights-of-Way in advance of construction. Exceptions will be indicated in the Contract.

12.105.16 FAILURE TO MAINTAIN ROADWAY OR STRUCTURE. If the Contractor fails to comply with the provisions of **Subsection 12.105.13; Maintenance During Construction**, the Engineer will immediately notify the Contractor of such non-compliance. If the

Contractor fails to remedy unsatisfactory maintenance within 24 hours after receipt of such notice, the Engineer may immediately proceed to maintain the project. The entire cost of this maintenance will be deducted from monies due or to become due the Contractor.

12.105.17 ACCEPTANCE.

a. Partial Acceptance. When the Contractor substantially completes a unit or portion of the work in accordance with the definition contained in **Subsection 12.101.71; Substantial Completion**, the Contractor may request an inspection of that unit or portion of the project. The Engineer's inspection shall disclose the following:

1. Work not started, but required to be completed.
2. Incomplete work, the completion of which is required.
3. Unsatisfactory work, the correction of which is required.

The Engineer shall provide the Contractor with a report containing the results of this inspection along with instruction for completing the construction of the unit or portion of the work under consideration. The Contractor shall immediately comply with these instructions. Upon completing and correcting the work, the Contractor may request another inspection.

If, upon completion of this second inspection, the Engineer finds that the unit or portion of the work has been satisfactorily completed in compliance with the Contract, the Engineer may accept that unit or portion of the work as physically completed, and the Contractor may be relieved of further responsibility for such unit or portion of the work, provided that the Contractor agrees to deliver full documentation, certificates and proofs of compliance for said work during final acceptance.

If, however, during this second inspection the Engineer finds any incomplete or unsatisfactory work, no partial acceptance will be granted, and acceptance of the unit or portion of the work must await the final acceptance of the entire project.

Partial acceptance shall not void or alter any of the terms or provisions of the Contract.

b. Final Acceptance. Final acceptance of the project will be made by the Engineer on behalf of the State when the Contractor has completed the project in full accordance with the definition contained in **Subsection 12.101.09; Completion**. The procedure for obtaining final acceptance follows:

1. When the Contractor determines that the work of the Contract is substantially completed in accordance with the definition of **Subsection 12.101.71; Substantial Completion**, the Contractor shall notify the Engineer of this fact.

2. Within 30 calendar days of the Contractor's official notice, the Engineer will schedule a time and date for an inspection.

3. The Engineer's inspection shall take place at the time and date established in subparagraph (2), above.

4. Within 60 calendar days of the inspection, the Engineer will notify the Contractor, in writing, as to the following:

(a) Any outstanding work items that remain to be completed.

(b) Any unsatisfactory work that must be corrected.

(c) The required submission of any and all executed documents, certificates, or proofs of compliance as required by the Contract.

Subparagraphs (a), (b), and (c), above, constitute the Engineer's so-called, "punch list."

5. The Contractor shall complete the work, correct unsatisfactory work, submit the required documents, and comply with all directions contained in the Engineer's "punch list" within 60 calendar days of the date of the Engineer's transmittal to the Contractor of said "punch list" except that;

If, during the progression of these 60 calendar days for the Contractor to complete the work, the date of December 15th is encountered, said progression of days shall stop, and shall not again be resumed until the date of the following April 15th is encountered, the intervening 120 days being designated by **Subsection 12.108.07; Determination and Extension of Contract Time**, as winter "shut down" time.

6. At the conclusion of the 60 calendar days for the Contractor to complete the work, the progression of which is defined above, the Engineer shall make another inspection of the work. If the Engineer determines that the work of the Contract has been satisfactorily completed in full accordance with **Subsection 12.101.09; Completion**, such inspection shall constitute the Final Inspection. In such event, the Engineer will make final acceptance of the project on behalf of the State and shall notify the Contractor in writing of this acceptance as of the date of the aforementioned Final Inspection.

If, however, this second inspection discloses that work remains to be completed, unsatisfactory work remains to be corrected, and documents remain to be submitted, the process will revert to that of **Para. b.4**, above, and proceed accordingly; with the additional stipulation that liquidated damages will commence on the date of the second inspection and will remain in effect until final acceptance is subsequently achieved, all as hereinafter provided for in **Subsection 12.108.08; Failure to Complete on Time**.

12.105.18 CLAIMS FOR ADJUSTMENTS AND DISPUTES.

a. Notification. If the Contractor deems that additional compensation is due for work or material not clearly covered in the Contract, the Contractor shall notify both the Engineer and the Chief of Construction Operations in writing of its intention to make claim for such additional compensation before beginning or continuing the affected work; also, the Contractor shall proceed diligently with performance of the contract pending final resolution of any request for

relief, payment, claim, appeal or action arising under the contract, and comply with any decisions of the Engineer¹. If such notification is not given, or the Contractor does not afford the Engineer proper facilities for keeping strict account of the actual costs, the Contractor thereby waives any claim for additional compensation. Notice by the Contractor, and the fact that the Engineer has kept account of the costs, shall not be construed as substantiating the validity of the claim.

b. Submission. Claims must be submitted within 120 days of substantial completion of the project. Claims submitted after 120 days will not be accepted. An equitable adjustment will be made to the Contract if the claim is found to be just.

Nothing in this Subsection shall be construed as establishing any claim contrary to the terms of **Subsections 12.104.02; 12.104.03; 12.104.04; 12.104.05; 12.104.06 and 12.104.07** of these Standard Specifications.

c. Documentation of Claims. Any claim shall be in sufficient detail to enable the Engineer to determine the basis for entitlement and the resulting costs. The following minimum information must accompany each claim submitted:

1. A detailed factual statement of the claim providing all necessary dates, locations and items of work affected by the claim.
2. The date actions resulting in the claim occurred or conditions resulting in the claim became evident.
3. A copy of the "Notice of Potential Claim" must be filed for the specific claim.
4. The name and title of each Department employee knowledgeable about facts that gave rise to such claim.
5. The name and title of each Contractor or employee knowledgeable about facts that gave rise to such claim.
6. The specific provisions of the Contract which support the claim, and a statement why such provisions support the claim.
7. The identification of any pertinent documents, and the substance of any material or communications relating to the claim.
8. A statement whether the additional compensation or extension of time is based on the provisions of the Contract or an alleged breach of Contract.
9. If an extension of time is also sought, the specific days for which it is sought and the basis for such claim as determined by an analysis of the construction schedule.
10. The amount of additional compensation sought and a breakdown of that amount.

d. Certification of Claims. When submitting a claim, the Contractor must certify in writing, under oath in accordance with the formalities required as to the following:

1. The claim is made in good faith.
2. Supportive data is accurate and complete to the Contractor's best knowledge and belief.
3. The amount of the claim accurately reflects the actual cost incurred by the Contractor.

e. Auditing of Claims. All claims filed against the Department shall be subject to audit by the Department at any time following the claim filing, whether or not the claim is part of a suit pending in the courts of this State. The audit may begin on ten days notice to the Contractor, Subcontractor, or Supplier. The Contractor, Subcontractor, or Supplier shall make a good faith effort to cooperate with the auditors and shall provide, at a minimum, access to the following documents:

1. Daily time sheets and foreman's daily reports.
2. Union agreements, if any.
3. Insurance, welfare, and benefits records.
4. Payroll register.
5. Earnings records.
6. Payroll tax returns.
7. Material invoices, purchases orders, and all material and supply acquisition contracts.
8. Material cost distribution worksheets.
9. Equipment records (list of company equipment, rates, etc.)
10. Vendor rental agreements, and subcontractor invoices.
11. Subcontractor payment certificates.
12. Canceled checks (payroll and vendors).
13. Job cost report.
14. Job payroll ledger.
15. General ledger, general journal, (if used) and all subsidiary ledgers and journals together with all supporting documentation pertinent to entries made in these ledgers and journals.
16. Cash disbursements journal.
17. Financial statements for all years reflecting the operations on this project.

18. Income tax returns whether such records are maintained by the company involved, its accountant, or others.

19. Depreciation records on all company equipment.

20. All other documents used to develop costs for the Contractor's internal purposes in establishing the actual cost of owning and operating equipment.

21. All documents which reflect the Contractor's actual profit and overhead during the time the project was being performed and for each of the five years prior to the commencement of this project.

22. All documents related to the preparation of the Contractor's bid including the final calculations on which the bid was based unless the documents are placed in escrow under other provisions of the Contract.

23. Worksheets used to prepare the claim, establishing the cost components for items of the claim including, but not limited to, labor, benefits and insurance, materials, equipment, subcontractors, and all documents which establish the time periods, individuals involved, the hours and the rates for the individuals.

12.105.19 PROCEDURE FOR CLAIMS AND DISPUTES. Every effort shall be made by the parties to the Contract to resolve claims and disputes in accordance with the internal procedures of the Department. If such efforts are unsuccessful, claims and disputes will be submitted to either binding arbitration or litigation for resolution in accordance with State Law.

12.105.20 PROJECT DELAYS.

a. General Conditions Concerning Delays. Given the nature and extent of costs arising out of work that has been delayed, and the intent of both the Contractor and the State to promptly assign responsibility for such delay and to have all associated costs as fully documented as possible, strict adherence to the provisions of this Subsection is a condition precedent to the Contractor's entitlement to additional compensation or an extension of time because of project delays.

b. Notification of Delay. Within 30 calendar days of any Department action or omission which the Contractor believes has delayed or may delay the project, the Contractor shall notify the Resident Engineer of such a delay and indicate whether it intends to file a request for delay costs. The Contractor shall confirm such notification in writing to the Engineer within 5 calendar days of its notification to the Resident Engineer.

c. Procedures. Upon notifying the Resident Engineer, the Contractor shall keep daily records of all non-salaried labor, material and equipment expenses for all operations that are allegedly affected by the delay. The Contractor shall also identify in the daily records each operation affected by the delay and the station location of each such operation. The Department will also keep daily records. Each Monday, the Contractor shall compare the previous week's daily records with those maintained by the Department. The Contractor shall report to the

Engineer within 10 calendar days of each such comparison all disagreements with Department records.

Failure to meet to review the Department's records or to report disagreements between the two sets of records will constitute the assumption that the Department's records are accurate.

Delay costs allegedly incurred prior to notifying the Resident Engineer that operations have been delayed will not be allowed.

1. Each Monday, the Contractor shall prepare and submit written reports to the Resident Engineer regarding alleged delays which contain the following information:

- (a) Number of days behind schedule.
- (b) Identify all operations that have been delayed, or will be delayed.
- (c) Explain how the Department's act or omission delayed each operation, and estimate the amount of time required to complete the project.
- (d) Itemize all extra costs being incurred, with explanations for each such cost.

2. Within 15 calendar days of the termination of an alleged delay, the Contractor shall submit a report to both the Resident Engineer and the Engineer containing the following information:

- (a) A description of the operations that were delayed. Documentation and explanation of how the Department caused the delay to include the reports of all scheduling experts or other consultants, if any; and
- (b) An as-built chart, or other graphic depiction of how the operations were delayed.
- (c) An item-by-item calculation and explanation of extra costs being sought.

3. The Engineer will review the Contractor's submission and any reports prepared by the Resident Engineer. A written decision will be provided to the Contractor within 60 days of the receipt of the Contractor's submission. If the Engineer determines that the Department is responsible for delays to the Contractor's operations, an equitable adjustment to the Contract will be authorized in accordance with **Subsection 12.109.10; Compensation for Project Delays.**

12.105.21 WORK ZONE TRAINING. The Contractor's TMP Implementation Manager and all other Contractor/Subcontractor personnel responsible for the setup, operation, maintenance, inspection, movement and/or breakdown of temporary traffic control devices shall be trained in accordance with the Department's "Training Guidelines for Personnel Responsible for Work Zone Safety & Mobility" and shall possess a certificate of satisfactory completion of such training. Training shall be at a level appropriate to the individual's job responsibilities and to the job decisions the individual is required to make and shall be completed prior to the commencement of work.

SECTION 12.106

CONTROL OF MATERIAL

12.106.01 SOURCE OF SUPPLY AND QUALITY REQUIREMENTS. Materials used on the work shall meet all quality requirements of the Contract and the “Master Schedule for the Preparation of a Project Schedule for Sampling, Testing, and Certification of Materials. In order to expedite the inspection and testing of materials, the Contractor shall notify the Engineer of the proposed sources of materials prior to delivery. At the option of the Engineer, materials may be approved at the source of supply before delivery is started. If, after trial, it is found that sources of supply which have been approved do not produce a reasonably uniform product, or if the product from any source proves unacceptable at any time, the Contractor shall furnish materials from other sources. All materials shall be new unless otherwise specified in the Contract.

No material which, after approval, has become unfit for use shall be employed in the work.

The Department reserves the right to retest all materials which have been previously tested and accepted at the source of supply and delivered to the site. However, prior to incorporation into the work the Department may reject all such materials which, when retested, do not reasonably meet the requirements of these Specifications, or those established for the specific project.

a. Buy American Requirements for Domestic Steel. In accordance with the U.S. Code of Federal Regulations Title 23 and Section 165 of the Surface Transportation Assistance Act of 1982, only such permanently incorporated steel materials as have been manufactured in the United States will be used on all projects. Further, any pig iron and/or pelletized and reduced iron ore, used to produce permanently incorporated steel materials or permanently incorporated non-steel products, must be manufactured in the United States.

Bidders are advised that the Contract will be awarded to the bidder who submits the lowest total bid based on furnishing domestic steel materials.

1. Certification of Steel. All manufacturing processes of the steel material in a project (i.e., smelting, and any subsequent process which alters the steel material’s physical form or shape or changes its chemical composition) must occur within the United States to be considered of domestic origin. This includes processes such as rolling, extruding, machining, bending, grinding, drilling and the application of coatings, including iron.

2. Minimal Use of Foreign Steel. Section 635.410(b)(4) of Title 23 CFR permits a minimal amount of foreign steel to be incorporated into a Federal-aid project. This amount is defined as one-tenth of one percent (0.1 percent) of the total contract cost or \$2,500, whichever is greater. The cost of the foreign steel is defined as its value delivered to the project.

12.106.02 LOCAL MATERIAL SOURCES. Possible sources of local materials may be designated on the Plans and described in the Special Provisions. In general, the quality of material in such deposits will be acceptable. However, the Contractor shall determine the

amount of equipment and work required to produce a material meeting the requirements of these Specifications. The Contractor shall understand that it is not feasible to ascertain from samples the limits for an entire deposit, and that variations shall be considered as usual and are to be expected. The Engineer may order procurement of material from any portion of a deposit and may reject other portions of the deposit as unacceptable.

The Department may acquire and allow the Contractor to take materials from sources designated on the Plans and/or as specified in the Special Provisions. The Department may also allow the Contractor to use such other property as may be specified, for plant site, stockpiles and hauling roads.

If the Contractor desires to use material from sources other than those designated, the Contractor shall acquire the necessary rights to take materials from the sources and shall pay all costs related thereto, including any which may result from an increase in length of haul. All costs of exploring and developing such other sources shall be borne by the Contractor. The use of material from other than designated sources will not be permitted until representative samples taken by the Engineer have been approved and written authority is granted for the use thereof.

When material deposits are neither described in the Special Provisions nor designated on the Plans, the Contractor shall provide sources of material acceptable to the Engineer.

When sources of material or material deposits are provided by the Contractor, the Department will assume the cost of processing samples to determine the suitability of the material.

Sites from which material has been removed shall, upon completion of the work, be left in a neat and presentable condition.

12.106.03 SAMPLES, TESTS, CITED SPECIFICATIONS. Materials will be inspected, tested and accepted by the Engineer before incorporation in the work. Work in which untested and unaccepted materials are used without approval of the Engineer shall be performed at the Contractor's risk. No payment will be made for materials found to be unacceptable and/or unauthorized. Unless otherwise designated, tests in accordance with the cited current standard methods of AASHTO, ASTM or other organizations used by the Department will be made by, and at the expense of the Department. Samples will be taken by a qualified representative of the Department. Materials being used are subject to inspection, test or rejection at any time prior to incorporation into the work. Copies of all tests will be furnished to the Contractor's representative upon request.

Whenever there is an AASHTO designation followed by an ASTM designation, the AASHTO designation will govern when there are minor differences between the two specifications.

12.106.04 CERTIFICATION OF COMPLIANCE. The Engineer may permit use, prior to sampling and testing, of certain materials or assemblies accompanied by Certificates of Compliance, stating that such materials or assemblies fully comply with the requirements of the Contract. The certificate shall be signed by the manufacturer. Each lot of such materials or

assemblies delivered to the work must be accompanied by a Certificate of Compliance and clearly identified.

Materials or assemblies used on the basis of Certificates of Compliance may be sampled and tested and if found not in conformity with Contract requirements will be subject to rejection whether in place or not.

The form and distribution of Certificates of Compliance shall be as approved by the Engineer.

The Engineer is authorized to refuse permission for use of materials or assemblies on the basis of Certificates of Compliance.

Unexpired Warranties. If the Contractor is furnished a warranty at the time of purchase of any product or material and the warranty has not expired at the time of acceptance of the work by the State, the warranty shall then be turned over to the State.

12.106.05 PLANT INSPECTION. The Engineer may undertake the inspection of materials at the source. Manufacturing plants may be inspected for compliance with specified manufacturing methods. Material samples will be obtained for laboratory testing for compliance with materials quality requirements. This may be the basis for acceptance of manufactured lots as to quality.

a. Conditions. In the event plant inspection is undertaken the following conditions shall apply:

1. The Engineer shall have the cooperation and assistance of the Contractor and the producer with whom it has contracted for materials.
2. The Engineer shall at all times have full access to those parts of the plant where the manufacture or production of materials is taking place.
3. Adequate safety measures shall be provided and maintained.

12.106.06 STORAGE OF MATERIALS. Materials shall be stored to insure the preservation of their quality and fitness for the work. Stored materials, even though approved before storage, may again be inspected prior to their use in the work. Stored materials shall be located to facilitate their prompt inspection.

a. Location of Stored Materials and Equipment.

1. Roads without Curbing and Sidewalks. Construction materials and equipment may be stored within the "clear zones" designated below provided that prior written approval has been granted by the Engineer. Material stored in these clear zones must be removed within fourteen (14) calendar days. Equipment may be stored in the clear zones only during workdays; i.e., no overnight storage of equipment will be allowed.

Posted Speed	Clear Zone Distance from Edge of Travel Lane
35 mph or less	12 feet
40-45 mph	16 feet
50 mph or less	20 feet
55 mph or less	30 feet

Any area of the clear zones which is used for storage of construction material and/or equipment must be clearly delineated with appropriate traffic control devices.

Storage sites shall be restored to their original condition at the sole expense of the Contractor.

Additional space required for storage shall be provided at the Contractor's expense. Private property shall not be used for storage purposes without written permission of the owner or lessee. If requested by the Engineer, copies of such written permission shall be furnished by the Contractor.

The Contractor shall comply with all Federal, State and local statutes and/or ordinances in reference to the storage of materials, and shall be liable for all damages arising from the violation thereof.

2. Roads with Curbing and Sidewalks. No portion of the shoulders and sidewalks may be used for storage of construction equipment and/or material.

12.106.07 HANDLING MATERIALS. Materials shall be handled in such manner to preserve their quality and fitness for the work. Aggregates shall be transported from the storage site to the work in vehicles constructed to prevent loss or segregation of materials after loading and measuring.

12.106.08 UNACCEPTABLE MATERIALS. Materials not reasonably conforming to the requirements of the Specifications will be considered as unacceptable and all such materials will be rejected and removed immediately from the site of the work unless otherwise instructed by the Engineer. Rejected material, the defects of which have been corrected, shall not be used again until approval by the Engineer has been granted.

12.106.09 DEPARTMENT-FURNISHED MATERIAL. The Contractor shall furnish materials required to complete the work, except those specified to be furnished by the Department.

Material furnished by the Department will be delivered or made available to the Contractor at the points specified in the Contract Documents.

The cost of handling and placing Department-furnished materials after they are delivered to the Contractor shall be included in the Contract price for the item in which they are used.

The Contractor will be responsible for all material delivered. Deductions will be made from any monies due the Contractor for shortages, deficiencies, other causes, and damage which may occur after delivery. Demurrage charges, resulting from the Contractor's failure to accept the material at the designated time and point of delivery will also be deducted from monies due the Contractor.

SECTION 12.107

LEGAL RELATIONS AND RESPONSIBILITY TO PUBLIC

12.107.01 LAWS TO BE OBSERVED. The Contractor shall keep fully informed of Federal and State laws, local laws, ordinances, and regulations and orders and decrees of bodies or tribunals having any jurisdiction or authority, which in any manner affect those engaged or employed on the Project, or which affect the conduct of the Project. The Contractor shall observe and comply with all such laws, ordinances, regulations, orders, and decrees; and shall protect and indemnify the State and its representatives against any claim or liability arising from the violation of any such law, ordinance, regulation, order, or decree, whether by the Contractor, the subcontractors, suppliers of materials or services, or others engaged by the Contractor, or the employees of any of them. If any discrepancy or inconsistency is discovered between the Contract and any law, ordinance, regulation, order or decree, the Contractor shall immediately report the same to the Engineer in writing.

The Contractor shall execute and file such documents, statements and affidavits required under applicable Federal or State law or regulation affecting its Proposal, Contract or the prosecution of the work. The Contractor shall permit the examination of any records made subject to such examination by Federal or State law or by regulations promulgated thereunder by any State or Federal agency charged with the enforcement of such law.

12.107.02 SPECIFIC STATUTES REQUIRED TO BE INSERTED. Every contract for the construction of public works by the State, or by persons or organizations contracting with the State for such construction, shall contain the following provisions from the General Laws of Rhode Island:

a. Title 37, Chapter 13, Sections 5, 6, and 7, respectively, of the General Laws of Rhode Island, 1956, entitled "Labor and Debts of Contractors," read as follows:

"37-13-5. PAYMENT FOR TRUCKING OR MATERIALS FURNISHED -- Withholding of sums due. -- A contractor or subcontractor on public works authorized by a proper authority shall pay any obligation or charge for trucking and material which have been furnished for the use of such contractor or subcontractor, in connection with the public works being performed by him, within ninety (90) days after such obligation or charge is incurred or the trucking services has been performed or the material has been delivered to the site of the work, whichever is later. When it is brought to the notice of the proper authority in a city or town, or the proper authority in the state having supervision of

such contract, that such obligation or charge has not been paid by the contractor or subcontractor, the proper authority may deduct and hold for a period not exceeding sixty (60) days, from sums of money due to the contractor or subcontractor, the equivalent amount of such sums certified by a trucker or materialman creditor as due him, as provided in this section, and which the proper authority determines is reasonable for trucking performed or materials furnished for such public works."

"37-13-6. ASCERTAINMENT OF PREVAILING RATE OF WAGES.

-- Before awarding any contract for public works to be done, the proper authority shall ascertain from the director of labor the general prevailing rate of the regular, holiday and overtime wages paid and the general prevailing payments on behalf of employees only, to lawful welfare, pension, vacation, apprentice training and educational funds (payments to said funds must constitute an ordinary business expense deduction for federal income tax purposes by contractors) in the city, town, village or other appropriate political subdivision of the state in which the work is to be performed, for each craft, mechanic, teamster, laborer or type of workman needed to execute the contract for the public works, and shall specify in the call for bids for the contract and in the contract itself the general prevailing rate of the regular, holiday, and overtime wages paid and the payments on behalf of employees only, to such welfare, pension, vacation, apprentice training and education funds existing in the locality for each craft, mechanic, teamster, laborer or type of workman needed to execute the contract or work."

"37-13-7. APPLICABILITY AND DETERMINATION OF PREVAILING RATE OF WAGES. -- every call for bids for:

(a) every contract in excess of \$1,000 to which the State of Rhode Island or any political subdivision thereof is party, for construction, alteration, and/or repair, including painting and decorating, of public buildings or public works of the State of Rhode Island or any political subdivision thereof, and which requires or involves the employment of employees shall contain a provision stating the minimum wages to be paid various types of employees which shall be based upon the wages that will be determined by the director of labor to be prevailing for the corresponding types of employees employed on projects of a character similar to the contract work in the city, town, village, or other appropriate political subdivision of the State of Rhode Island in which the work is to be performed; and every contract shall contain a stipulation that the contractor or his subcontractor shall pay all said employees employed directly upon the site of the work, unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account, the full amounts accrued at time of payment computed at wage rates not less than those stated in the call for bids, regardless of any contractual relationships which may be alleged to exist between the contractor or subcontractor and such employees and that the scale of wages to be paid shall be posted by the contractor in a prominent and easily accessible place at the site of the work; and the further stipulation that there may be withheld from the contractor so much of accrued payments as may be considered necessary to pay to such employees employed by the contractor or any subcontractor on the work the difference between the rates of wages required by the contract to be paid said employees on the

work and the rates of wages received by such employees and not refunded to the contractor, subcontractors, or their agents;

(b) the term `wages, scale of wages', `wage rates', `minimum wages', and `prevailing wages' shall include:

- (1) the basic hourly rate of pay; and
- (2) the amount of

(A) the rate of contribution made by a contractor or subcontractor to a trustee or to a third person pursuant to a fund, plan, or program; and

(B) the rate of costs to the contractor or subcontractor which may be reasonably anticipated in providing benefits to employees pursuant to an enforceable commitment to carry out a financially responsible plan or program which was communicated in writing to the employees affected, for medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing, for unemployment benefits, life insurance, disability and sickness insurance, or accident insurance, for vacation and holiday pay, for defraying costs of apprenticeship or other similar programs, or for other bonafide fringe benefits, but only where the contractor or subcontractor is not required by other federal, state, or local law to provide any of such benefits: Provided, that the obligation of a contractor or subcontractor to make payment in accordance with the prevailing wage determinations of director of labor insofar as this chapter of this title and other acts incorporating this chapter of this title by reference are concerned may be discharged by the making of payments in cash, by the making of contributions of a type referred to in paragraph (2) (A), or by the assumption of an enforceable commitment to bear the costs of a plan or program of a type referred to a paragraph (2) (B), or any combination thereof, where the aggregate of any such payments, contributions, and costs is not less than the rate of pay described in paragraph (1) plus the amount referred to in paragraph (2)."

b. Title 28, Chapter 26, Section 5 of the General Laws of Rhode Island, 1956, entitled "License Required for Operation of Hoisting Machinery - Public Contracts," reads as follows:

28-26-5. No persons shall operate or be in direct charge of a hoisting or excavation gasoline, steam, diesel, electric or compressed air hoist, shovel, crane, excavator, of five horsepower or more without obtaining a license to do so as provided in this chapter. No user or agent of use of any such described steam, gasoline, diesel, electric or compressed air hoisting

machinery shall permit it to be operated unless it is operated by a duly licensed person as hereinafter provided by this chapter.

c. Chapters 85, 86 AND 88 of the Public Laws of Rhode Island, 1960:

Section 123 of the aforesaid chapters defines the authority of Director of Department of Public Works and use of Federal assistance and provides in part that in the event that Federal funds or Federal assistance are made available to the State for use in carrying out highway projects, said projects shall be carried out and executed in all respects subject to the provisions of the appropriate Federal law providing for the construction of such projects and the rules and regulations made pursuant thereto, and to such terms, conditions rules and regulations, not inconsistent with such Federal law, rules and regulations as said Director may establish to ensure the proper execution of said projects, therefore, any provisions of the State laws that conflict with the Federal laws, rules and regulations are not applicable to projects financed in whole or in part with Federal Aid Highway funds.

d. Public Law - Chapter 5-6-2; entitled "Work for Which License Required," reads as follows:

No person, firm, or corporation shall enter into, engage in, or work at the business of installing wire, conduits, apparatus, fixtures and other appliances for carrying or using electricity for light, heat or other purpose, unless such person, firm or corporation shall have received a license and a certificate therefore, issued by the State Board of Examiners of Electricians.

12.107.03 PERMITS, LICENSES AND TAXES. The Contractor shall procure all permits (except those specifically provided in the Contract Documents) and licenses, pay all charges, fees, and taxes, and give all notices necessary and incidental to the due and lawful prosecution of the work. These costs shall be included in the unit prices bid for the various items of the Contract work.

12.107.04 PATENTED DEVICES, MATERIALS, AND PROCESSES. If the Contractor employs any design, device, material, or process covered by letters of patent or copyright, the Contractor shall provide for such use by suitable legal agreement with the patentee or owner. The Contractor and the Surety shall indemnify and save harmless the State, any affected third party, or political subdivision from any and all claims for infringement by reason of the use of any such patented design, device, material, process, trademark or copyright. The Contractor shall indemnify the State for costs, expenses, and damages which it may be obligated to pay by reason of any infringement thereof, during the prosecution or after the completion of the Project.

12.107.05 RESTORATION OF SURFACES OPENED BY PERMIT. The right to construct or reconstruct any utility service in the highway or street or to grant permits for same is expressly

reserved by the Department for the proper authorities of the municipality in which the work is performed. The Contractor shall not be entitled to damages either for digging up the street or for any delay occasioned thereby, unless otherwise provided for under **Subsection 12.104.03; Differing Site Conditions.**

Any individual, firm, or corporation wishing to make an opening in the highway must secure a permit from the Department. The Contractor shall allow parties bearing such permits, and only those parties, to make openings in the highway. When ordered by the Engineer, the Contractor shall make all necessary repairs necessitated by such openings. Such necessary work will be paid for as either Extra Work, or as otherwise provided in these Specifications. All repair work will be subject to the same conditions as applied to original work.

12.107.06 FEDERAL-AID PARTICIPATION. When the United States Government participates in the cost of the work covered by the Contract, the work shall be performed under the supervision of the Department but otherwise subject to the inspection and approval of the appropriate officials of the United States Government. Such inspection shall neither make the Federal Government a party to this Contract nor interfere with the rights of either party to said Contract.

When any Federal laws, rules, or regulations are in conflict with any provisions of a Federally-assisted Contract, the Federal requirements shall prevail, take precedence, and be in force over and against any such conflicting provisions.

12.107.07 SANITARY, HEALTH AND SAFETY PROVISIONS. The Contractor shall observe rules and regulations of Federal, State and local health officials. The Contractor shall not require any worker to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to health or safety.

The Contractor shall admit without delay and without the presentation of an inspection warrant, any inspector of the Occupational Safety and Health Administration or other legally responsible agency involved in safety and health administration upon presentation of proper credentials.

12.107.08 PUBLIC CONVENIENCE AND SAFETY. The Contractor shall conduct the work to assure the least possible obstruction to traffic. The safety and convenience of both the general public and the residents along and adjacent to the highway, as well as the protection of persons and property, shall be provided by the Contractor as specified under **Subsection 12.104.08; Maintenance of Traffic**, or as the Engineer may direct.

The Contractor shall comply with the safety provisions of all laws, rules, codes, and regulations applicable to the type of work being performed. The Engineer will suspend the work of the Contract if the Contractor fails either to comply with said safety provisions or provide adequate protection for inspection of the work by the Engineer or his/her authorized representatives.

a. Accident Reports. The Contractor shall furnish the Engineer with two copies of a report of any accident occurring on the Project that involves:

1. Personal injury requiring treatment by a physician.
2. Loss of time on the job.
3. Public liability or property damage.

Accident reports shall be submitted on forms acceptable to the Engineer.

12.107.09 BARRICADES AND WARNING SIGNS. The Contractor shall provide, erect, and maintain all necessary barriers, barricades, lights, danger signals, signs and other traffic control devices, and shall take all necessary precautions for the protection of the work and the safety of the public.

Highways or bridges closed to traffic shall be protected by effective barricades. Suitable warning signs and protective devices shall be provided to properly control and direct traffic.

Barricades, warning signs, lights, temporary signals, and other protective devices must conform with the Manual on Uniform Traffic Control Devices for Streets and Highways published by the U.S. Government printing office.

12.107.10 USE OF EXPLOSIVES. When explosives are necessary for the prosecution of the work, the Contractor shall not endanger life, property or new work. The Contractor shall be responsible for damage resulting from the use of explosives.

The Contractor shall comply with all laws and ordinances, as well as with Title 29 and Title 30 of the Code of Federal Regulations, and the Safety and Health Regulations for Construction of OSHA, whichever is the most restrictive, in the use, handling, loading, transportation, and storage of explosives and blasting agents.

a. Additional Specific Requirements. The Contractor shall comply with the following:

1. The Contractor shall be solely responsible for employing such plant, equipment and construction methods necessary to accomplish the work of this Contract with complete safety and without damage to persons, existing buildings, structures, facilities and utilities.

2. The Contractor shall furnish the services of technical representatives of the manufacturer of the explosive materials. Such individuals shall be experienced in the use of high explosives in blasting operations under the circumstances to be encountered in the work of this Contract. The Contractor shall furnish the services of the explosive manufacturer's representatives for such lengths of time prior to starting blasting operations as is necessary to determine the proper equipment, devices, materials, methods and procedures to be used for the proper performance of the work. The Contractor shall also furnish the services of the explosive manufacturer's representatives during the preparation for, and progress of blasting operations for such lengths of time and as frequently as necessary to assure that blasting operations shall be performed in a safe and proper manner.

3. Prior to commencement of work, the Contractor shall meet and confer with the Engineer at which time the Contractor shall outline in detail his proposed administration of an overall safety program, which program shall at all times be satisfactory to the Engineer. The Contractor shall furnish to the Engineer copies of the current safety program and procedures for the safety and prevention of injury to persons and the prevention of damage to property and the work. The Contractor shall comply with this program at all times during the prosecution of the work.

4. All operations involving explosives and/or blasting agents shall be in accordance with the "Suggested Code for the Manufacture, Transportation, Storage and Use of Explosives and Blasting Agents" published by the Institute of Makers of Explosives, as amended. Wherever the Code and the Rhode Island Standard Specifications conflict, the Code shall apply. The Contractor shall be responsible for developing techniques necessary to obtain the required ledge slopes consistent with maximum safety requirements.

b. Care in Blasting. It is especially required that blasting operations shall be conducted with all possible care and in such a manner as to prevent injury to persons and property. A sufficient warning shall be given to all persons in the vicinity of the work before blasting.

No blasting will be allowed within 25 feet of an existing building or in-service underground utility line.

c. Power of Explosives. The explosives employed in the work shall be of such power and placed in such quantities and positions that will not:

1. Unduly enlarge the excavation.
2. Unnecessarily shatter the rock upon or against which the work will be installed.
3. Injure work already in place.

d. Transportation, Handling, and Storage. Explosives must be carefully transported, stored, handled and used as required by applicable State and local ordinances and laws. The necessary permits for such transportation, storage, handling and use shall be obtained by the Contractor. The Contractor shall show such permits to the Engineer before any blasting will be allowed. The Contractor shall keep on the job only such quantity of explosives as may be needed for the work underway and only during such time as they are being used. Explosives shall be stored in a secure manner and separately from all tools. Caps or detonators shall be stored separately and at a point over 100 feet distant from the explosives. When the need for explosives is ended, all such material remaining on the job shall be promptly removed from the premises.

e. Approval of the Engineer. The approval of the Engineer shall first be obtained before blasting is permitted. If, in the opinion of the Engineer, blasting is unsafe or dangerous to persons, or to existing structures and utilities, the Contractor shall employ pneumatic tools, drilling and splitting mechanically, or by hand, or by other such means that do not require the use of explosives for the removal of rock, boulders, or ledge, all at no additional expense to the State.

f. Notification of Local Authorities. Before any dynamite or detonator caps are stored or used under this Contract, the Contractor shall contact the Police and Fire Departments of the city or town in which the project is located for instructions relative to the regulations for possession and use of explosives in that community. The Contractor shall obtain all required permits or licenses for possession and use of explosives on the site or sites of construction under this Contract. In addition, the Contractor shall be responsible:

1. For designating an individual who shall be responsible for the explosive materials at all times.

2. For the immediate reporting to the Police Department of the Cities or Towns in which the project is located of all unaccounted for explosive materials.

g. Records. The Contractor shall keep a complete record of blasting operations, noting the date, exact location with reference to a datum, weight of charge, and whether the firing was instantaneous or delayed. The Contractor shall furnish the Engineer with a complete record of operations during the preceding weekly period.

1. Records shall indicate by date the quantity and type of explosive materials delivered to the construction sites(s); the quantity of explosive material used; and the quantity of such material subsequently removed from the construction site(s).

2. All records related to the possession and use of explosive materials shall be open for inspection by the Engineer and the Police Departments of the cities and towns in which the project is located.

3. The Contract prices for the various items of work shall include full compensation for providing a complete record of blasting operations.

h. Repairs. The Contractor is cautioned that it will be responsible for any damage to existing roadway surfaces, drainage lines, structures or other objects as a result of blasting operations. The Contractor will be required to repair such damage as may be directed by the Engineer in accordance with prevailing Rhode Island Special Provisions or Standards for the particular type of work involved. The Contractor shall assume the full cost of making such repairs.

12.107.11 PROTECTION AND RESTORATION OF PROPERTY AND LANDSCAPE.

The Contractor shall be responsible for the preservation of all public and private property and shall protect carefully from disturbance or damage all land monuments and property marks until the Engineer has witnessed or otherwise referenced their location. The Contractor shall not move such monuments and marks until so directed.

When the Contractor's operations encounter remains of prehistoric dwelling sites or artifacts of historical or archaeological significance, the operations shall be temporarily discontinued. The Engineer will contact archaeological authorities to determine the disposition thereof. When directed by the Engineer, the Contractor shall excavate the site to preserve the artifacts and shall remove and deliver them to the custody of the proper state authorities. Such

excavation will be paid for as hereinafter provided in **Subsection 12.109.04; Differing Site Conditions, Changes, Extra Work, and Force Account Work.**

The Contractor shall be responsible for all damage or injury to public or private property resulting from any act, omission, neglect, or misconduct in, of either the Contractor's or its subcontractors' manner or method of executing the work, or in consequence of the non-execution thereof. Furthermore, the Contractor shall be responsible for all such damage due to defective materials. The Contractor shall restore, at its own expense, such property to a condition similar or equal to that existing before such damage or injury was done, by repairing, rebuilding, or otherwise restoring as directed by the Engineer.

Should the Contractor enter into, either directly or indirectly, an agreement with a property owner within the project limits, the Contractor must first obtain the signature of the property owner on the so-called LETTER TO THE PROPERTY OWNER to be provided by the Department. This document explains that the State is not a party to the agreement between the Contractor and the property owner and must be signed by the property owner and returned to the Resident Engineer. If the agreement affects or changes the design of the roadway, the Contractor must first submit these modifications, via shop drawings, to the Chief Engineer for approval.

12.107.12 FOREST PROTECTION. In carrying out work within or adjacent to State or National Forests, the Contractor shall comply with all regulations of the State Fire Marshall, Conservation Commission, Forestry Department, or other authority having jurisdiction governing both the protection of forests and the prosecution of work within such forests. The Contractor shall observe all sanitary laws and regulations with respect to the performance of work within or adjacent to such forest areas. The Contractor shall maintain the areas in an orderly condition, dispose of all refuse, obtain permits for the construction and maintenance of all construction camps, stores, warehouses, residences, latrines, cesspools, septic tanks, and other structures in accordance with the requirements of the Forest Supervisor.

The Contractor shall take all reasonable precaution to prevent and suppress forest fires. Furthermore, the Contractor shall require its employees and subcontractors, both independently and at the request of forest officials, to do all reasonably within their power to prevent and suppress and to assist in preventing and suppressing forest fires and to make every possible effort to notify a forest official at the earliest possible moment of the location and extent of any fire observed by them.

12.107.13 RESPONSIBILITY FOR DAMAGE CLAIMS.

a. Indemnification. The Contractor shall defend, indemnify and hold harmless the State, the Department, its officers and employees, from any and all suits, actions, claims, losses, expenses, damages and any and all other liabilities of any character resulting in any injuries or damage to any person, entities, or property arising out of (or which may be claimed to arise out of) any act and/or omission of the Contractor or its subcontractors, in performance of work covered by the Contract, and/or in consequence of any neglect in safeguarding the work; and/or through use of unacceptable materials in constructing the work; and/or because of any neglect, or misconduct of the Contractor; and/or because of any claims or amounts recovered from any infringements of patent, trademark, or copyright; and/or from any claims or amounts arising out of or recovered under the Workers' Compensation Act, or any other law, ordinance, order, or decree. The State may retain for its exclusive use, without recourse by the Contractor

or anyone claiming under the Contractor, any and all amounts due the Contractor as provided under the Contract Documents to assure the Contractor's compliance with this Section. In the event no money is due or the retained sums are insufficient to fully indemnify the State hereunder, the Surety shall be held liable with the Contractor until this Section is complied with in full; except that money due the Contractor will not be withheld when satisfactory evidence is produced that the Contractor is adequately protected by public liability and property damage insurance, the insurer has been given proper, timely notice of any claims arising from the work performed by the Contractor pursuant to the Contract, and the insurer has assumed defense of the claim. The Contractor shall provide written confirmation satisfactory to the Department that all such actions have been properly addressed prior to final payment under **Subsection 12.109.09**. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State, which immunity is hereby reserved by the State.

b. Liability Insurance. The Contractor shall procure and maintain at the Contractor's own expense, until final acceptance of Contract, insurance coverage for damages assumed by Contract or imposed by law, of the kinds and in the amounts specified, with insurance companies authorized to do business in the State. The insurance shall cover all operations performed under the Contract, whether by the Contractor or by subcontractors. Before commencing the work, the Contractor shall furnish certificates of insurance in the form satisfactory to the Department certifying that the policies will not be changed or canceled until 30-days written notice has been given to the Department. The types and limits of insurance are as follows:

1. Workers' Compensation Insurance. Coverage shall be in accordance with prevailing laws.

2. Liability and Property Damage Insurance. Each policy shall name the Department as an additional insured and shall include a provision requiring the insurer to investigate and defend the Department against any and all claims for death, bodily injury or property damages even if groundless. Coverages shall be in the following amounts:

(a) Bodily injury liability:

\$500,000, each person.
\$1,000,000, each occurrence.

(b) Property damage liability:

\$500,000, each occurrence.
\$1,000,000, aggregate.

c. Insurance Covering Special Hazards. Special hazards shall be covered by either riders to the liability and/or property damage policy or policies hereinabove specified, or by separate policies of insurance as follows:

1. Property Damage Liability arising out of the collapse of or structural injury to any building or structure due to:

(a) excavation (including borrowing, filling, or backfilling in connection therewith), tunneling, pile driving, cofferdam work or caisson work; or

(b) moving, shoring, underpinning, raising or demolition of any building or structure, or removal or rebuilding of any structural support thereof.

2. Property Damage Liability for injury to or destruction of property arising, directly or indirectly from blasting or explosions however caused, other than explosions of air or steam vessels, piping under pressure, prime movers, machinery or power transmitting equipment.

12.107.14 THIRD PARTY BENEFICIARY CLAUSE. It is specifically agreed between the parties executing this Contract that it is not intended by the provisions of the Contract to create the public or any member thereof a third party beneficiary hereunder, or to authorize anyone not a party to the Contract to maintain a suit for personal injuries or property damage pursuant to the provisions of the Contract.

12.107.15 PERSONAL LIABILITY OF DEPARTMENT EMPLOYEES. The Director, Engineer, or their authorized representatives are acting solely as agents and representatives of the Department when carrying out and exercising the power or authority granted to them under the Contract.

12.107.16 NO WAIVER OF LEGAL RIGHTS. Upon completion of the Contract, the Department will expeditiously make final inspection and notify the Contractor of acceptance. Final acceptance, however, shall neither preclude the Department from correcting any measurement, estimate, or certificate made before or after completion of the Contract, nor prevent the Department from recovering from the Contractor or Surety or both, overpayments sustained by failure on the part of the Contractor to fulfill the obligations under the Contract. A waiver on the part of the Department of any breach of any part of the Contract shall not be held to be a waiver of any other or subsequent breach.

The Contractor, without prejudice to the terms of the Contract, shall be liable to the Department for latent defects, fraud, or such gross mistakes as may amount to fraud, or as regards the Department's rights under any warranty or guaranty.

12.107.17 HAZARDOUS MATERIAL. If the Contractor encounters or exposes during construction any abnormal condition which indicates the presence of a hazardous material or toxic waste, it shall immediately suspend work in the area and notify the Engineer. The Contractor's operation in this area shall not resume until so directed by the Engineer; however, the Contractor shall continue working in other areas of the project, unless otherwise directed by the Engineer.

Abnormal conditions shall include, but shall not be limited to, the following: presence of barrels; obnoxious odors; excessively hot earth; smoke; or any other condition which could be a

possible indicator of hazardous material or toxic waste. The conditions shall be treated with extreme caution.

Disposition of the hazardous material or toxic waste shall be made in accordance with the requirements and regulations of the Rhode Island Department of Environmental Management. Where the Contractor performs necessary work required to dispose of these materials, the work will be performed under a supplemental agreement. Should the disposition of waste material require special procedures by certified personnel, the Department will make arrangements with qualified persons to dispose of the material.

12.107.18 CIVIL RIGHTS. The Contractor shall comply with Federal, State and local laws, rules and regulations which set forth unlawful employment practices including that of discrimination because of race, religion, color, sex or national origin, and which define actions required for Affirmative Action and Minority (Disadvantaged) Business programs.

12.108.01 SUBLETTING OF CONTRACT. The Contractor shall not sublet, sell, transfer, assign, or otherwise dispose of the Contract or contracts or any portion thereof, or of its right, title, or interest therein, without written consent of the Engineer. If such consent is given, the Contractor will only be permitted to sublet a portion thereof. The Contractor will be required to perform with its own organization, work amounting to not less than 40 percent of the adjusted contract cost. The adjusted contract cost is the total contract cost less the total cost of subcontract specialty items listed in the Proposal. Specialty Items are defined in **Subsection 12.101.63.**

No subcontracts or transfers of Contract shall relieve the Contractor of liability under the Contract and Bonds. A copy of written agreements with subcontractors must be submitted when making application to sublet any work under the Contract. Furthermore, no agreements between the Contractor and its subcontractors or vendors shall create any "third party" relationships between said subcontractors or vendors and the State.

The Contractor shall provide written notice to, and obtain prior written consent from the Engineer, before allowing any subcontractor to sublet any portion of its work to a lower-tier contractor.

12.108.02 NOTICE TO PROCEED. The "Notice to Proceed" will stipulate the date the Contractor is expected to begin the construction and from which date contract time will be charged. Commencement of work by the Contractor constitutes a waiver of this notice.

12.108.03 PROSECUTION AND PROGRESS

A. GENERAL REQUIREMENTS.

1. Project Schedule Program

All construction Projects require an integrated schedule management and controls program that the Contractor shall comply with through completion. A Critical Path Method (CPM) Schedule must be developed and maintained for all Projects. The Contractor shall be required to participate in Schedule Development meetings facilitating knowledge-sharing and updating of Schedules. An integrated stepped Schedule Development process will begin once

the Apparent Low Bidder letter is sent to the Contractor. The level of detail and Schedule Submission requirements will be based on the Schedule Level A, B, or C, which shall be defined in the Special Provisions of the Contract Documents.

- Schedule Level A Projects with a high level of complexity, impact to the motoring public or community, and/or larger size Projects.
- Schedule Level B Projects of average to moderate complexity, moderate impact to the motoring public or community, and/or average size.
- Schedule Level C Smaller projects with minimal to no complexity, and minimal impact to the community. Typical examples would be resurfacing, maintenance, and landscaping projects.

The CPM Schedule shall be the Contractor's primary tool to organize and communicate their plan for the timely completion of the Project. The Schedule will be used to assess progress, delays, projection of time required, Contractor and RIDOT resources requirements, and any mitigation if necessary. The Schedule shall include all the work to be performed/required by the Primary Contractor, Subcontractors, equipment vendors, suppliers, Utility Companies, regulatory agencies, owner review and other work that is interrelated to the Contractor's work. The CPM Schedule shall accurately portray the work planned and executed and shall reflect coordination of work.

The following Schedule Submittals are required for all Projects:

- (A.) PRELIMINARY PROJECT SCHEDULE**
- (B.) BASELINE PROJECT SCHEDULE**
- (C.) STATUS SCHEDULE UPDATES**

Recovery Schedules will be required if requested by RIDOT.

The Project Schedules shall be used by the Engineer and Contractor for the following purposes as well as those stated in these Specifications:

- To identify the Critical Path and its specific activities.
- To identify any changes in proposed work that differs from the Specifications or the Plans (i.e., alternate phasing, Value Engineering Proposals).
- To document the actual progress of work and evaluate the time impact of changes in the work.
- Allow the Department the opportunity to mitigate the impact of unforeseen events.
- To enable the Engineer to track and prioritize the review of Shop Drawings and Submittals. To evaluate resource requirements of the Contractor and the Engineer (Level A).

- To coordinate the work of 3rd party contractors into the sequencing of the Contractor's work where necessary.

Having a timely Schedule/Schedule Update affects the Engineer's decision making. The Department shall not be liable for delays to the Contractor's work when the Contractor has failed to provide a Schedule Update in accordance with the requirements of the Contract Documents. Progress payments may be withheld if the Contractor fails to submit required Schedule Submissions. This includes, but is not limited to Schedule Development, Schedule Updates, and Recovery Schedule Submissions.

Additional Requirements for Schedule Level A

The Contractor shall retain a scheduler(s) dedicated to the Project, with a minimum of three (3) years experience on Projects similar in size and scope. The scheduler shall be responsible for developing, updating, and maintaining the Schedule. The Contractor shall submit the resume of the proposed scheduler(s) to the Engineer for acceptance within 3 days of receiving the "Apparent Low Bidder" Letter. Determination of the scheduler(s) acceptability is made at the discretion of the Engineer. The scheduler shall be present at all required meetings, including but not limited to the Schedule Development, Schedule Update, and any other meetings which may affect the Project's Schedule.

2. Software

The software used to generate the CPM Schedule shall be capable of producing schedules in accordance with the requirements of the Contract Documents and fully compatible with software utilized by the Engineer: currently Primavera Project Planner (P3). The Contractor shall purchase and maintain a valid software maintenance agreement for each license of software necessary to produce and maintain the Project Schedules. Unless specified elsewhere in the Contract Documents, the Contractor shall comply with the terminology defined by the Primavera Project Management Manual.

B. SCHEDULE DEVELOPMENT.

1. Schedule Development Submittals

The scheduling requirements and Submittals will be based on the defined schedule level. The Schedule Development Process will commence on the date that the Apparent Low Bidder letter is mailed to the Contractor, which will be considered Day 1 for all Scheduling Submittals. The table below details the required Submissions and their corresponding Submission due dates for each schedule level.

STEP	STEP DESCRIPTION	SCHEDULE LEVEL			ENGINEER REVIEW DEADLINE (After receipt of submission)
		A	B	C	
Step 1	Scheduler's Resume	Day 3		-	3 days
Step 2	Initial Schedule	Day 7	-	-	4 days

	Framework				
Step 3	Complete Schedule Framework	Day 14	Day 14	-	5 days
Step 4	Preliminary Schedule	Day 28	Day 28	Day 28	7 days
Step 5	Baseline Schedule	Day 42	Day 42	Day 42	7 days
Step 6	Bid Item Loaded Baseline Schedule	*Day 70	*Day 70	*Day 70	7 days
Step 7	Resource Loaded Schedule	Day 84	-	-	7 days
Step 8	Finalized Baseline	Day 98	Day 98	Day 98	7 days
*Required by Day 70 but no earlier than 10 Days after NTP		<i>All days are calendar days</i>			

Refer to Section D for Technical Scheduling Requirements; refer to the Special Provisions for project specific information, including Project Groups, ID Standards, Milestones and Activity Data.

The requirements for each Schedule Development Submission are listed below. Meetings will be held on a weekly basis, or as necessary, to facilitate the schedule development. Each Submission shall incorporate the accepted components, and address the comments from the previous Submission(s). If any Schedule Development Step Submission does not conform to Specification and is therefore Unacceptable, the Contractor shall revise and resubmit this for acceptance prior to proceeding to the next step. Each Submission shall include three (3) paper and (2) two electronic files (in their corresponding format).

Step 1: Scheduler's Resume

Step 2: Initial Schedule Framework Submittal:

- Work Breakdown Structure (WBS)
- Activity Codes: All Contractor defined activity code values.
- Calendars: All Contractor defined calendars
- Contractor's Submittal List (including all required Contractor Submittals)
- Potential Value Engineering or alternate sequencing/methods.

Step 3: Complete Schedule Framework Submittal:

- All requirements of Step 2 with prior comments addressed.
- Activity Data for all Milestones, Submittals, Procurement and Work by Others. Data includes (1) Activity ID, (2) WBS ID, (3) Responsibility Code, (4) Activity Type, and (5) Calendar IDs.
- Resource Definitions (Levels A Only): labor resources, work types, and equipment resources detailed by crews, incorporating all Engineer comments to date.

Step 4: Preliminary Schedule Submittal:

- All requirements of Step 3 with prior comments addressed.
- Activity Data, including all logic, for all work required to be performed within the first 120 days after the NTP.

- c) All work after the first 120 days from NTP shall be shown in summary activities (summary activities shall not have durations greater than 30 days).
- d) Narrative explaining the sequence of the work and all critical Submittals and activities.

Step 5: Baseline Schedule Submittal:

- a) All requirements of Step 4 with prior comments addressed.
- b) Completed Schedule showing all work activities and logic for the complete Contract.
- c) Narrative Report.

Step 6: Bid Item Loaded Schedule Submittal:

- a) All requirements of Step 5 with prior comments addressed.
- b) Complete Bid Item Loaded Schedule.
- c) Schedule Narrative which shall explain the use of resources and an explanation of all logic changes since the Baseline Schedule Submittal.

Step 7: Resource Loaded Schedule Submittal (Level A Only):

- a) All requirements of Step 6 with prior comments addressed.
- b) Resource loading completed for all activities in the Schedule for the entire Project
- c) Schedule Narrative which shall explain the use of resources and an explanation of all logic changes made since the Baseline Schedule Submittal.

Step 8: Finalized Baseline Schedule Submittal:

The Contractor shall revise the original Baseline Schedule Submittal until the Schedule conforms to the Plans and Specifications. No additional changes shall be made. The revised Baseline Schedule Submittal shall be revised and resubmitted until accepted by the Engineer.

2. Review and Acceptance of Project Schedule Submittals

The Engineer shall review Schedule Submittals for conformance with the requirements of the Contract Documents. The planning, scheduling, and execution of the work and the accuracy of any Project Schedule shall remain the responsibility of the Contractor. The Contractor is also responsible for errors in any previously accepted Project Schedule, including but not limited to activity durations, relationships between activities, resource allocation, or any float suppression techniques.

Schedules that do not accurately reflect the work may be identified at any time. Once identified, they shall be addressed by the Contractor at no additional cost to the State. The acceptance of any Project Schedule by the Engineer does not constitute acceptance or approval of any change to the requirements of the Contract Documents including but not limited to any mandated construction sequences. Such acceptance shall not relieve the Contractor of any responsibility under the Contract for the successful completion of the work.

C. PROJECT SCHEDULE UPDATES.

Schedule Update Meetings shall be held every two weeks from Notice to Proceed to the completion of the Project. The Contractor shall be required to attend each meeting with all their update information (data as of the data date) compiled in advance. The Contractor shall have a complete and accurate report of the current progress and depiction of how future work plans shall meet the contract completion dates. Failure to attend meetings or submit Schedule Updates may result in Progress Payments being withheld. The Contractor shall provide a sufficient number of copies of the Updated Schedules at the meetings. The format of this update form shall be provided by the Engineer at the Schedule Development Meeting.

Schedule Update Submittals shall be submitted to the Engineer every two weeks on the scheduled meeting dates or no later than two (2) working days after the Project Schedule Update Meeting. If a meeting is not held, Updates shall still be submitted. The Engineer's review period for the Schedule Update Submittal is five (5) working days. Three copies of the Schedule Updates shall be submitted to the Engineer with the following components:

1. A Schedule Narrative detailing the current Milestone Status, Critical Path, and all changes made to the Schedule, including Actual Dates, Calendar and Duration changes, and logic revisions as defined in section E-3, of this specification.

2. Activity Column/Bar Chart Diagram utilizing the layouts provided by the Department at the first Schedule development meeting. This will highlight the past period progress and be utilized for the Update information.

3. Copies of the current RFI and Submittal Logs.

4. Any other documents and/or reports requested by the Engineer.

5. Computer Disk(s) with record schedule incorporating all submitted Schedule Update Data (UXXX).

All Schedule data, logic or duration changes, or any modifications to the Schedule shall be addressed and discussed with the Engineer at the Project Schedule Update Meeting. This shall be done prior to the Contractor submitting their final Schedule Updates.

Changes to the accepted Baseline Schedule shall be detailed in the Schedule Update Narrative. The acceptance and inclusion of these changes shall not be the sole basis of acceptance or entitlement to any time extension(s) or cost(s).

Schedule Update Submittals shall never be used as the sole basis for any adjustment in the Contract Time(s), regardless of any acceptance or approval by the Engineer. Any acceptance or approval of the Schedule Update Submittal by the Engineer, either expressed or implied, shall only apply to the issue of progress and not to any issue of acceptability or accuracy of the Schedule Update Submittal for use as a basis for measuring adjustments in Contract Time(s).

d. Technical Schedule Requirements.

For the purpose of enabling both the Engineer and the Contractor to readily evaluate CPM Schedules, including derived data and reports, the Schedules shall be developed and maintained in accordance with the following requirements. The Contractor will have access to templates of these requirements during Schedule Development.

All CPM Schedules shall utilize a Work-Breakdown Structure (WBS) which shall be developed by the Contractor, during Schedule Development. The following is the basic dictionary for the WBS which may be appended, with Engineer's acceptance, when further detail is required. Title Case shall be utilized in the development of the WBS descriptions. The WBS will be the primary code for displaying and organizing the graphical output schedules utilized for the project, unless otherwise directed by the Engineer.

1. Basic Structure for WBS:

XX.00	Contract Name	
XX.10	Milestones	XX are contract specific, alpha-numeric
XX.15	Summary Activities	characters that will be defined by the
	Engineer.	
XX.30	Procurement/Shop Drawings	
XX.40	Utility/RR & Work by Others	
XX.60	Construction	

2. Project Naming Standards:

Preliminary Project Schedule: PS00
 Baseline Schedule: BL00
 Bi-Weekly Status Schedules: Uxxx
 Recovery Schedule: Rxxx

3. Project Milestones.

The Contractor shall include Milestones as specified in the Special Provisions of the Contract Documents. Late Finish Constraints shall be assigned to the Milestones where applicable.

4. Activity ID.

The Activity IDs shall be coded in accordance with the following convention:

	XX	----	----
	Project Specific	WBS Code	Contractor Specific
	(Alpha-numeric)	(Levels 2-5)	(Alpha-numeric)
Example:	XX	1000	1000
	Project Specific	WBS Code	Contractor Specific
	(Alpha-numeric)	(Levels 2-5)	(Alpha-numeric)

Example: XX10001000

The first two characters shall be contract specific, provided by the Engineer: "XX"

Next characters: WBS codes levels 2 through 5 (two to six digits) assigned to the activity, without the decimal points.

Last two characters: unique alpha numeric characters as designated by the Contractor.

All 10 characters shall be used in the activity ID.

5. Activity Codes.

The CPM Schedules shall contain activity code classifications and code values. The Contractor shall propose a coding structure for the Engineer's review and acceptance. The activity code structure combined with the activity identification number shall provide the capability to organize information by location, road or ramp, structure, work type, Subcontractor, discipline, etc., as deemed necessary by the Engineer. The Contractor shall reserve three (3) code classifications (fields) and a minimum of six (6) characters for the Engineer's use.

RESP code will be utilized for identification of responsible party. RESP values shall be discussed at the Schedule Development Meetings.

6. Activity Descriptions.

Each activity description shall have a narrative description consisting of verb or work function (i.e. form, pour, excavate, etc.), object (i.e. slab, footing, wall, etc.), and location (i.e. STA, bridge, pier, or retaining wall number, street, ramp, etc.). There shall be no two activities with the same activity description. For example, an acceptable description would be, "Pour Footing Ramp Rt –Sta. 42+00 to 42+50". The word(s) "Miscellaneous" or "Misc" or other non-specific terminology shall not be used in the activity's description. Any abbreviations used in the activity descriptions shall be consistent with the abbreviations used throughout the Contract Documents, and should be listed therein. The formatting of the activity description in the software shall be left-justified and capitalized.

7. Activity Durations.

The CPM Schedule shall have a minimal number of activities with durations less than two (2) (a short duration) and more than twelve (12) (a long duration) working days. The Contractor may request permission from the Engineer to assign durations greater than twelve (12) working days. If the Engineer accepts the Contractor's request to use a long duration, the reason for the request shall be detailed in the Preliminary and Baseline Schedule Narratives.

8. Activity Type.

The following types of activities are required for use in the Schedule:

(a) Milestone Activities – Only Milestones that are defined in the Contract’s Special Provisions shall utilize these activity types.

(b) Summary (Hammock) Schedule Activities –The Contractor shall maintain a summary schedule of hammock activities. These schedule activities must remain in all of the Schedule Submittals. The Hammock’s predecessors and successors may be modified to include all those activities that are entered into the Schedule and considered part of the respective hammock activity’s scope of work.

(c) Task Activities – This is the primary activity type. All activities other than Milestone and Summary as defined above shall be task activities.

9. Activity Dates.

Activity Early and Late Start and Finish dates shall be calculated for each activity based upon the schedule data date, actual dates, schedule logic, schedule constraints, calendars, and original duration or remaining duration in accordance with the scheduling parameters defined in this section. Actual dates shall be agreed upon by the Engineer.

10. Cash Flow/Activity Bid Item Loading.

The Contractor shall allocate the quantity for all bid items listed in the proposal pages. Each bid item will be associated with the corresponding schedule activity(ies). Each bid item shall be allocated to an activity or distributed to a group of activities. This shall be done through the use of Primavera’s resources dictionary and resource assignment. The summed value of that portion of the activities allocated to each bid item shall equal the total value of the corresponding bid item. The bid item loading will identify the quantity of the bid item(s) associated with each schedule activity. The result of this Bid Item Loading will be an accurate portrayal of the owner’s cash flow requirements for the project.

11. Calendars.

The following calendars shall be used in the Contractor’s Schedule. The Contractor may request permission from the Engineer to create additional calendars, however, use of these calendars is by Engineer’s acceptance. Additionally, the Contractor may not schedule work during the winter shutdown period unless the Contract specifically states that work will be performed at this time or it is later agreed to and documented. It is the responsibility of the Contractor to schedule their work during the time allotted in the Contract. The following calendars are:

Calendar 1- 5-day workweek (includes Holidays and Winter Shut Down)

Calendar 2- Procurement

Calendar 3- 6-day workweek (includes Holidays and Winter Shut Down)

Calendar 4- 7-day workweek (includes Holidays and Winter Shut Down)

Calendar 5- 5-day workweek (includes Holidays and No Winter Shut Down)

Calendar 6- 6-day workweek (includes Holidays and No Winter Shut Down)

Calendar 7- 7-day workweek (includes Holidays and No Winter Shut Down)
Calendar 8- Interstate 5-day workweek (includes Holidays & Winter Shut Down)
Calendar 9- Interstate 6-day workweek (includes Holidays & Winter Shut Down)
Calendar A - Seeding
Calendar B - Wetland Seeding
Calendar C- Plants B&B

12. Data Date.

The following are the definitions of the data dates for the CPM Schedules:

Preliminary CPM Schedule –Date of Bid Opening

Baseline CPM Schedule –Date of Bid Opening

Status Update Schedules –TBD at Schedule Development Meeting

13. Logic.

The logic in the Schedules shall represent the progression of time and the sequence of work performed within the contract time. The CPM Schedules shall conform to the following requirements:

Every activity shall have logically assigned predecessors and successors. Unless otherwise specified, the activity “Bid Opening” shall be the only activity without a predecessor, “Contract Completion” and each Contract Milestone shall be the only activities without successors.

The use of activity constraints is limited to the use of Start-No-Earlier-Than and Finish-No-Later-Than, for access restraints and Completion Milestone(s). The Contractor may request permission from the Engineer to use these constraints for other activities but acceptance is required for incorporation in the CPM Schedule. The use of Zero Free Float, Start On, Expected Finish, Mandatory Start or Mandatory Finish is strictly prohibited.

Activity lag durations shall not have a negative value unless the Contractor can convince the Engineer that it best represents realistic conditions. Activity lags shall not be used in lieu of logic relationships.

Redundant ties to preceding activities in a sequential series of activities will not be permitted. For example:

- Activity C is a successor in a Finish-Start relationship to B
- Activity B is a successor in a Finish-Start relationship to A
- Activity shall not have redundant Finish-Start relations to C

A tie representing a different constraint will not be considered redundant. For example, a logic tie showing the completion of the work scope of a predecessor is required before the successor can start is different from a logic tie representing a resource limitation and will not be considered redundant.

The Critical Path for a project shall be defined as the longest continuous series of activities progressing toward a Contractual Milestone or Contract Completion.

Out-of-sequence logic shall not be permitted to be included in a submitted CPM Schedule. The Contractor is responsible for identifying, correcting, and updating any out-of-sequence logic in a Schedule.

Float is not for the exclusive use or benefit of either the Engineer or the Contractor. It is an expiring resource available to all parties, acting in good faith, as needed to meet any Contract Milestone(s).

14. Schedule Layout Requirements.

The Engineer will provide the Contractor with the required layouts for the Schedule.

15. Schedule Calculations.

Performing scheduling calculations requires the following settings:

- Turn off automatic scheduling and leveling.
- When scheduling activities, apply retained logic.
- Calculate the start-to-start lag from early start.
- Schedule durations as: contiguous.
- Show open ends as: non-critical.
- Calculate total float as: finish float.
- Summary calculations shall use Calendar No. 1 and the weighting factor for determining percent complete shall be duration.
- Set the auto-inserting option on automatic with a minimum increment of three (3).
- Initially set critical activities using defined critical as: total float less than one (1). This option may be changed at the direction of the Engineer.
- Set language for output as: U.S. English.

16. Submittals and Procurement.

All Submittals and Shop Drawings will be represented in the Contractor's Submittal List (CSL) and shall be cross referenced in the Project Schedule utilizing the Item Codes from the Specifications. At a minimum, each submittal in the CSL will have a corresponding submittal preparation activity in the Schedule. Each submittal activity will have corresponding review and approval activity. Each submittal item will also have a corresponding procurement activity identifying the duration for the procurement of the corresponding materials, equipment, etc. The accuracy and completeness will be the responsibility of the Contractor. The Contractor is responsible for any delays due to inaccuracies in identifying Shop Drawings, Submittals, and Procurement Requirements.

e. Schedule Submission Narratives.

1. Preliminary Schedule Narrative.

The Preliminary Schedule Narrative shall contain the following information:

- (a.) Identification of the data date and schedule file name.

(b.) A description of the planned flow of work, identifying all key or driving activities/resources for the first 120 days in detail and remaining project in summary. Summary activities shall not be greater than 30 calendar days in duration.

(c.) Identify any alternates or substitutions.

(d.) Response to all the owner's comments. The identification and explanation of all changes made to the schedule submission.

Additional Requirements for Schedule Level A

(e.) A summary of planned labor utilization for the Project for the first 120 days in detail. This shall identify the average and maximum number of workers by craft designation on site each month based on the resource loaded Project Schedules and the shifts to be worked. Identify actual and potential labor resource limitations.

(f.) A summary of planned equipment utilization for the Contract for the first 120 days in detail, identifying each type of operated equipment to be used in the work, the planned quantity of each type of operated equipment utilized each month, and the criteria for mobilizing and demobilizing each piece of equipment to and from the site. Identify actual and potential labor resource limitations.

(g.) Key constraints and potential problems affecting the Contractor's work must be identified: construction interfaces with existing plant operations, third parties at the project site, temporary contractor plants, facilities or fixed equipment planned for use whether within the contract ROW, contract easement, or off-site. Include length of time the plant is to be used, any planned moves, and any potential conflicts that could arise if the plan is not followed.

2. Baseline Schedule Narrative.

The Baseline Schedule Narrative shall contain the following information:

(a.) Identification of the data date and schedule file name.

(b.) A description of the planned flow of work identifying all key or driving resources.

(c.) Identify any alternates or substitutions.

(d.) Response to all of the owner's comments and the identification and explanation of all changes made to the schedule submission.

(e.) An explanation of how adverse weather has been addressed in the Baseline Schedule. Identify any and all activities that contain contingency days for adverse weather. Lack of preparation for normal adverse weather is unacceptable.

Additional Requirements for Schedule Level A

(f.) A summary of planned labor utilization for the Project identifying the average and maximum number of workers by craft designation on site each month based on the resource

loaded Project Schedules and the shifts to be worked.

(g.) Identify actual and potential labor resource limitations.

(h.) Key constraints and potential problems affecting the Contractor's work must be identified: construction interfaces with existing plant operations, third parties at the project site, temporary Contractor plants, facilities or fixed equipment planned for use whether within the contract ROW, contract easement, or off-site. Include length of time the plant is to be used, any planned moves, and any potential conflicts that could arise if the plan is not followed.

3. Schedule Update Narrative.

The Schedule Update Narrative shall contain the following information:

(a.) Identification of the Update Period, the data date, and the schedule file name.

(b.) Narrative of work accomplished in the past two weeks and work planned for the next two weeks. Identify what planned work was not accomplished and why.

(c.) Narrative of the current critical path to each contractual completion Milestone.

(d.) Identify any alternates or substitutions.

(e.) Response to all of the owner's comments, and the identification and explanation of all changes made to the Schedule Submission.

(f.) Elective Change: An elective change is defined as a revision to logic or duration(s) by the Contractor to effectively use labor and resources which have no adverse effect on the owner or Contract. The Engineer may use this as a request to a change in the Schedule. Mutual agreement on the change must be attained to implement either request. The Elective Change Narrative shall contain the following information:

(1.) Identification of the activities changed.

(2.) A description of the scope of the elective change and identification of the advantages and disadvantages of implementing the change. Identify all driving resources, if any. Identify key constraints influencing the Contractor's approach to the work.

Additional Requirements for Schedule Level A

(g.) Identification of activities with critical or near critical float (within ten (10) Working Days of the Critical Path) that were planned to occur during the Update Period, but did not occur or occurred later than the scheduled late start or late finish date, and an explanation of these delays. Identification of delays to activities taking place off the project site, e.g., Submittal preparation, fabrication, and delivery activities.

(h.) Provide a listing of all activities which have surpassed their planned duration by more than twenty (20) percent and any justification for maintaining original planned durations for future activities of like work.

(i.) A summary of any changed plans for labor utilization for the Project, identifying the average and maximum number of workers on site each month. Identify actual and potential labor resource limitations. A summary of the actual labor utilization used over the past month.

(j.) A summary of any changed plans for equipment utilization for the project, identifying each type of operated equipment to be used on the Work, the planned quantity of each type of operated equipment utilized each month, and all changes to the criteria for mobilizing and demobilizing each piece of equipment to and from the site. Identify actual and potential equipment resource problems. A summary of the actual equipment utilized over the past month.

f. Progress Delays.

The Contractor shall identify and promptly report to the Engineer all schedule and progress delays during the prosecution of the work. The Contractor shall promptly take appropriate action to develop a Recovery Schedule in the form of a revised Baseline Schedule whenever the actual physical progress is behind schedule, as compared to the Current Baseline Schedule, or whenever requested by the Engineer.

At a minimum, the Contractor shall submit a Recovery Schedule whenever the Project Schedule Update becomes thirty (30) or more Days late to any Milestone(s) designated in section 108.03, Milestones. The Proposed Baseline Schedule Revision shall be in accordance with corresponding section contained herein. The development and submission of a Recovery Schedule does not relieve the Contractor from continuing with the submission of the Project Status Schedule Submittals.

The submission of the Recovery Schedule shall be at no cost to the Engineer and shall be submitted within (30) days of the Project Schedule Update. The Recovery Schedule shall demonstrate a clear procedure for bringing the Project into compliance with a time line acceptable to the Engineer.

The Department may request a Recovery Schedule due to a delay that is not the fault of the Contractor. Cost associated with the development of these Schedules will be considered a reimbursable expense. Normal adverse weather shall be anticipated by, and planned for by the Contractor. Delays due to such weather events are unacceptable. Failure to submit such a Recovery Plan shall provide a basis for future Payment Application withholdings, either in whole, or in part, by the Engineer.

g. BASELINE SCHEDULE REVISIONS.

In the event of a significant delay, or changes to the Project's Schedule as determined by the Engineer, or any situation where time needs to be recovered, a Revised Baseline Schedule may be required.

Baseline Schedule Revision Submittals shall include a comprehensive listing of all activities added to or deleted from the Current Baseline Schedule of Record as well as a complete listing of all logic and activity relationship changes which have been made. All

changes in the schedule must be fully described in an accompanying narrative. No Baseline Schedule Revision Submittal will be accepted unless it satisfies the following requirements:

- Any out-of-sequenced logic is corrected or explained to the satisfaction of the Engineer.
- Start and Finish dates are verified for accuracy.
- The Schedule accurately reflects the Contractor's plan (including accurate logic and durations) for completing the remaining work.

All changes from the accepted Baseline Schedule to the proposed Revised Baseline Schedule must be identified and accepted by the Engineer prior to incorporation into the Revised Schedule. Any proposed changes and/or revisions to the Current Baseline Schedule accepted by the Engineer pursuant to its review of a Proposal Schedule (definition required) submitted by the Contractor shall be incorporated into the Current Baseline Schedule and submitted as a Baseline Schedule Revision Submittal. A Baseline Schedule Revision Submittal shall be due within 5 days following the Engineer's acceptance of the proposed schedule changes and/or revisions, as submitted in a Proposal Schedule, and shall consist of the requirements of the Baseline Schedule, as supplemented below. The Baseline Schedule Revision shall include a cost distribution for added work and/or costs for review and acceptance by the Engineer.

Once a Baseline Schedule Revision Submittal is accepted by the Engineer it shall become the Current Baseline Schedule Revision of Record (and be used for subsequent Schedule Update Submittals), and shall be referred to by its revision number.

Except as otherwise designated by Change Order, no Current Baseline Schedule Revision that extends performance beyond any Contract Time and/or Contract Milestone(s) shall qualify as a Current Baseline Schedule Revision of Record that would allow it to be used to demonstrate entitlement to a Time Extension. In no case shall a Schedule Update be construed as a Baseline Schedule Revision of Record unless it is specifically submitted and accepted as such by the Engineer.

12.108.04 LIMITATION OF OPERATIONS. The Contractor shall conduct the work to assure the least interference with traffic. The Contractor shall have due regard to the location of detours and to the provisions for handling traffic. The Contractor shall not open up work to the prejudice or detriment of work already started or completed. The Engineer may require the Contractor to finish a section on which work is in progress before work is started on any additional sections if the opening of such section is essential to public convenience. Any extra costs will be considered under **Subsection 12.104.04; Alterations in the Plans or Details.**

12.108.05 CHARACTER OF WORKERS. The Contractor shall employ sufficient labor, supervision, and equipment for prosecuting the several classes of work to full completion in the manner and time required by the Contract.

All workers shall have sufficient skill and experience to perform properly the work assigned to them. Workers engaged in special work or skilled work shall have sufficient

experience in such work and in the operation of the equipment required to satisfactorily perform such work.

Any person employed by the Contractor or by any subcontractor who does not perform the work in a proper and skillful manner or is intemperate or disorderly shall, at the written request of the Engineer, be removed forthwith by the Contractor or subcontractor employing such person, and shall not be employed again in any portion of the work without the approval of the Engineer.

Should the Contractor fail to remove such person or persons as required above, or fail to furnish suitable and sufficient personnel for the proper prosecution of the work, the Engineer may withhold progress payments from the Contractor which are or may become due, and suspend the work by written notice until such orders are complied with.

12.108.06 METHODS AND EQUIPMENT. All equipment which is proposed to be used on the work shall be of sufficient size and in such mechanical condition as to meet requirements of the work and to produce a satisfactory quality of work. Equipment used on any portion of the project shall not cause injury to the roadway, adjacent property, or other highways.

When the methods and equipment to be used by the Contractor are not prescribed in the Contract, the Contractor shall use any methods or equipment that will accomplish the contract work in conformity with the requirements of the Contract.

When the Contract specifies the use of certain methods and equipment, these methods and equipment shall be used unless others are approved by the Engineer. If the Contractor desires to use a method or type of equipment other than those specified in the Contract, it may request approval from the Engineer for such use. The request shall be in writing and shall include full description of the methods and equipment proposed for use and the reasons for making the change. If approval is granted, it will be on the condition that the Contractor will be responsible for producing construction work in conformity with Contract requirements. If, after trial use of the substituted methods or equipment, the Engineer determines that the work produced does not meet Contract requirements, the Contractor shall discontinue the use of the substitute method or equipment and shall complete the remaining work with the specified methods and equipment. The Contractor shall remove the deficient work and replace it with work of specified quality, or take such other corrective action as the Engineer may direct. No change will be made in the basis of payment for the construction items involved nor in contract time as a result of approving a change in methods or equipment.

12.108.07 DETERMINATION AND EXTENSION OF CONTRACT TIME.

a. Completion Time. The number of days allowed for the completion of work, or date by which the work shall be completed, will be stated in the Proposal and Contract Agreement, and will be known as the "Contract Time."

The time for completion stated in the Contract, is expressed as a fixed calendar date, and is based on the original quantities as defined in **Subsection 12.102.03; Interpretation of Quantities in Bid Schedule**. If satisfactory completion of the Contract requires work to be

performed in greater quantities than those set forth in the Contract Documents, and the Contractor shall show to the satisfaction of the Engineer that the additional work effects his schedule and contract completion date(s), the time allowed for completion shall be increased on a basis corresponding with the new contract schedule.

The time for completion stated in the Contract has been developed on the assumption that work will be suspended during winter shutdown, i.e., the period from December 15th through the following April 15th unless otherwise specified in the contract documents.

b. Delays. If the Contractor finds it beyond their control to complete the work within the contract time as specified, or as extended in accordance with the provisions of this Subsection, the Contractor may, at any time prior to the expiration of the contract time, make a written request to the Engineer. The Contractor's claim that insufficient time was specified is not a valid reason for extension of time.

The Contractor shall be responsible for notifying the Resident Engineer within thirty (30) calendar days of any Department action or omission which the Contractor believes has delayed or may delay the project. Notification and documentation of the delays shall be in accordance with **Section 12.105.20 Project Delays**. Such notification shall be a precondition to consideration of an extension of time.

If the Engineer determines that the work was delayed because of conditions beyond the control and without the fault of the Contractor, the time for completion may be extended for such period as conditions justify.

c. Requirements for Time Extension Request. The Contractor's request shall be submitted as a comprehensive Time Extension Request Package. It shall include a narrative, project schedules, copies of all supporting documentation, and related correspondence. The submissions shall be considered a single package and all information shall mutually substantiate the requested extension of time.

1. At a minimum the narrative shall include the following:
 - (a) Detailed project history including overall project performance by the Contractor, subcontractors, the Department, and third parties that affected the necessity for the time extension request.
 - (b) Identification, description, and documentation for each delay issue. This shall include the circumstances which occurred resulting in the delay, the responsible parties for the delay and when the Contractor notified the Department regarding the delay. The number of calendar days each delay impacted each milestone shall be calculated and reported.
 - (c) Identification, description, and documentation for each mitigation action. This shall include the actions taken by each party to mitigate delays, the dates of such actions, and the resulted calendar days which were gained or mitigated by such actions.
2. At a minimum, project schedules shall be included in the Time Extension Package to substantiate the delays and mitigation actions to the project. Engineer Accepted Schedules

shall be referenced as is; schedules either Accepted as Noted, Not Accepted, or Rejected shall be corrected before for use in the delay analysis. The number of days requested shall be substantiated by the project schedules.

3. At a minimum the project documentation and correspondence shall be included in the submitted Time Extension Package. This documentation shall include letters, memos, directives, field notes, emails, etc which substantiates any delays or mitigation detailed in the narrative.

12.108.08 FAILURE TO COMPLETE ON TIME.

a. Phased Completion, Interim Completion and Substantial Completion. For each day, including work days, Saturdays, Sundays, and Holidays, that any unit or portion of the work shall remain uncompleted as defined by **Subsection 12.105.17; Acceptance, Para. a., Partial Acceptance**, the applicable Daily Charge will be deducted from any money due the Contractor, not as a penalty but as liquidated damages. The Job Specific Phased and Interim Completion Dates and Associated Liquidated Damages are defined in **Special Provision Code 12.108.1000; Prosecution and Progress**.

An adjustment of the contract time for completion of the work granted under the provisions of **Subsection 12.108.07** hereto will be considered in the assessment of liquidated damages.

Permitting the Contractor to continue and finish the work, or any part of it, after the contract time, or any extensions thereof, has passed will not waive the Department's rights under the Contract. Unless otherwise specified, liquidated damages will not be assessed during the winter shutdown period, i.e., December 15th through the following April 15th.

b. Final Completion. For each day, including work days, Saturdays, Sundays, and Holidays, that any work shall remain uncompleted after the time established for completion of the work in **Subsection 12.105.17; Acceptance, Para. b, Final Acceptance**, the applicable Daily Charge specified below, will be deducted from any money due the Contractor, not as a penalty, but as liquidated damages. An adjustment of the contract time for completion of the work granted under the provisions of **Subsection 12.108.07** hereto will be considered in the assessment of liquidated damages.

Permitting the Contractor to continue and finish the work, or any part of it, after the contract time or any extensions thereof, has passed will not waive the Department's rights under the Contract. Unless otherwise specified, liquidated damages will not be assessed during the winter shutdown period, i.e., December 15th through the following April 15th.

Rates for liquidated damages will be established in accordance with the Schedule. When the contract time is either the calendar day or fixed calendar day basis, the schedule for calendar days shall be used. When the contract time is on a work day basis, the schedule for work days will be used.

Schedule of Liquidated Damages

Original Contract Amount		Daily Charge	
From More Than	To and Including	Calendar Day or Fixed Date Work Day	
\$ 0	\$ 25,000	\$200.00	\$250.00
25,000	50,000	300.00	400.00
50,000	100,000	450.00	600.00
100,000	500,000	550.00	750.00
500,000	1,000,000	900.00	1,250.00
1,000,000	2,000,000	1,200.00	1,650.00
2,000,000	4,000,000	1,500.00	2,050.00
4,000,000	6,000,000	1,750.00	2,450.00
6,000,000	10,000,000	2,250.00	3,150.00
10,000,000	-----	2,650.00	3,700.00

(Job Specific)

CODE 12.108.1000

PROSECUTION AND PROGRESS

In accordance with **Section 12.108.08, Failure to Complete on Time, Para. a., Phased and Interim Completion** the following defines the Phase and Interim Completion Dates and Associated Liquidated Damages:

1. Phase 1 Completion: *<Phase 1 Completion Date>*

All work shall be completed for the *<Phase 1 of Project>*. Completion will be the point at which all work within the phase is complete such that it can be safely and effectively used by the public and when the following criteria are realized: *<Job-Specific Criteria>*

Liquidated Damages: \$ per calendar day.

2. Phase 2 Completion: *<Phase 2 Completion Date>*

All work shall be completed for the *<Phase 2 of Project>*. Completion will be the point at which all work within the phase is complete such that it can be safely and effectively used by the public and when the following criteria are realized: *<Job-Specific Criteria>*

Liquidated Damages: \$ per calendar day.

3. Substantial Completion: *<Substantial Completion Date>*

All Contract work shall be completed, as defined by **Section 12.101.71**.

Liquidated Damages: \$ per calendar day.

12.108.09 DEFAULT OF CONTRACT.

a. Conditions. If the Contractor;

1. Fails to begin the work under the Contract within the time specified in the Notice to Proceed, or

2. Fails to perform the work with sufficient workers and equipment or with sufficient materials to assure the prompt completion of said work, or

3. Fails to perform the work in accordance with the contract requirements and/or refuses to remove and replace rejected materials or unacceptable work, or

4. Discontinues the prosecution of the work, or

5. Fails to resume work that has been discontinued within a reasonable time after notice to do so, or

6. Becomes insolvent or is declared bankrupt, files a voluntary petition for bankruptcy under the Federal Bankruptcy Act, or commits any act of bankruptcy or insolvency, or

7. Allows any final judgment to remain unsatisfied for a period of 10 days, or

8. Is a party to fraud, or

9. Makes an assignment of the Contract for the benefit of creditors, or

10. Fails to comply with contract requirements regarding minimum wage payments or EEO requirements, or

11. Fails to carry on the work in an acceptable manner in accordance with the Contract requirements; the Engineer may declare the Contractor to be in default of the Contract and shall give notice in writing to the Contractor and the Surety of such default, advising the Contractor of actions required to remedy said default.

If the Contractor or Surety, within a period of 10 days of receipt of such notice, does not proceed in accordance therewith, then the Department will have full power and authority, without violating the Contract, to assume prosecution of the work from the Contractor. The Department may appropriate or use the Contractor's materials and equipment at the site as may be suitable for use in the project and may enter into an agreement with another contractor for the completion of said Contract according to the terms and provisions thereof, or use such other methods as in the opinion of the Engineer will be required for the completion of Contract.

All costs and charges incurred by the Department as a result of the default, including the cost of completing the work under Contract and any applicable liquidated damages, will be deducted from any monies due or to become due the Contractor. If such costs exceed the sum which would have been payable under the Contract, then the Contractor and the Surety shall be liable and shall pay to the Department the balance of such costs in excess of the contract amount.

If it is determined, after termination of the Contractor's right to proceed, that the Contractor was not in default, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the Department in accordance with **Subsection 12.108.10**. Thus, damages to which a Contractor may be entitled as a result of the improper default termination will be limited to appropriate amounts for the items listed in **Subsection 12.108.10; Termination of Contract**.

12.108.10 TERMINATION OF CONTRACT.

a. Reasons for Termination. The Department may terminate the entire Contract, or any portion thereof, when the Contractor is prevented from proceeding with the prescribed work for any of the following reasons:

1. An Executive Order of the President of the United States with respect to the prosecution of war; in the interest of national defense; or any civil emergency or natural disaster.
2. An Executive Order of the Governor of the State with respect to a natural disaster or civil emergency.
3. Court orders relating to energy consumption, and orders or injunctions obtained by third party action resulting from national or local environmental protection laws.
4. Discovery of unanticipated archaeological artifacts of a significant nature that would require extensive and time-consuming delays in the work for the purposes of identification, evaluation, and possibly recovery.
5. Occurrence of an unanticipated environmental situation of a significant nature that would require extensive and time-consuming delays in the work for the purposes of identification, evaluation, and possibly mitigation.
6. Any other circumstances beyond the control of either the Department or the Contractor that precludes the orderly prosecution or completion of the work and that is in the public interest.

The Engineer shall terminate the Contract by delivering to the Contractor a Notice of Termination which shall specify the extent of the termination, the reasons therefore, and the effective date thereof.

b. Termination Procedures. After receipt of a Notice of Termination, and except as directed by the Engineer, the Contractor shall immediately proceed with the following obligations:

1. Stop work as specified in the notice.
2. Place no further subcontracts or orders (referred to as subcontracts in this clause for materials, services, or facilities, except as necessary to complete the continued portion of the Contract.
3. Terminate all subcontracts to the extent they relate to the work terminated.
4. With approval or ratification to the extent required by the Engineer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts; the approval or ratification will be final for purposes of this clause.
5. As directed by the Engineer, transfer title and deliver to the Department the fabricated, partially fabricated, or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated; and the completed or partially completed plans, drawings, information, and other property that, if the Contract had been completed, would be required to be furnished to the Department.
6. Complete performance of the work not terminated.
7. Take any action that may be necessary, or that the Engineer may direct, for the protection and preservation of the property related to this Contract that is in the possession of the Contractor and in which the Department has or may acquire an interest.
8. At the direction of the Engineer, acceptable materials obtained by the Contractor for the Project but which have not been incorporated therein, may be purchased from the Contractor at actual cost delivered to a prescribed location, or disposed of as mutually agreed.

When the Department orders termination of a Contract, or portion thereof, effective on a certain date, all completed items of work as of that date will be paid for at the contract bid prices. Payment for partially completed work will be made either at agreed prices or in accordance with the subparagraph below entitled, "Contractor and Department Fail to Agree." Items that are eliminated in their entirety by such termination shall be paid for as provided in **Subsection 12.109.05; Eliminated Items.**

The Contractor shall submit, within 60 days of the effective termination date, a claim for additional damages or costs not covered above or elsewhere in the Contract. Such claim may include such cost items as reasonable idle equipment time, mobilization efforts, bidding and project investigative costs, overhead expenses attributable to the project terminated, legal and accounting charges involved in claim preparation, subcontractor costs not otherwise paid for,

actual idle labor cost if work is stopped in advance of termination date, guaranteed payments for private land usage as part of the original Contract, and any other cost or damage for which the Contractor feels reimbursement should be made. The intent of negotiating this claim would be that an equitable settlement be reached with the Contractor. In no event will loss of anticipated profits be considered as part of any settlement.

The Contractor and the Department may agree upon the whole or any part of the amount to be paid because of the termination. The amount may include a reasonable allowance for profit on work performed. The Contract shall be amended, and the Contractor paid the agreed amount.

c. Contractor and Department Fail to Agree. If the Contractor and the Department fail to agree on the whole amount to be paid the Contractor because of the termination of work, the Department shall pay the Contractor the amounts determined as follows, but without duplication of any amounts agreed upon above;

1. For contract work performed before the effective date of termination, the total of the following:

(a) The cost of this work;

(b) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the termination portion of the Contract; and

(c) A sum, as profit on (a), above, determined by the Department to be fair and reasonable; however, if the Contractor would have sustained a loss on the entire Contract had it been completed, the Department shall allow no profit and shall reduce the settlement to reflect the indicated rate loss.

2. The reasonable costs of settlement of the work terminated, including:

(a) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and support data;

(b) The termination and settlement of subcontracts (excluding the amounts of such settlements); and

(c) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.

3. Except for normal spoilage, and except to the extent that the Department expressly assumed the risk of loss, the Department shall exclude from the amounts payable to the Contractor, the fair value, as determined by the Department of property that is destroyed, lost, stolen, or damaged so as to become undeliverable to the Department or to the buyer.

4. In arriving at the amount due the Contractor under this clause, there shall be deducted:

(a) All unliquidated advance or other payments to the Contractor under the terminated portion of this Contract;

(b) Any claim which the Department has against the Contractor under this Contract; and

(c) The agreed price for, or the proceed of sale of materials, supplies, or other things acquired by the Contractor or sold under the provisions of this clause and not recovered by or credited to the Department.

d. Partial Termination. If the termination is partial, the Contractor may file a proposal with the Department for an equitable adjustment of the price(s) of the continued portion of the Contract. The Department shall make any equitable adjustment agreed upon. Any proposal by the Contractor for an equitable adjustment under this clause shall be requested within 90 days from the effective date of termination unless extended in writing by the Engineer.

e. Records. The Department may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Contractor for the terminated portion of the Contract, if the Department believes the total of these payments will not exceed the amount to which the Contractor will be entitled.

The Contractor shall maintain and make available all project cost records to the Department for audit to the extent necessary to determine the validity and amount of each item claimed. This includes all books and other evidence bearing on the Contractor's costs and expenses under this Contract. The Contractor shall make these records and documents available to the Department, at the Contractor's office, at all reasonable times, without any direct charge. If approved by the Department, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.

f. Contractual Responsibilities. Termination of a Contract or portion thereof shall not relieve the Contractor of contractual responsibilities for the work completed, nor shall it relieve the Surety of its obligation for and concerning any just claim arising out of the work performed.

SECTION 12.109

MEASUREMENT AND PAYMENT

12.109.01 MEASUREMENT OF QUANTITIES. Work completed under the Contract will be measured by the Engineer according to United States standard measure, or by the metric system when the Contract so provides.

A station when used as a definition or term of measurement will denote 100 linear feet.

The method of measurement and computations to be used to determine quantities of materials furnished and work performed under the Contract will be those methods generally recognized as conforming to good engineering practice.

Unless otherwise specified, longitudinal measurements for area computations will be made horizontally, and no deductions will be made for individual fixtures in the roadway having an area of 9 square feet or less. Unless otherwise specified, transverse measurements for area computations will be the neat dimensions shown on the Plans.

Structures will be measured according to neat lines shown on the Plans or as altered to fit field conditions.

Items which are measured by the linear foot, such as pipe culverts, curb, guardrail, underdrains, etc., will be measured parallel to the base or foundation upon which such structures are placed, unless otherwise shown on the Plans.

In computing volumes of excavation the average end area method, or other acceptable methods, will be used.

The thickness of plates and galvanized sheet used in the manufacture of corrugated metal pile, metal plate pipe culverts and arches, and metal cribbing will be specified and measured in decimal fractions of inches.

The term "gauge" shall mean the standard gauges as established by AASHTO, ASTM, U.S.A.S.I. or Manufacturer's standards, in the order of precedence listed.

The term "ton" will mean the short ton consisting of 2,000 pounds avoirdupois. Materials which are measured or proportioned by weight shall be weighed on accurate, approved scales by competent, qualified personnel at locations designated by the Engineer. If material is shipped by rail, the car weight may be accepted provided that payment is made only for the actual weight of such material. However, car weights will not be acceptable for material that is passed through mixing plants. Trucks used to haul material being paid for by weight shall be weighed empty daily at such times as the Engineer directs. Each truck shall bear a plainly legible identification mark.

Materials to be measured by volume in the hauling vehicle shall be hauled in approved vehicles and measured in such vehicles at the point of delivery. Vehicles for this purpose may be of any size or type acceptable to the Engineer, provided that the body is of such shape that the actual volume may be readily and accurately determined. Vehicles shall be loaded to at least their water level capacity and all loads shall be leveled when the vehicles arrive at the point of delivery. However, any "heap" above the water level line may be computed for quantity if authorized by the Engineer.

When requested by the Contractor and approved in writing by the Engineer, material specified to be measured by the cubic yard may be weighed and such weights will be converted to cubic yards for payment purposes. Factors for conversion from weight measurement to volume measurement will be determined by the Engineer and shall be acceptable to the Contractor before such method of measurement of quantities is employed.

Bituminous materials will be measured as indicated in the Proposal. Volumes will be measured at 60°F or will be corrected to the volume at 60°F using ASTM D1250 for asphalts or ASTM D633 for tars.

Net certified scale weights, or weights converted from certified volumes in the case of rail shipments, will be used as a basis of measurement. Such weights, however, shall be subject to correction whenever bituminous material has been lost from the car or the distributor, wasted, or otherwise not incorporated in the work.

When bituminous materials are shipped by truck or transport, net certified weights or volume subject to correction for loss or foaming, may be used for computing quantities.

Cement will be measured by the pound.

Timber will be measured by thousand foot-board measure (M.F.B.M.) actually incorporated in the structure. Measurement will be based on nominal widths and thicknesses and the extreme length of each piece.

The term "lump sum" when used in the Bid Schedule as an item of payment will mean complete payment for the work so described in the Contract.

When a complete structure or structural unit (in effect, "lump sum" work) is specified as the unit of measurement, the unit will be construed to include all necessary fittings and accessories.

Rental of equipment will be measured by time in hours of actual working time and necessary travel time within the limits of the project. If special equipment has been ordered by the Engineer in connection with force account work, travel time and transportation to the project will be measured. If equipment has been ordered held on the job on a standby basis by the Engineer, half-time rates for the equipment will be paid.

When standard manufactured items are specified such as fence, wire, plates, rolled shapes, pipe conduit, etc., and these items are identified by gauge, unit weight, section dimensions, etc., such identification will be considered to be nominal weights or dimensions. Unless more stringently controlled by tolerances in cited specifications, manufacturing tolerances established by the respective industries will be accepted.

Scales for the weighing of highway and bridge construction materials that are required to be proportioned or measured and paid for by weight, shall be furnished, erected, and maintained by the Contractor, or be certified permanently installed commercial scales.

Scales shall be accurate within $\frac{1}{2}$ of 1 percent of the correct weight throughout the range of use. The Contractor shall have the scales checked under the observation of the Inspector before beginning work and at such other times as requested. The intervals shall be uniform in spacing throughout the graduated or marked length of the beam or dial and shall not exceed $\frac{1}{10}$ of 1 percent of the nominal rated capacity of the scale; but not less than 1 pound. The use of spring balances will not be permitted.

Beams, dials, platforms, and other scale equipment shall be arranged so that the operator and inspector can safely and conveniently view them.

Scale installations shall have available ten standard 50 pound weights for testing the weighing equipment or suitable weights and devices for other approved equipment.

Scales must be tested for accuracy and serviced before use at a new site. Platform scales shall be installed and maintained with the platform level and rigid bulkheads at each end.

Scales over weighing (indicating more than true weight) will not be permitted to operate and materials received subsequent to the last correct weighing accuracy test will be reduced by the percentage of error in excess of $\frac{1}{2}$ of 1 percent.

In the event inspection reveals the scales have been under weighing, they shall be adjusted and no additional payment to the Contractor will be allowed for materials previously weighed and recorded.

Costs in connection with furnishing, installing, certifying, testing, and maintaining scales; for furnishing check weights and scale house, and for all other items specified in this Subsection for weighing of highway and bridge construction materials for proportioning or payment shall be included in the unit contract prices for the various pay items of the project.

When the estimated quantities for a specific portion of the work are designated as pay quantities in the Contract, they shall be the final quantities for which payment will be made, unless the dimensions of the work shown on the Plans are revised by the Engineer. If revised dimensions result in an increase or decrease in the quantities of work, the final quantities for payment will be revised in the amount represented by the authorized changes.

12.109.02 SCOPE OF PAYMENT. The Contractor shall receive and accept compensation provided for in the Contract as full payment for furnishing all materials and for performing all work under the Contract in a complete and acceptable manner, and for all risk, loss, damage, or expense of whatever character arising out of the nature or prosecution of the work, subject to the provisions of **Subsections 12.104.03; Differing Site Conditions and 12.107.16; No Waiver of Legal Rights.**

If the "Basis of Payment" clause in the specifications relating to any unit price in the Bid Schedule requires that the said unit price cover and be considered compensation for certain work or material essential to the item, this same work or material will not also be measured or paid for under any other pay item which may appear elsewhere in the Contract.

12.109.03 COMPENSATION FOR ALTERED QUANTITIES. When the accepted quantities of work vary from the quantities in the Bid Schedule, the Contractor shall accept payment at the original contract unit prices for the accepted quantities of work performed. No allowance will be made for any reason except as provided for in **Subsections 12.104.03; 12.104.05; and 12.104.07; Differing Site Conditions, Extra Work, and Significant Changes in the Character of the Work,** respectively.

12.109.04 DIFFERING SITE CONDITIONS, CHANGES, EXTRA WORK AND FORCE ACCOUNT WORK.

a. Methods of Payment. Differing site conditions, changes, extra work, and significant changes in the character of the work, all performed in accordance with **SECTION 12.104; SCOPE OF WORK,** will be paid for in accordance with the following methods as appropriate:

1. Contract unit prices.
2. Unit prices agreed upon in the order authorizing the work.
3. An agreed upon lump sum amount.
4. If directed by the Department, on a Force Account Basis to be compensated in the following manner:

(a) Labor. For all labor and foremen in direct charge of the specific operations, the Contractor shall receive the rate of wage actually paid as shown by its certified payroll, which rate shall be at least the prevailing rate of wage (or scale), for each and every hour that said labor and foremen are actually engaged in the work.

No part of the salary or expenses of anyone connected with the Contractor's forces above the grade of foreman, and having general supervision of the work, will be included in the labor item as specified above.

The Engineer reserves the right to determine the number and type of labor employed.

The Contractor shall receive the actual costs paid to, or in behalf of, workers by reason of subsistence and travel allowances, health and welfare benefits, pension fund benefits or other benefits, when such amounts are required by collective bargaining agreement or other employment contract generally applicable to the classes of labor employed on the work.

An amount equal to 20 percent of the sum of the above items will also be paid the Contractor.

(b) Bond, Insurance and Tax. For property damage, liability, worker's compensation insurance premiums, unemployment insurance contributions, and social security taxes incurred on force account work, the Contractor shall receive the actual cost, to which cost a surcharge of 6-percent will be added. The Contractor shall furnish satisfactory evidence of the rate or rates paid for such bonds, insurances and taxes.

(c) Materials. For materials accepted by the Engineer and used in the work, the Contractor shall receive the actual cost of such materials delivered to the site, including transportation charges paid (exclusive of machinery rentals as hereinafter set forth), to which cost a surcharge of 15 percent will be added. The Contractor will not be reimbursed for any penalty or carrying charge incurred due to late or delayed payment for materials used in the work.

(d) Equipment. For any machinery or special equipment (other than small tools) including transportation cost, the use of which has been authorized by the Engineer, the Contractor shall receive either the "hourly rental rates" as prescribed herein by the Department, or the actual documented cost plus an amount equal to 10 percent of said actual documented cost, whichever is less. Under no circumstance shall the payment exceed the replacement cost of the equipment.

All rental rates shall include the estimated operating cost as indicated for that equipment in either the Rental Rate Blue Book or the Rental Rate Blue Book for Older Equipment, including the Rate Adjustment Tables approved for projects wholly or partially funded by the Federal Highway Administration (FHWA). Operators' wages are not included in the estimated operating cost and are paid separately, except for certain specified equipment in which the operator's wages are included.

The "hourly rental rate" for an individual piece of equipment shall be determined by dividing the associated monthly rate, modified by the Rate Adjustment Tables, as contained in the Rental Rate Blue Book by one hundred seventy-six (176). There will be no adjustment to the hourly rate for the period of use.

For rented equipment, the cost shall be based on the actual documented cost plus an amount equal to 10-percent of said actual documented cost, subject to the conditions set forth below. The actual documented cost shall consist of the paid invoice

for rented equipment plus other documented operating costs (i.e. fuel, maintenance, repairs, etc.).

Actual documented costs plus 10 percent of said costs shall not exceed the cost as calculated from the RENTAL RATE BLUE BOOK or the RENTAL RATE BLUE BOOK FOR OLDER CONSTRUCTION EQUIPMENT. The Contractor shall submit documentation for both the hourly rental rates and actual documented costs to determine that the actual documented costs plus 10 percent of said costs does not exceed the calculated rental rate costs. No percentage surcharges will be added to the "Blue Book" rates as prescribed herein for rented equipment.

For equipment which is already on the project, the rental period shall start when such equipment is ordered to work by the Engineer, and shall continue until ordered to stop work.

For equipment which has to be brought to the project specifically for use on force account work, the State will pay all loading and unloading costs, and all transportation costs to and from the project, including assembling and dismantling, provided, however, that the cost of return transportation shall not exceed that of moving the equipment to the project. Loading, unloading and transportation costs will not be paid if the equipment is used for work other than force account work while on the project. The rental period shall start at the time the equipment is ready for operation, and shall extend during the period of time the equipment is actually utilized on force account work. The rental period shall end when the equipment is released by the Engineer.

All equipment, including trucks, shall, in the judgment of the Engineer, be in good working condition and suitable for the purpose intended. The Engineer reserves the right to determine the number of units of the various types of equipment to be employed on force account work. The manufacturer's model identification shall be the basis for identifying the type of equipment for payment purposes. Certification for the model year of the equipment will be required.

(e) Miscellaneous. No additional allowance will be made for general superintendence, the use of small tools, or other costs for which no specific allowance is herein provided.

(f) Compensation. The Contractor's representative and the Engineer shall daily compare records of work completed on a force account basis. The Engineer will then prepare the daily work sheets and said sheets will be signed by the Contractor's representative no later than noon of the next working day.

(g) Statements. No payment will be made for work performed on a force account basis until the Contractor has furnished the Engineer with six copies of itemized statements of the cost of such work, incurred on a daily basis, and detailed as follows:

(1) Name, classification, date, daily hours, total hours, rate and extension for each laborer and foreman.

(2) Designation, dates, daily hours, total hours, rental rate, and extension for each unit of machinery and equipment.

(3) Quantities of materials, prices, and extensions.

(4) Transportation of materials.

(5) Cost of property damage, liability and worker's compensation insurance premiums, unemployment insurance contributions, and social security taxes.

Statements shall be accompanied and supported by certified payrolls, and receipted invoices for all materials used and transportation charges. However, if materials used on the force account work are not specifically purchased for such work but are taken from the Contractor's stock, then in lieu of the invoices, the Contractor shall furnish an affidavit certifying that such materials were taken from its stock, that the quantity claimed was actually used, and that the price and transportation claimed represent the actual cost to the Contractor.

12.109.05 ELIMINATED ITEMS. Should any items contained in the Contract be found unnecessary for the proper completion of the work, the Engineer may, upon written order to the Contractor, eliminate the items from the Contract, and the action shall not invalidate the Contract. When a Contractor is notified of the elimination of items, the Contractor will be reimbursed for actual work performed and all costs incurred, including mobilization of materials prior to said notification.

12.109.06 PARTIAL PAYMENTS.

a. Amount. Partial payments will be made bi-weekly as the work progresses. The amount of the partial payments shall be 97 percent of the Contract price for the work performed during the previous payment period, all as measured and/or estimated and accepted by the Engineer. Partial payment will be subject to a 3 percent retainage.

Retainage will be released when all items on the punch list and the required documentation have been addressed to the satisfaction of the Engineer.

No partial payments shall be made when, in the judgment of the Engineer, the work has not proceeded according to provisions of the Contract. Partial payments shall not be construed as an acceptance by the Department of any materials furnished or work performed.

No partial payments shall be made on perishable plant materials until such plant materials are planted as specified in the Contract.

Upon written request from the Contractor, supported by delivery invoices, and for those conditions outlined below, the Engineer may allow partial payment on such approved materials, supplies and equipment as are delivered to an approved site in acceptable condition. Such materials, supplies and equipment, as yet not incorporated

into the work, shall be identified, set aside and suitably stored at or near the site of the work.

b. Conditions. The conditions under which the Engineer may allow partial payments for those materials, supplies, and equipment not yet incorporated into the work include any of the following:

1. The schedule of completion of the work has been terminated by authorized suspension of Contract work (pending final settlement), or
2. The schedule of completion of the work has been hindered and delayed by seasonal closing of the project or by similar causes over which the Contractor has no control, or
3. When, in the opinion of the Engineer, the advance delivery of such materials is in the best interest for the timely completion of the project.

c. Maximum Payment. Under these conditions partial payments for such materials, supplies and equipment furnished at an approved site shall not exceed the lesser of the following amounts.

1. 100 percent of the actual cost incurred by the Contractor, or
2. 80 percent of the amount generated by the quantity of materials so delivered and accepted, multiplied by the unit price bid for such materials as contained in the Bid Schedule.

Such payment shall be made as a partial payment under the related item or items by adjustment of the quantity progressively allowed. The Contractor must furnish a paid invoice for the furnished materials, supplies or equipment within thirty (30) days after receiving the partial payment. Otherwise, the amount of the partial payment will be deducted from subsequent invoices.

12.109.07 PARTIAL PAYMENT OF LUMP SUM ITEMS. Each bi-weekly period the Engineer and the Contractor will consult and subsequently agree on the progress of work performed under those lump sum items indicated in the Bid Schedule. Partial payments for the completed and accepted portions of such work will be made to the Contractor based on the Engineer's estimate of the value of said completed work.

Prior to award of the Contract, or in any case within ten (10) calendar days after the date of the Notice of Award, the Contractor shall submit to the Engineer for approval two copies of the breakdown of each lump sum bid item that appears in the Bid Schedule, (excluding the Mobilization item). The breakdown of Lump Sum-Superstructure and Lump Sum-Substructure items shall include only those items listed on the Plans, and shall include the Contractor's verified quantities it used in preparing its bid. All other additional costs (such as engineering, shop drawings, formwork, equipment, etc.) to complete those items of work shall be included and distributed in the breakdown of those listed items. For other lump sum items not identified on the Plans, the Contractor shall

provide a breakdown of the various items that constitute the respective lump sum work items.

The Engineer will use as a guide the Lump Sum breakdowns submitted by the Contractor if they fairly represent the cost of the various items of work. If, in the opinion of the Engineer, the prices submitted by the Contractor do not fairly represent the cost of the various items of work, the Engineer may substitute other prices that do fairly represent the cost of such work.

12.109.08 PAYMENT OF WITHHELD FUNDS.

a. Payment. Upon request, the Department will make payment of funds withheld from progress payments if the Contractor deposits, in escrow, securities eligible for the investment of State funds or bank certificates of deposit, upon the following conditions:

1. The Contractor shall bear the expenses of the Department and the State Treasurer in connection with the escrow deposit made.

2. Securities or certificates of deposit to be placed in escrow will be subject to the approval of the Department and, unless otherwise permitted by the escrow agreement, shall be of a value of at least 100 percent of the amounts of retention to be paid to the Contractor pursuant to this Section.

3. The Contractor shall enter into an escrow agreement satisfactory to the Department.

4. The Contractor shall obtain the written consent of the Surety to the agreement.

12.109.09 ACCEPTANCE AND FINAL PAYMENT. When the project has been accepted as provided in **Subsection 12.105.17**, the Engineer will prepare the final estimate of work performed. If the Contractor approves the final estimate or files no claim or objection to the quantities therein within 30 days of receiving the final estimate, the Department will process the estimate for final payment. With approval of the final estimate by the Contractor, payment will be made for the entire sum found to be due after deducting all previous payments and all amounts to be retained or deducted under the provision of the Contract.

If the Contractor files a claim in accordance with Contract requirements, it shall be submitted in writing in sufficient detail to enable the Engineer to ascertain the basis and amount of such claim. Upon final adjudication of the claim, any additional payment determined to be due the Contractor will be placed on a supplemental estimate and processed for payment.

All prior partial estimates and payments will be subject to correction in the final estimate and payment.

12.109.10 COMPENSATION FOR PROJECT DELAYS.

a. Compensable Delays. The Department will provide an equitable adjustment to the Contractor for those delays created by the Department's acts or omissions. Unless otherwise specified, the Contractor assumes the risk of damages from all other causes of delay.

The term "delay" shall be deemed to mean any event, action, force or factors which extends the Contractor's time of performance of the Contract. This Subsection is intended to cover all such events, actions, forces or factors, whether they be styled "delay," "disruption," "interference," "impedance," "hindrance" or otherwise.

Strict compliance with the provisions of this Subsection will be an essential condition precedent to any equitable adjustment for delays.

b. Limitation of Costs. Only the additional actual costs associated with the following items will be recoverable by the Contractor as an equitable adjustment for delays.

1. Documented and substantiated additional or escalated job site non-salaried labor expenses.

2. Documented and substantiated additional or escalated costs for materials.

3. Documented and substantiated equipment costs or escalated equipment costs. When measuring additional equipment expenses (i.e., ownership expenses) arising as a direct result of a delay caused by the Department, use actual records kept in the usual course of business, and measure increased ownership expenses pursuant to generally accepted accounting principles.

4. Documented and substantiated extended job-site overhead to include those costs necessary to maintain the job site during the delay such as field office (inclusive of equipment, copy and fax machines, computers etc), field office utility bills (i.e. electricity, gas, water, etc.), field office supplies and janitorial services, and security. Under no circumstances will any of the contractor's labor costs (inclusive of extended field labor) be paid under extended job-site overhead. Labor costs are paid subject to the conditions of No.b.1 and No.b.5 of this section.

5. An additional surcharge of 10 percent of the total of items 1, 2, 3, and 4, to account for home office overhead as well as all salaried labor (both home office and extended field supervision), and profit.

Note: Where documentation, payment for equipment, and/or cost substantiation is specified, the Contractor shall adhere to the requirements in Section 12.109.04 of these Standard Specifications. Payment for costs submitted for reimbursement will be made

only to the extent that the requirements of Section 12.109.04 are met to the satisfaction of the Engineer.

c. Waiver of Liability. The parties agree that, in any adjustment for delay costs, the Department will have no liability for the following items of damages or expense:

1. Profit in excess of that provided herein;
2. Loss of profit;
3. Labor inefficiencies;
4. Home office overhead in excess of that provided herein;
5. Consequential damages, including but not limited to loss of bonding capacity, loss of bidding opportunities and insolvency;
6. Indirect costs or expenses of any nature;
7. Attorneys fees, claims preparation expenses or costs of litigation.

12.109.11 PROMPT PAYMENT PROCEDURES. In accordance with Title 42, Chapter 11.1-1 of the General Laws, all invoice vouchers submitted by the Contractor will be paid within thirty (30) days, provided however, that according to 42-11.1-5(B)2, the thirty (30) day period will not commence until the Department has reviewed and accepted all invoice documentation in its proper and approved form.

12.109.12 SUBCONTRACTOR PROMPT PAYMENT. The Prime Contractor shall make prompt payment for satisfactory subcontract work for which the Department has made partial or full payment. The term "Subcontractor" as used herein, is defined in **Subsection 12.101.70; Subcontractor.**

When a Subcontractor has not received payment for work paid to the Prime Contractor within 30-days from receipt of the actual check by the Prime Contractor from the State, a formal complaint may be filed under the following procedures:

a) The Subcontractor will send written notification to the Department, including contract item numbers, date work performed, a copy of the invoice(s) from the Subcontractor to the Prime, and a copy of the Progress Payment where payment to the Prime Contractor was included. The latter item may be obtained from the Department's field supervisor or Construction Office. If the Subcontractor has not provided a payment/performance bond for this work to the contractor, then the formal complaint must also include verification that all suppliers and other debts on these items have been paid or documented reasons for non-payment acceptable by the Department. Failure to

provide this verification will be considered “good cause” for postponement of payment by the Prime Contractor.

b) The Department will notify the Prime Contractor of the formal complaint in writing within 15 days and will proceed to withhold an amount equal to the previous payment(s) made to the Prime Contractor for the specific subcontractor’s work. The Prime Contractor must submit written documentation to the Department demonstrating good cause for not making the required payment within 15 days. If the Department does not receive the required documentation within the required 15 days or does not accept the Contractor’s good cause justification, the Department will withhold or continue to withhold an amount equal to all previous payments to the Prime Contractor for the specific Subcontractor’s work until the Department has verified payment to the Subcontractor. If the Department accepts the Prime Contractor’s good cause justification, it will notify the Subcontractor of its decision that this is categorized as a dispute and payment to the Prime Contractor will be released. The Subcontractor and Prime Contractor may solve their dispute in any fashion they so choose (arbitration, mediation, litigation, etc.). The cost of any such arbitration/mediation shall be borne by both parties at an equal share or as otherwise provided for in any agreement between the parties.

c) Should the two parties enter into a payment agreement/settlement, the Department will only release previous monies held in accordance with the agreement/settlement. Should the Prime Contractor default again, the Department will contact the bonding company and request complete payment within 15 days. Should the bonding company and/or Prime Contractor fail to make complete payment after a 15-day period, all progress payments to the Prime Contractor will stop until the subcontractor is paid and the dispute is resolved to the satisfaction of the Department.

Any delays and/or claims resulting from the actions taken by the Department under this Specification will not be the responsibility of the State.

ATTACHMENT "A"
**STATE OF RHODE ISLAND GENERAL CONDITIONS OF
PURCHASE**

Note: The Office of Purchases may, from time to time, make amendments to the General Terms and Conditions when the Purchasing Agent determines that such amendments are in the best interest of the State. Amendments shall be made available for public inspection at the Office of the Secretary of State but shall not require formal public notice and hearing. Copies of the Terms and Conditions shall be provided to any individual or firm requesting to become a registered bidder. Applicants shall be required, as part of the application process, to certify that they have read the General Terms and Conditions and understand that they apply to all State Purchases.

**STATE OF RHODE ISLAND OFFICE OF
PURCHASES**
GENERAL CONDITIONS OF PURCHASE

All State Purchase Orders, Contracts, Solicitations, Delivery Orders and Service Requests shall incorporate and be subject to the provisions of Title 37 Chapter 2 of the General Laws of the State of Rhode Island, the Regulations adopted pursuant thereto, all other applicable provisions of the Rhode Island General Laws, specific requirements described in the Request or Contract, and the following General Conditions of Purchase:

1. GENERAL - All purchase orders, contracts, solicitations, delivery orders, and service requests are for specified goods and services, in accordance with express terms and conditions of purchase, as defined herein. For the purposes of this document, the terms "bidder" and "contractor" refer to any individual, firm, corporation, or other entity presenting a proposal indicating a desire to enter into contracts with the State, or with whom a contract is executed by the State's Purchasing Agent, and the term "contractor" shall have the same meaning as "vendor".

2. ENTIRE AGREEMENT - The State's Purchase Order, or other State contract endorsed by the State Office of Purchases, shall constitute the entire and exclusive agreement between the State and any contractor receiving an award. In the event any conflict between the bidder's standard terms of sale, these conditions or more specific provisions contained in the solicitation shall govern. All communication between the State and any contractor pertaining to any award or contract shall be accomplished in writing.

- **a.** Each proposal will be received with the understanding that the acceptance, in writing, by contract or Purchase Order by the Purchasing Agent of the offer to do work or to furnish any or all the materials, equipment, supplies or services

described therein shall constitute a contract between the bidder and the State. This shall bind the bidder on his part to furnish and deliver at the prices and in accordance with the conditions of said accepted proposal and detailed specifications and the State on its part to order from such contractor (except in case of emergency) and to pay for at the agreed prices, all materials, equipment, supplies or services specified and delivered. A contract shall be deemed executory only to the extent of funds available for payment of the amounts shown on Purchase Orders issued by the State to the contractors.

b. No alterations or variations of the terms of the contract shall be valid or binding upon the State unless submitted in writing and accepted by the Purchasing Agent. All orders and changes thereof must emanate from the Office of Purchases: no oral agreement or arrangement made by a contractor with an agency or employee will be considered to be binding on the Purchasing Agent, and may be disregarded.

c. Contracts will remain in force for the contract period specified or until all articles or services ordered before date of termination shall have been satisfactorily delivered or rendered and accepted and thereafter until all terms and conditions have been met, unless

1. terminated prior to expiration date by satisfactory delivery against orders of entire quantities, or

2. extended upon written authorization of the Purchasing Agent and accepted by the contractor, to permit ordering of the unordered balances or additional quantities at the contract price and in accordance with the contract terms, or

3. canceled by the State in accordance with other provisions stated herein.

• **d.** It is mutually understood and agreed that the contractor shall not assign, transfer, convey, sublet or otherwise dispose of this contract or his right, title or interest therein, or his power to execute such contract, to any other person, company or corporation, without the previous consent, in writing, of the Purchasing Agent.

e. If, subsequent to the submission of an offer or issuance of a purchase order or execution of a contract, the bidder or contractor shall merge with or be acquired by another entity, the contract may be terminated, except as a corporate resolution prepared by the contractor and the new entity ratifying acceptance of the original bid or contract terms, condition, and pricing is submitted to the Office of Purchases, and expressly accepted.

f. The contractor or bidder further warrants by submission of an offer or acceptance of a purchase order or other contract that he has no knowledge at the

time of such action of any outstanding and delinquent or otherwise unsettled debt owed by him to the State, and agrees that later discovery by the Purchasing Agent that this warranty was given in spite of such knowledge, except where the matter is pending in hearing or from any appeal therefrom, shall form reasonable grounds for termination of the contract.

3. SUBCONTRACTS - No subcontracts or collateral agreements shall be permitted, except with the State's express consent. Upon request, contractors must submit to the Office of Purchases a list of all subcontractors to be employed in the performance of any Purchase Order or other contract arising from this Request.

4. RELATIONSHIP OF PARTIES - The contractor or bidder warrants, by submission of an offer or acceptance of a purchase order or other contract, that he is not an employee, agent, or servant of the State, and that he is fully qualified and capable in all material regards to provide the specified goods and services. Nothing herein shall be construed as creating any contractual relationship or obligation between the State and any sub-bidder, subcontractor, supplier, or employee of the contractor or offeror.

5. COSTS OF PREPARATION - All costs associated with the preparation, development, or submission of bids or other offers will be borne by the offeror. The State will not reimburse any offeror for such costs.

6. SPECIFIED QUANTITY REQUIREMENT - Except where expressly specified to the contrary, all solicitations and contracts are predicated on a specified quantity of goods or services, or for a specified level of funding.

- **a.** The State reserves the right to modify the quantity, scope of service, or funding of any contract, with no penalty or charge, by written notice to the contractor, except where alternate terms have been expressly made a part of contract.

- b.** The State shall not accept quantities in excess of the specified quantity except where the item is normally sold by weight (where sold by weight, the State will not accept quantities greater than ten per cent [10%] of the specified quantity), or where the Request or Contract provides for awards for other than exact quantities.

- c.** Purchase Orders or other contracts may be increased in quantity or extended in term without subsequent solicit with the mutual consent of the contractor and the State, where determined by the Purchasing Agent to be in the State's best interest.

7. TERM AND RENEWAL - Where offers have been requested or contracts awarded for terms exceeding periods of twelve (12) months, it is mutually understood and agreed that the State's commitment is limited to a base term not to exceed twelve (12) months, subject to renewal annually at the State's sole option for successive terms as otherwise described, except where expressly specified to the contrary. Purchase orders appearing to commit to obligations of funding or terms of performance may be executed for

administrative convenience, but are otherwise subject to this provision, and in such cases the State's renewal shall be deemed to be automatic, conditional on the continued availability of appropriated funds for the purpose, except as written notice of the State's intent not to renew is served.

8. DELIVERY - Delivery must be made as ordered and in accordance with the proposal. If delivery qualifications do not appear on the bidder's proposal, it will be interpreted to mean that goods are in stock and that shipment will be made within seven (7) calendar days. The decision of the Purchasing Agent, as to reasonable compliance with the delivery terms, shall be final. Burden of proof of delay in receipt of order shall rest with the contractor. No delivery charges shall be added to invoices except when authorized on the Purchase Order.

9. FOREIGN CORPORATIONS - In accordance with Title 7 Chapter 1.1 of the General Laws of Rhode Island, no foreign corporation shall have the right to transact business in this state until it shall have procured a certificate of authority so to do from the Secretary of State.

10. PRICING - All pricing offered or extended to the State is considered to be firm and fixed unless expressly provided for to the contrary. All prices shall be quoted F.O.B. Destination with freight costs included in the unit cost to be paid by the State, except, where the Request or Contract permits, offers reflecting F.O.B. Shipping Point will be considered, and freight costs may then be prepaid and added to the invoice.

11. COLLUSION - Bidder or contractor warrants that he has not, directly or indirectly, entered into any agree participated in any collusion or otherwise taken any action in restraint of full competitive bidding. In special circumstances, an executed affidavit will be required as a part of the bid.

12. PROHIBITION AGAINST CONTINGENT FEES AND GRATUITIES - Bidder or contractor warrants that he has not paid, and agrees not to pay, any bonus, commission, fee, or gratuity to any employee or official of the State for the purpose of obtaining any contract or award issued by the State. Bidder or contractor further warrants that no commission or other payment has been or will be received from or paid to any third party contingent on the award of any contract by the State, except as shall have been expressly communicated to the State Purchasing Agent in writing prior to acceptance of the contract or award in question. Subsequent discovery by the State of non-compliance with these provisions shall constitute sufficient cause for immediate termination of all outstanding contracts and suspension or debarment of the bidder(s) or contractor(s) involved.

13. AWARDS - Awards will be made with reasonable promptness and by written notice to the successful bidder (only); bids are considered to be irrevocable for a period of sixty (60) days following the bid opening unless expressly provided for to the contrary in the Request, and may not be withdrawn during this period without the express permission of the Purchasing Agent.

- **a.** Awards shall be made to the bidder(s) whose offer(s) constitutes the lowest responsive price offer (or lowest responsive price offer on an evaluated basis) for the item(s) in question or for the Request as a whole, at the option of the State. The State reserves the right to determine those offers which are responsive to the Request, or which otherwise serve its best interests.

b. The State reserves the right, before making award, to initiate investigations as to whether or not the materials, equipment, supplies, qualifications or facilities offered by the bidder meet the requirements set forth in the proposal and specification, and are ample and sufficient to insure the proper performance of the contract in the event of award. If upon such examination it is found that the conditions of the proposal are not complied with or that articles or equipment proposed to be furnished do not meet the requirements called for, or that the qualifications or facilities are not satisfactory, the State may reject such a bid. It is distinctly understood, however, that nothing in the foregoing shall mean or imply that it is obligatory upon the State to make any examinations before awarding a contract; and it is further understood that if such examination is made, it in no way relieves the contractor from fulfilling all requirements and conditions of the contract.

c. Qualified or conditional offers which impose limitations of the bidder's liability or modify the requirements of the bid, offers for alternate specifications, or which are made subject to different terms and conditions than those specified by the State may, at the option of the State, be

1. Rejected as being non-responsive, or
2. set aside in favor of the State's terms and conditions (with the consent of the bidder), or
3. accepted, where the State Purchasing Agent determines that such acceptance best serves the interests of the State.

- Acceptance or rejection of alternate or counter-offers by the State shall not constitute a precedent which shall be considered to be binding on successive solicitations or procurements.

d. Bids submitted in pencil, or which do not bear an original signature, in ink, by an owner or authorized agent thereof, will not be accepted.

e. Bids must be extended in the unit of measure specified in the Request. In the event of any discrepancy between unit prices and their extensions, the unit price will govern.

f. The Purchasing Agent reserves the right to determine the responsibility of any bidder for a particular procurement.

g. The Purchasing Agent reserves the right to reject any and all bids in whole or in part, to waive technical defects, irregularities, and omissions, and to give consideration to past performance of the offerors where, in his judgment the best interests of the State will be served by so doing.

h. The Purchasing Agent reserves the right to make awards by items, group of items or on the total low bid for all the items specified as indicated in the detailed specification, unless the bidder specifically indicates otherwise in his bid.

i. Preference may be given to bids on products raised or manufactured in the State, other things being equal.

j. The impact of discounted payment terms shall not be considered in evaluating responses to any Request.

k. The Purchasing Agent reserves the right to act in the State's best interests regarding awards caused by clerical errors by the Office of Purchases.

14. SUSPENSION AND DEBARMENT - The Purchasing Agent may suspend or debar any vendor or potential bidder, for good cause shown:

- **a.** A debarment or suspension against a part of a corporate entity constitutes debarment or suspension of all of its divisions and all other organizational elements, except where the action has been specifically limited in scope and application, and may include all known corporate affiliates of a contractor, when such offense or act occurred in connection with the affiliate's performance of duties for or on behalf of the contractor, or with the knowledge, approval, or acquiescence of the contractor or one or more of its principals or directors (or where the contractor otherwise participated in, knew of, or had reason to know of the acts).

b. The fraudulent, criminal or other serious improper conduct of any officer, director, shareholder, partner, employee, or any other individual associated with a contractor may be imputed to the contractor when the conduct occurred in connection with the individual's performance of duties for or on behalf of the contractor, or with the contractor's knowledge, approval or acquiescence. The contractor's acceptance of benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

c. A vendor or contractor who knowingly engages as a subcontractor for a contract awarded by the State to a vendor or contractor then under a ruling of suspension or debarment by the State shall be subject to disallowance of cost,

annulment or termination of award, issuance of a stop work order, or debarment or suspension, as may be judged to be appropriate by the State Purchasing Agent.

15. PUBLIC RECORDS - Contractors and bidders are advised that all documents, correspondence, and other submissions to the Office of Purchases may be accessible as public records, pursuant to Title 38, Chapter 2 of the General Laws, absent specific notice that portions of such submittals may contain confidential or proprietary information, such that public access to those items should be withheld, and except as otherwise provided for pursuant to RIGL 37-2-18 (a)-(h) "Competitive Sealed Bidding".

16. PRODUCT EVALUATION - In all specifications, the words "or equal" are understood after each article when manufacturer's name or catalog are referenced. If bidding on items other than those specified, the bidder must, in every instance, give the trade designation of the article, manufacturer's name and detailed specifications of the item the bidder proposes to furnish; otherwise, the bid will be construed as submitted on the identical commodity described in the detailed specifications. The Purchasing Agent reserves the right to determine whether or not the item submitted is the approved equal the detailed specifications.

- **a.** Any objections to specifications must be filed by a bidder, in writing, with the Purchasing Agent at least 96 hours before the time of bid opening to enable the Office of Purchases to properly investigate the objections.

- b.** All standards are minimum standards except as otherwise provided for in the Request or Contract.

- c.** Samples must be submitted to the Office of Purchases in accordance with the terms of the proposals and detailed specifications. Samples must be furnished free of charge and must be accompanied by descriptive memorandum invoices indicating whether or not the bidder desires their return and specifying the address to which they are to be returned (at the bidder's risk and expense), provided they have not been used or made useless by tests; and absent instructions, the samples shall be considered to be abandoned. Award samples may be held for comparison with deliveries.

- d.** All samples submitted are subject to test by any laboratory the State Purchasing Agent may designate.

17. PRODUCT ACCEPTANCE - All merchandise offered or otherwise provided shall be new, of prime manufacture, and of first quality unless otherwise specified by the State. The State reserves the right to reject all nonconforming goods, and to cause their return for credit or replacement, at the State's option. Contract deliverables specified for procurements of services shall be construed to be work products, and subject to the provisions of this section.

- **a.** Failure by the State to discover latent defect(s) or concealed damage or non-conformance shall not foreclose the State's right to subsequently reject the goods in question.

- b.** Formal or informal acceptance by the State of non-conforming goods shall not constitute a precedent for successive receipts or procurements.

- c.** Where the contractor fails to promptly cure the defect or replace the goods, the State reserves the right to cancel the Purchase Order, contract with a different contractor, and to invoice the original contractor for any differential in price over the original contract price.

- d.** When materials, equipment or supplies are rejected, the same must be removed by the contractor from the premises of the State Agency within forty-eight (48) hours of notification. Rejected items left longer than two days will be regarded as abandoned and the State shall have the right to dispose of them as its own property.

18. PRODUCT WARRANTIES - All product or service warranties normally offered by the contractor or bidder shall accrue to the State's benefit, in addition to any special requirements which may be imposed by the State. Every unit delivered must be guaranteed against faulty material and workmanship for a period of one year unless otherwise specified, and the State may, in the event of failure, order its replacement, repair, or return for full credit, at its sole option.

19. PAYMENT - Unless otherwise provided for by the Request or Contract, payment shall not be made until delivery has been made, or services performed, in full, and accepted. Payment shall not be due prior to thirty (30) working days following the latest of completion, acceptance, or the rendering of a properly submitted invoice.

- **a.** Payment terms other than the foregoing may be rejected as being non-responsive..

- b.** No partial shipments will be accepted, unless provided for by the Request or Contract.

- c.** Where a question of quality is involved, payment in whole or part against which to charge back any adjustment required, shall be withheld at the direction of the Purchasing Agent. In the event a cash discount is stipulated, the withholding of payments, as herein described, will not deprive the State from taking such discount.

- d.** Payments for used portion of inferior delivery will be made by the State on an adjusted price basis.

- e. Payments on contracts under architectural or engineering supervision must be accompanied by a Certificate of Payment and Statement of Account signed by the architect or engineer and submitted to the Agency involved for approval.

20. THIRD PARTY PAYMENTS - The State recognizes no assigned or collateral rights to any purchase agreement except as may be expressly provided for in the bid or contract documents, and will not accede to any request for third party or joint payment(s), except as provided for in specific orders by a court of competent jurisdiction, or by express written permission of the Purchasing Agent. Where an offer is contingent upon such payment(s), the offeror is obligated to serve affirmative notice in his bid submission.

21. SET-OFF AGAINST PAYMENTS - Payments due the contractor shall be subject to reduction by the State Controller equal to the amount of unpaid and delinquent state taxes (or other just debt owed to the State), except where notice of delinquency has not been served or while the matter is pending in hearing or from any appeal therefrom.

22. CLAIMS - Any claim against a contractor may be deducted by the State from any money due him in the same or other transactions. If no deduction is made in such fashion, the contractor shall pay the State the amount of such claim on demand. Submission of a voucher and payment, thereof, by the State shall not preclude the Purchasing Agent from demanding a price adjustment in any case when the commodity delivered is later found to deviate from the specifications and proposal.

- a. The Purchasing Agent may assess dollar damages against a vendor or contractor determined to be non-performing or otherwise in default of their contractual obligations equal to the cost of remedy incurred by the State, and make payment of such damages a condition for consideration for any subsequent award. Failure by the vendor or contractor to pay such damages shall constitute just cause for disqualification and rejection, suspension, or debarment.

23. STATE CONTROLLER'S CERTIFICATION OF FUNDING - Certification as to the availability of funds to support the procurement for the current fiscal year ending June 30th only. Where delivery or service requirements extend beyond the end of the current fiscal year, such extensions are subject to both the availability of appropriated funds and a determination of continued need.

24. UNUSED BALANCES - Unless otherwise specified, all unused Blanket Order quantities and/or unexpended funds shall be automatically canceled on the expiration of the specified term. Similarly, for orders encompassing more than one State fiscal year, unexpended balances of funding allotted for an individual fiscal year may be liquidated at the close of that fiscal year, at the State's sole option.

25. MINORITY BUSINESS ENTERPRISES - Pursuant to the provisions of Title 37 Chapter 14.1 of the General Laws, the State reserves the right to apply additional consideration to offers, and to direct awards to bidders other than the responsive bid representing the lowest price where:

- **a.** the offer is fully responsive to the terms and conditions of the Request, and
- b.** the price offer is determined to be within a competitive range (not to exceed 5% higher than the lowest responsive price offer) for the product or service, and
- c.** the firm making the offer has been certified by the R.I. Department of Economic Development to be a small business concern meeting the criteria established to be considered a Minority Business Enterprise. Ten per cent [10%] of the dollar value of the work performed against contracts for construction exceeding \$5,000 shall be performed by Minority Business Enterprises where it has been determined that subcontract opportunities exist, and where certified Minority Business Enterprises are available. A contractor may count towards its MBE, DBE, or WBE goals 60% of its expenditures for materials and supplies required under a contract and obtained from an MBE, DBE, or WBE regular dealer, and 100% of such expenditures when obtained from an MBE, DBE, or WBE manufacturer. Awards of this type shall be subject to approval, by the Director of Administration, of a Subcontracting Plan submitted by the bidder receiving the award.

26. PREVAILING WAGE REQUIREMENT - In accordance with Title 37 Chapter 13 of the General Laws of Rhode Island, payment of the general prevailing rate of per diem wages and the general prevailing rate for regular, overtime and other working conditions existing in the locality for each craft, mechanic, teamster, or type of workman needed to execute this work is a requirement for both contractors and subcontractors for all public works.

27. EQUAL OPPORTUNITY COMPLIANCE, HANDICAPPED ACCESS AND AFFIRMATIVE ACTION - Contractors of the State are required to demonstrate the same commitment to equal opportunity as prevails under federal contracts controlled by Federal Executive Orders 11246, 11625, 11375 and 11830, and Title 28 Chapter 5.1 of the General Laws of Rhode Island. Affirmative action plans shall be submitted by the contractor for review by the State Equal Opportunity Office. A contractor's failure to abide by the rules, regulations, contract terms and compliance reporting provisions as established shall be grounds for forfeiture and penalties as shall be established, including but not limited to suspension.

28. DRUG-FREE WORKPLACE REQUIREMENT - In accordance with Executive Order No. 91-14, Contractors who do business with the State and their employees shall abide by the State's drug-free workplace policy and the contractor shall so attest by signing a certificate of compliance.

29. GOODS PRODUCED IN THE REPUBLIC OF SOUTH AFRICA – In accordance with Chapters 35-10-12 and 37-2-57 of the General Laws, goods which are known to be wholly produced in the Republic of South Africa may not be accepted for any procurement the State of Rhode Island; the offeror attests by his submission of a bid

or offer, or acceptance of a purchase order or other contract, that these prohibitions do not apply to material or goods which form the basis for his offer or contract.

30. TAXES - The State of Rhode Island is exempt from payment of excise, transportation and sales tax imposed by the Federal or State Government. These taxes should not be included in the proposal price. Exemption Certificates will be furnished upon request.

31. INSURANCE - All construction contractors, independent tradesmen, or firms providing any type of maintenance, repair, or other type of service to be performed on state premises, buildings, or grounds are required to purchase and maintain coverage with a company or companies licensed to do business in the state as follows:

- **a. Comprehensive General Liability Insurance** -
 - 1) Bodily Injury \$1,000,000 each occurrence
 - \$1,000,000 annual aggregate
 - 2) Property Damage \$500,000 each occurrence
- \$500,000 annual aggregate
 - Independent Contractors
 - Contractual - including construction hold harmless and other types of contracts or agreements in effect for insured operations
 - Completed Operations
 - Personal Injury (with employee exclusion deleted)
- **b. Automobile Liability Insurance** -
- Combined Single Limit \$1,000,000 each occurrence
 - Bodily Injury
 - Property Damage, and in addition non-owned and/or hired vehicles and equipment
- **c. Workers' Compensation Insurance** -
- Coverage B \$100,000

The Purchasing Agent reserves the right to consider and accept alternate forms and plans of insurance or to require additional or more extensive coverage for any individual requirement. Successful bidders shall provide certificates of coverage, reflecting the State of Rhode Island as an additional insured, to the Office of Purchases, forty-eight (48) hours prior to the commencement of work, as a condition of award. Failure to comply with this provision shall result in rejection of the offeror's bid.

32. BID SURETY - When requested, a bidder must furnish a Bid Bond or Certified Check for 5% of his bid, or for the stated amount shown in the solicitation. Bid Bonds must be executed by a reliable Surety Company authorized to do business in the State of Rhode Island. Failure to provide Bid Surety with bid may be cause for rejection of bid. The Bid Surety of any three bidders in contention will be held until an award has been made according to the specifications of each proposal. All others will be returned by mail within 48 hours following the bid opening. Upon award of a contract, the remaining sureties will be returned by mail unless instructed to do otherwise.

33. PERFORMANCE AND LABOR AND PAYMENT BONDS – A performance bond and labor and payment bond of up to 100% of an award may be required by the Purchasing Agent. Bonds must meet the following requirements:

- **a.** Corporation: The Bond must be signed by an official of the corporation above his official title and the corporate seal must be affixed over his signature.
- b.** Firm or Partnership: The Bond must be signed by all of the partners and must indicate that they are "Doing Business As (name of firm)."
- c.** Individual: The Bond must be signed by the individual owning the business and indicate "Owner."
- d.** The Surety Company executing the Bond must be licensed to do business in the State of Rhode Island or Bond must be countersigned by a company so licensed.
- e.** The Bond must be signed by an official of the Surety Company and the corporate seal must be affixed over his signature.
- f.** Signatures of two witnesses for both the principal and the Surety must appear on the Bond.
- g.** A Power of Attorney for the official signing of the Bond for the Surety Company must be submitted with the Bond.

34. DEFAULT AND CANCELLATION - A contract may be canceled or annulled at the contractor's expense upon non-performance of contract, or breach, by the contractor, of any of his obligations. Failure of contractor to cure such non-performance or breach within ten working days after the receipt of notice, shall be sufficient cause for the cancellation of the contract in question, the cancellation of all outstanding contracts or sub-contracts held by the contractor, and the suspension or debarment of the contractor from future procurements.

- **a.** Failure of a contractor to deliver or perform within the time specified, or within reasonable time as interpreted by the Purchasing Agent or failure to make replacement of rejected articles, when so requested, immediately or as directed by the Purchasing Agent, will cause the Purchasing Agent to purchase in the open market to replace those rejected or not delivered. The Purchasing Agent reserves the right to authorize immediate purchase in the open market against rejections on any contract when necessary. On all such purchases, the contractor, or his surety, agrees to promptly reimburse the State for excess costs occasioned by such default. Should the cost be less, the contractor shall have no claim to the difference.
- b.** A contractor who fails to commence within the time specified or complete an award made for repairs, alterations, construction, or any other service will be considered in default of contract. The Purchasing Agent may contract for completion of the work with another contractor and seek recourse from the defaulting contractor or his surety.
- c.** If contractor consistently fails to deliver quantities or otherwise perform as specified, the Purchasing Agent reserves the right to cancel the contract and purchase the balance in the open market at the contractor's expense.

35. INDEMNITY - The contractor guarantees:

- a. To save the State, its agents and employees, harmless from any liability imposed upon the State arising from the negligence, either active or passive, of the contractor, as well as for the use of any copyrighted or non-copyrighted composition, secret process, patented or unpatented invention, article or appliance furnished or used in the performance of the contract of which the contractor is not the patentee, assignee or licensee.
- b. To pay for all permits, licenses and fees and give all notices and comply with all laws, ordinances, rules and regulations of the city or town in which the installation is to be made and of the State of Rhode Island.
- c. That the equipment offered is standard new equipment, latest model of regular stock product with all parts regularly used with the type of equipment offered; also, that no attachment or part has been substituted or applied contrary to manufacturer's recommendations and standard practice.

36. CONTRACTOR'S OBLIGATIONS - In addition to the specific requirements of the contract, construction and building repair contractors bear the following standard responsibilities:

- a. To furnish adequate protection from damage for all work and to repair damages of any kind, for which he or his workmen are responsible, to the building or equipment, to his own work, or to the work of other contractors;
- b. To clear and remove all debris and rubbish resulting from his work from time to time, as directed or required, a completion of the work leave the premises in a neat unobstructed condition, broom clean, and in satisfactory order and repair;
- c. To store equipment, supplies, and material at the site only upon approval by the State, and at his own risk;
- d. To perform all work so as to cause the least inconvenience to the State, and with proper consideration for the rights of other contractors and workmen;
- e. To acquaint themselves with conditions to be found at the site, and to assume responsibility for the appropriate dispatching of equipment and supervision of his employees during the conduct of the work; and
- f. To ensure that his employees are instructed with respect to special regulations, policies, and procedures in effect for any State facility or site, and that they comply with such rules.

37. FORCE MAJEURE - All orders shall be filled by the contractor with reasonable promptness, but the contractor shall not be held responsible for any losses resulting if the fulfillment of the terms of the contract shall be delayed or prevented by wars, acts of public enemies, strikes, fires, floods, acts of God, or for any other acts not within the control of the contractor and which by the exercise of reasonable diligence, the contractor is unable to prevent.

38. New Employee Verification Requirement through E-Verify – Pursuant to Executive Order 08-01 and Procurement Regulation 1.12, all persons and businesses, including grantees, contractors and their subcontractors and vendors doing business with the Executive Branch of the State of Rhode Island are required to register with and utilize the services of the E-Verify program, or any successor thereto, to ensure compliance with

federal and state law, and in accordance with the provisions of section 1.12 of the Purchasing Regulations. This requirement represents a condition of contract with the State. Failure to comply may result in sanctions with the Procurement Regulations and in accordance with Section 14. Suspension and Debarment and/or Section 34. Default and Cancellation of the general terms and conditions.

The within amended Rules and Regulations were adopted by me as Director of the Department of Administration on the _____ day of December 2010.

Rosemary Booth-Gallogly
Director, Department of Administration