

THE
UNIVERSITY
OF RHODE ISLAND

**University of Rhode Island
Board of Trustees
Procurement Regulations**

Revised February 16, 2024

PURSUANT TO RIGL § 16-32-2(e)

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PART 1 GENERAL PROVISIONS

1.1 PURPOSES AND POLICIES

- A. The purpose of these regulations is to implement the applicable requirements of the State Purchases Act, RIGL Chapter 37-2 applicable to the University of Rhode Island, when acting as a “Public Agency” as defined in the Act and provide policies and procedures thereunder, while also seeking to simply, clarify, and continuously modernize the Procurement system to provide efficiency and economy in the purchase of Supplies, Services, and Construction; and maintain and safeguard quality, integrity, fairness, responsibility, accountability, and equity in accordance with the highest ethical standards. Capitalized terms used and not otherwise defined herein have the meaning assigned to them in Part 12 hereof. Where used herein the word “may” is intended to be permissive.
- B. Contract awards shall be made to the most Responsive and Responsible Proposer, taking into consideration the reliability of the Proposer, the qualities of the materials, equipment or Supplies to be furnished, their conformity to Specifications, the suitability to the purpose for which acquired, terms of delivery, price, and the best interests of the University.
- C. The University Chief Purchasing Officer shall determine courses of action when the rules outlined herein require interpretation or when Procurement disputes arise, or conflicts occur.
- D. University officers shall be responsible for compliance with the purchasing-related statutes enacted by the General Assembly and with all related policies, rules, regulations, procedures, and codes promulgated by the Board and the State Purchases Department where applicable.

1.2 AUTHORITY

- A. The Board shall have and may exercise all general powers set forth under § 16-32-2(e) necessary or convenient to affect its purposes in complying with the provisions of the State Purchases Act where applicable.
 - a. RIGL § 37-2-7(16) for restricted, sponsored and auxiliary funds.
 - b. RIGL § 37-2-18.2 for Research
 - c. RIGL § 16-32-2(e)1 for Small Purchases
- B. Nothing in these regulations shall prevent the University from complying with the terms and conditions of any grant, gift, bequest, or cooperative agreement.

1.3 DOCUMENTATION AND REPORTS

- A. Documentation.
 - 1. The University and its Purchasing Department shall maintain adequate written records in Contract Files to document Procurement activities, reason for selection of a Vendor and justification of price.
 - 2. The Contract File of each Procurement shall include adequate justification of Source Selection and pricing.
 - 3. The Purchasing Department shall require an audit trail for every purchase. Such documentation shall be recorded and maintained by the University for the purpose of:
 - a. background information to assure that informed decisions are made at each step of the Procurement process;
 - b. rationale for the action taken;
 - c. providing information for reviews and audits; and
 - d. to furnish facts in the event of litigation.

- B. Purchasing documentation shall be signed, initialed (as appropriate) or electronically approved by duly authorized officials. Such signature or initialing shall constitute certification by the official that the action documented meets the administrative requirements for which they are responsible.
 - 1. Authority to act with regard to Procurement on behalf of the University will be determined through the signatory authority approval process of the University.
 - 2. Purchase Orders shall be authorized by the University Chief Purchasing Officer or the University Purchasing Agent, or their delegates.
- C. Documentation records may be in the form of copies, electronic files or other means or media.
- D. Audit of Vendors' records for Procurements
 - 1. The Board may at any time until the third anniversary of final payment of any Contract cause to be audited the books and records of any Vendor whose Contract with the University included submission of cost or pricing Data in order to determine the final price and where the Contract value exceeds Competitive fifty thousand dollars (\$50,000) and for any Change Order exceeding twenty-five thousand dollars (\$25,000). The right to audit hereunder shall only extend to those books and records reasonably connected with cost or pricing Data submitted in accordance with RIGL § 37-2-28.
 - 2. Books and records shall be maintained by the Vendor for a period of three (3) years from the date of final payment under the prime Contract and by any Subcontractor for a period of three (3) years from the date of final payment under the subcontract.
- E. In the event the Procurement was made via sealed public bid, an Abstract of each Bid together with the name of the Bidder shall be recorded and made available for public inspection. Records exempted from public disclosure by APRA need not be publicly disclosed, except as otherwise authorized. The University Purchasing Agent shall ensure that information not subject to public disclosure or otherwise authorized is not divulged. No original documentation shall be removed from the premises of the Purchasing Department unless otherwise authorized by the University Chief Purchasing Officer.

1.4 BREACH OF CONTRACT DISPUTES

- A. A Contract Dispute occurs when a Vendor and the University are unable to arrive at a mutual interpretation of the requirements, limitations, or compensation for the performance of a Contract.
- B. The University Purchasing Agent is authorized to resolve Contract Disputes upon the University's indication of impasse. A request for resolution in writing from either party shall be submitted to the University Purchasing Agent, which request shall provide:
 - 1. a description of the dispute or problem, including all appropriate citations and references from the Contract in question,
 - 2. clear statement by the party requesting the decision in favor of their interpretation of the Contract, and
 - 3. a proposed course of action to resolve the dispute.
- C. The other contracting party shall respond to the request within five (5) business days.
- D. Within fourteen (14) calendar days, the University Purchasing Agent shall, in writing:
 - 1. Determine whether the interpretation provided is appropriate;
 - 2. Determine whether the proposed solution is feasible; or
 - 3. Propose another solution.

- E. The University Purchasing Agent may assess dollar damages against Vendors determined to be non-performing or otherwise in default of their contractual obligations equal to the cost of remedy incurred by the University and make payment of such damages a condition for consideration of any subsequent award. Failure by the Vendor to pay such damages shall constitute just cause for disqualification and rejection, suspension, or Debarment under Sections 4.5 or 11.1 of these regulations.
- F. If the Vendor is not satisfied with the University Purchasing Agent's determination of the resolution of a Contract Dispute or assessment of damages the Vendor may follow the dispute resolution procedures set forth in the relevant Contract. As required by RIGL § 37-2-48, any Procurement disputes relating to Public Works Contracts shall comply with any and all applicable arbitration related requirements set forth in The Rhode Island Public Works Arbitration Act, codified at RIGL Chapter 37-16.

1.5 RESOLUTION OF PROTESTS

- A. Presumption of Correct Decision. The decision of any official, agent, or other person appointed by the University Chief Purchasing Officer to resolve any controversy arising under, or in connection with, the Solicitation or award of a Contract, or under, or in connection with, the performance of obligations of either party under an awarded 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 University; 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.
- B. Authority to resolve Protests regarding the award of a Contract:
 - 1. The University shall have authority to resolve Protests and other controversies of actual or prospective Proposers in connection with the Solicitation or selection for award of a Contract.
 - 2. Any actual or prospective Bidder, Offeror, or Vendor who is aggrieved in connection with the Solicitation or selection for award of a Contract may file a Protest with the University Chief Purchasing Officer.
 - 3. The protester's notice to the University Chief Purchasing Officer shall clearly state that it is a Protest, and at a minimum shall include the following information:
 - a. the name, street address, e-mail address, telephone and facsimile numbers of the protester (or its representative, if any);
 - b. original signature of the protestor or its representative;
 - c. identity of the Contract, Solicitation or award at issue;
 - d. a detailed statement of facts and circumstances that gave rise to the Protest, together with copies of any available relevant documents;
 - e. all information establishing that the protestor is an aggrieved party for the purpose of filing a Protest;
 - f. citations to any relevant statutes or regulations; and,
 - g. a brief statement as to the form of relief requested; and,
 - h. a statement of whether the protestor has submitted a request for the disclosure of public records that are pertinent to the Protest, and if such a request has been submitted, a copy thereof. A Protest that fails to contain the required information may be denied.

C. Timeliness of a Protest.

1. A Protest must be filed in accordance with this Section 1.5 "Resolution of Protests" and within the following time limits:
 - a. +Protests regarding the form or content of Solicitation documents must be received by the University Chief Purchasing Officer not later than fourteen (14) calendar days before the date set in the Solicitation for receipt of bids. If grounds for a Protest did not exist at the initial Solicitation but arose as the result of an amendment to the Solicitation, then the Protest must be received by the University Chief Purchasing Officer no later than fourteen (14) calendar days before the next closing time established for receipt of bids. If the date set in the Solicitation for receipt of bids is less than fourteen (14) calendar days from issuance, a Protest concerning the form or content of the Solicitation documents must be received by the University Chief Purchasing Officer not less than forty-eight (48) hours before the date set for receipt of bids.
 - b. In all other cases, Protests must be received by the University Chief Purchasing Officer not later than fourteen (14) calendar days after the protester knew or should have known, whichever is earlier, the facts giving rise to a Protest.
 - c. For Protests regarding the form or content of the Solicitation documents, the facts giving rise to the Protest shall be presumed to be known to the protester on the date the Solicitation, or an amendment thereto, was posted to the Purchasing Department's Procurement website. For Protests arising from Bid Opening procedures and or award of the Contract, the facts giving rise to the Protest shall be presumed to be known to the protester on either the date of Bid Opening or the date the Contract award was posted to the Purchasing Department's' Procurement website.
 - d. New factual allegations made after the initial Protest without a new and separate showing of timeliness shall be deemed to be untimely.
 - e. The fourteen (14) day period in which to file a Protest does not include the day on which the alleged basis for Protest arises. If the last calendar day within which a Protest is to be filed falls on a Saturday, Sunday, state holiday or a day when the University or Purchasing Department is closed, the period in which to file a Protest is extended to the next day not a Saturday, Sunday, state holiday or when the University is not closed.
2. Protests of different Contract Solicitations or awards must be filed separately.
3. Upon receipt of a Protest timely filed neither the contracting department, nor the Purchasing Department shall proceed further with the Solicitation or award of a Contract, until the University Chief Purchasing Officer issues a written determination that authorizes the contracting department or the Purchasing Department to proceed with the Solicitation or award as being necessary to protect a substantial interest of the University.
4. The University Chief Purchasing Officer shall issue a written determination in response to a Protest within thirty (30) calendar days of the receipt thereof. The University Chief Purchasing Officer reserves the right to waive or extend the time requirements for such written determination when, in their sole judgment, circumstances so warrant.

5. The University Chief Purchasing Officer's written determination shall state whether the Protest is granted or denied, the reasons therefor and any action(s) to be taken in response thereto. A copy of the University Chief Purchasing Officer's written determination shall be mailed to the protestor.
6. In the event that the protestor requests access to documents relating to the Solicitation or award pursuant to APRA in conjunction with the Protest, then the University Chief Purchasing Officer may defer issuing their written determination until thirty (30) days after the response(s) to the APRA request has been issued.

1.6 ADMINISTRATIVE RESPONSIBILITY FOR CONTRACTS AND OTHER EXPENDITURES THAT ARE NOT PROCUREMENTS

- A. Contracts for Concessions are not Procurements for the purposes of these regulations.
- B. Contracts that are not Procurement Contracts shall be, to the extent practicable, subject to the same open, competitive procedures which apply to Procurements
- C. The University Chief Purchasing Officer may delegate authority to enter into non-Procurement Contracts.

1.7 INTERNET NEUTRALITY PRINCIPLES

University Contracts for fixed or mobile broadband internet access Services shall be awarded only to Services providers that adhere to the internet neutrality principles set forth in the Executive Order 18-02 by the Governor of Rhode Island.

PART 2 AUTHORITY AND RESPONSIBILITIES

2.1 AUTHORITY

The Board, in accordance with RIGL Chapter 37-2, has Public Agency Procurement authority for purchases which are funded by Restricted, Sponsored, or Auxiliary Funds, as provided for in RIGL § 37-2-7(16) and § 37-2-18.2 and for Small Purchases as provided for in RIGL §16-32-2(e)1

2.2 RESPONSIBILITIES

- A. The University Chief Purchasing Officer, on behalf of the Board, shall be responsible for:
 1. Administering Procurement regulations established by the Board in accordance with RIGL § 16-32-2(e), § 37-2-7(16) and § 37-2-18.2
 2. Evaluating and auditing the University's purchasing activity to ensure that the University is attaining the most advantageous Procurements possible and to ensure compliance with applicable rules and regulations;
 3. Determining courses of action when the policies and procedures outlined herein require interpretation and/or when situations arise where conflicts exist or occur.
 4. Promoting standardization of requirements and processes, including standardization of specifications, to increase opportunities for the economic advantages.
 5. Implementation of administrative control systems with respect to all Procurement actions, including, but not limited to, Standards of quality, verification of Contract deliverables and Vendor responsibilities, maintenance of records, and all other activities relating to Contract administration.
- B. The University Purchasing Agent shall be responsible for:
 1. assuring adherence to applicable Procurement laws, regulations, rules, codes and procedures;

2. ensuring that the use of delegated State purchasing authority available to the University is exercised properly;
 3. supervising Procurement activity within the Purchasing Department;
 4. assuring that Delegated Purchasing Authority within URI is exercised properly;
 5. establishing and maintaining good relations with Vendors and potential Vendors without conflicts of interest;
 6. assuring that a pool of responsible, qualified Vendors is developed, maintained and utilized;
 7. assuring that Procurements are made in a context which supports to the greatest extent possible competitive purchases, opportunities for minority and women owned/operated businesses, and opportunities for Rhode Island enterprises; and
 8. assuring compliance with appropriate applicable competitive bidding procedures throughout the Procurement process.
- C. Relationship with the State Division of Purchases.
1. The University shall maintain a close and cooperative relationship with the State Division of Purchases.

2.3 VIOLATIONS OF PURCHASING LAWS AND REGULATIONS

- A. Deliberate disregard for regulations, policies and procedures shall be subject to disciplinary action, including dismissal of Employees and Debarment or suspension of Vendors doing business with the University.
- B. Violations of the Supplemental Code of Procurement Ethics set forth in Section 3.1 of these regulations shall be subject to appropriate sanctions including censure, dismissal, Suspension, and Debarment.
- C. The University Chief Purchasing Officer shall have the power of Suspension or Debarment of Vendors, Subcontractors, or Bidders in accordance with the requirements set forth in Section 4.5 and 11.1 of these regulations.
- D. Suspected violations of state conflict of interest laws and applicable regulations regarding Procurement or the Supplemental Code of Procurement Ethics shall be reported in confidence, by any knowledgeable party, including University Employees and Vendors, to the University Chief Purchasing Officer and in accordance with the rules and regulations established by the State Ethics Commission.
- E. Violations of applicable purchasing laws, regulations, policies, and procedures shall be reported, by any knowledgeable party, including the Board, University Employees and Vendors, to the University Purchasing Agent and the University Chief Purchasing Officer who shall have authority to apply sanctions as provided in Sections 4.4, 4.5 and 11.1 of these regulations.
- F. Suspected violations of State conflict of interest laws regarding Procurement shall be reported, by any knowledgeable party, including members of the Board and University Employees and Vendors, to the University Chief Purchasing Officer. Violations of the Act or State conflict of interest laws shall be reported to the Board and to the State Attorney General.
- G. When for any reason collusion is suspected among any Proposers, a written notice of the facts giving rise to such suspicion shall be transmitted to the Board and the State Attorney General.
- H. Suspected falsification of certifications shall be referred to the State Attorney General for investigation and prosecution.

PART 3 CODE OF ETHICS AND PROFESSIONAL BEHAVIOR

3.1 CODE OF ETHICS AND PROFESSIONAL BEHAVIOR

- A. All University Employees are subject to, and shall comply with, the provisions of RIGL Chapter 36-14 and all regulations promulgated by the Rhode Island Ethics Commission, which are known and referred to as the Rhode Island Code of Ethics, as well as the University's "Ethics and Conflict of Interest Policy", and the additional provisions of this section.
- B. The following "Supplemental Code of Procurement Ethics" shall also apply to all Procurement by the University under these Regulations:
 1. The following supplemental ethical standards shall be applicable to all University Employees involved in the Procurement process:
 - a. To consider, first, the interests of the University in all transactions
 - b. To support and carry out Board, University and State policies;
 - c. To buy without prejudice;
 - d. To avoid any conflict of interest with respect to Procurement, or the appearance thereof;
 - e. To obtain the maximum ultimate value for each dollar of expenditure;
 - f. To subscribe to and work for honesty and truth in buying and selling, and to denounce all forms and manifestations of commercial bribery; and
 - g. To respect obligations and to require that obligations to the University and the State be respected, consistent with good business practice.
 2. Relations With Vendors. A primary responsibility of Purchasing Department personnel shall be to maintain good relations with Vendors and potential Vendors. Relationships shall be maintained in a manner which assures that no conflict-of-interest situations arise.
 - a. All potential Vendors shall be afforded the courtesy of a fair opportunity to present their capabilities and products.
 - b. Reasonable effort shall be made to provide fair bidding opportunities to all qualified and interested Vendors.
 - c. University Employees shall observe a commitment to maintain the confidentiality of information submitted by Vendors and potential Vendors.
 - i. Vendor proposals shall be treated in confidence with regard to technical approach and terms and conditions.
 - ii. Distribution of information contained in Vendor proposals shall be limited to those having a "need to know" as determined by the University Purchasing Agent.
 - iii. Under no circumstances shall Confidential Information be made available to other Vendors.
 - d. Personnel are prohibited from engaging in any conduct which may tend to cause any existing or prospective Vendor of Supplies or Services to believe that their relationship with the University will be affected by their purchasing or failing to purchase Supplies or Services from any representative of the University.
 - e. Under no circumstances may a potential or established University Vendor provide to a purchasing official or agent, nor may a purchasing official or agent of the University accept from a potential or established University

- Vendor, any Supplies or Services for personal use, regardless of monetary value, for less than payment at fair market value.
- f. In accordance with RIGL Chapter 36-14 and the RI State Ethics Commission regulations Title 520 of the State Code of Regulations, University Employees are prohibited from accepting gifts or gratuities for themselves or their families (spouses, parents, children, sisters, brothers, in-laws, etc.) from Vendors, Subcontractors, Consultants or other parties now furnishing or desiring in future to furnish Supplies or Services to the University. For purposes of this section gifts or gratuities include, but are not limited to money, merchandise, gift certificates, trips (individually or in groups), cocktail parties, meals, evening entertainment, sporting events, etc.
 - g. Social interaction between personnel involved in the Procurement process and any present or prospective Vendors or Subcontractors and their representatives creating the impression of favoritism shall be avoided. However, this regulation does not prohibit social interactions between University Employees and representatives of Vendors 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 University is sought by the Employee. For example, the Vendor's representative may be an acquaintance, neighbor, relative or former University employee. The responsibility rests on the individual Employee to regulate their own actions and to seek advice from the University Chief Purchasing Officer or the Ethics Commission if concerned about an apparent conflict of interest.
3. It shall be the obligation of all University Employees to avoid or manage conflicts of interest with respect to Procurement by reporting Promptly to the University Purchasing Agent and/or the University Chief Purchasing Officer all instances where a conflict exists or is suspected to exist.
 - a. Conditions under which a conflict of interest may be held to exist include, but are not limited to the following:
 - i. Where a Procurement official with a principal responsibility for a category of Supplies or Services
 - a) receives personal enrichment as a result of an award; or
 - b) holds a financial interest in a firm offering such Supplies or Services; or
 - c) receives indirect or subsequent income, by way of employment, retainer, consultancy, or other remuneration from a firm offering such Supplies or Services; or
 - d) has an immediate family member or blood relative holding an equity interest, or a management or directorial position in a firm offering such Supplies or Services; or
 - ii. Where any University 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, or
 - iii. Under any circumstances described in Code of Ethics RIGL Chapter 36-14.
 4. The University Chief Purchasing Officer or their Designee 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.

- a. Resolution of conflict may include, but shall not be limited to, the following measures: reassignment of the Procurement official or other University Employee involved; termination of employment of the Procurement official or other University Employee involved; and Debarment of any and all Vendors who may be involved.
5. Membership and active participation in the meetings and activities of local purchasing organizations are encouraged.
6. Samples provided by Vendors shall be deemed to be the property of the University which the University Chief Purchasing Officer may determine appropriate for donation to charitable organizations or needy individuals.
7. Purchasing personnel shall not make purchases for personal use in the name of the University or through the use of any Procurement forms.

PART 4 VENDOR QUALIFICATION, PREQUALIFICATION, AND SOLICITATION REQUIREMENTS

4.1 RESPONSIBILITIES OF BIDDERS AND OFFERORS

- A. 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 may be made. 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
 1. "Prompt" means five (5) working days unless otherwise specified by the University Purchasing Agent.
 2. Information furnished by a Bidder or Offeror that is identified as proprietary or confidential, pursuant to this Section may not be disclosed outside of the Purchasing Department without prior written consent of the Bidder or Offeror.
 3. The University Purchasing Agent may utilize factors such as financial capability, reputation, management, etc. to evaluate the responsibility and qualifications of potential Vendors in order to develop a list of prospective Bidders qualified to be sent Invitation for particular Bids.
 4. Ability to meet Performance Bond requirements set forth for Public Works Contracts not exceeding one hundred fifty thousand dollars (\$150,000) as set forth in RIGL Chapter 37-12, shall be a valid criterion for determination of responsibility, provided however that the University, upon approval of the University Chief Purchasing Officer, may waive such requirement for good cause.
 5. The University Purchasing Agent may instruct interested Vendors not currently on any established Bidders List to submit completed Bidder registration forms to the University and the State Division of Purchases for consideration by the respective purchasing agents.
 6. As a prerequisite condition for Contract award, the University 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 MBE, WBE or VBE.

4.2 BIDDERS LISTS

- A. The University shall maintain a Bidders List consisting of the names and addresses of Vendors of various Supplies and Services from which bids, proposals, and quotations can be solicited.
- B. Bidders Lists are formatted in a manner which identifies those Vendors certified as MBE, WBE or VBE.
- C. The University may use prequalified Vendors by the State under the Act and the Department of Administration, Division of Purchases Procurement Regulations, Part 4.
- D. The University may elect to prequalify Vendors for individual projects that are deemed to be complex or critical in nature. The criteria for prequalification will be described as part of the Solicitation.
- E. The University may develop and maintain its own Bidder Lists in addition to the Bidders Lists maintained by the State purchasing agent.

4.3 PREQUALIFICATION OF PUBLIC WORKS VENDORS

- A. Vendors may be pre-qualified by the University prior to bidding on Public Works Projects with an estimated value of over one million dollars (\$1,000,000) or as deemed necessary by the University Purchasing Agent for a particular project.
 - 1. If the University Purchasing Agent determines that Competition will be limited due to the unique nature of a project, the University Purchasing Agent may:
 - a. Waive the prequalification requirement for a Public Works Project valued over one million dollars (\$1,000,000);
 - b. Require prequalification for projects less than one million dollars (\$1,000,000) when so specified in the Solicitation;
 - c. Specify in the Solicitation that Vendors who are not prequalified may bid on a Public Works Project, but the Vendor must be prequalified prior to the issuance of the award.
- B. The University Purchasing Agent may restrict the prequalification of a Vendor to a certain category of work based on information provided pursuant to § 4.3(D)(3) of these regulations or limit the size of Purchase Order based on information provided pursuant to § 4.3(D)(4) of these regulations, or both.
 - 1. Categories of Work. The University Purchasing Agent may limit a Vendor's prequalification to one of the following categories of work:
 - a. Horizontal Construction
 - b. Road or parking lot Construction and rehabilitation. Prequalification for Vendors submitting bids on road work for the University shall be prequalified pursuant to RIGL § 37-2- 26.
 - c. Vertical Construction (Design-Bid-Build): Vendor acting as Prime Contractor for the Construction of buildings (including new Construction and/or renovations).
 - c. Exterior building envelope projects including roofing, window installation/repair, exterior wall work, masonry, or any combination thereof.
 - d. HVAC/Plumbing: Projects where the work primarily encompasses the disciplines of plumbing, fire protection, heating, ventilating and air conditioning (HVAC), and building control systems.
 - e. Electrical: Projects which have a primary focus on electrical and low voltage systems including but not limited to electrical distribution, emergency power generation, lighting, low voltage distribution, and devices.
 - f. Site Work & Utility Work: Clearing, grubbing, removal of tree stumps, shrubs, site preparation, mass earth excavation, silt fence,

erosion/sedimentation control, gabions, erosion control, rock crushing/recycling, screening topsoil and other aggregates. Sewer and water mains, pipe jacking, storm drainage, sewer rehabilitation, sewage pumping stations.

- g. Painting (Interior or exterior).
 - h. Landscaping/Environmental Improvements: Landscaping roadside, including seeding, hydro seeding, mulching, sodding, and ground cover planting, topsoil application, and other Construction related thereto. Site Landscaping including topsoil application, including planting of trees, shrubs, and all ground covers on various types of sites, selective tree removal, trimming, seeding, insecticide application, weed control, liming, soil binder & soil supplements, irrigation, Wetland mitigation, creation, plantings, and removal of invasive species.
 - i. Environmental: Environmental/hazardous waste removal, stockpile, sewage pumping stations. The containment, cleanup, removal and disposal of debris, hazardous, controlled/toxic materials, including water.
 - j. Marine repairs, Construction, or salvaging.
 - k. Construction Manager at Risk (CMAR) as defined in § 8.10(E) of these Regulations and RIGL §§ 37-2-7, 37-2-27.2, 37-2-27.3, and 37-2-27.4.
 - l. Any other category of work that the University Purchasing Agent shall determine during their prequalification determination that the Vendor is qualified to perform.
- 2. Vendors bidding on Construction Contract management may be prequalified in accordance with this Part and shall also be prequalified for specific Solicitations in accordance with RIGL § 37-2-27.
 - 3. Size of Purchase Order. The University Purchasing Agent may also limit a Vendor's prequalification to a Purchase Order value range determined to be suitable based on the information submitted by the Vendor.
- C. Prequalification Submission
- 1. A Vendor who wishes to be prequalified must submit a prequalification packet at least once every two years, providing all information in support of evaluation categories listed in this § 4.3.
 - 2. All Vendors are advised to review the provisions related to confidentiality within the University's General Conditions of Purchase and to properly identify privileged or confidential documents as outlined therein.
 - 3. If there is a substantial change in the information provided in a Vendor's prequalification packet within the two-year prequalification period, the Vendor has an affirmative duty to supplement the information provided to the Purchasing Department so that the Purchasing Department may determine whether the Vendor may remain at prequalified status.
 - a. For the purposes of this Part, "substantial change" shall mean any change which a reasonable Person would believe would affect the classifications or amount of work for which the Vendor has been prequalified by the Purchasing Department to perform.
 - b. Failure to supply material information will result in revocation of pre-qualification pursuant to Section 4.4 of these regulations and Vendor Suspension for not less than one (1) year.
- D. Evaluation Categories
- 1. Management Experience

- a. Business Owners: The name, title, years with the vendor of the owner(s) of the business.
 - b. Management Personnel: The names, title, education and experience, years with Vendor, and list of projects completed by all management personnel. Vendors shall have staff that are qualified and competent in the area of estimating, scheduling, project management, field supervision, and safety.
 - c. Public Works Project Experience
 - 1. Years of experience performing Public Works Projects (including municipal, state, and federal Public Works Projects). At least three (3) years of Public Works Project experience is required for prequalification. Work as a Subcontractor on Public Works Projects may be considered.
 - 2. A list of all Public Works Projects performed in the past five (5) years, including the project name, brief description, and owner contact person.
 - 3. A list of the three (3) largest Public Works Projects performed in the last five (5) years including: the project name, description, original Contract sum, final Contract sum with explanation, date of substantial completion and date of final completion. If no Public Works Projects have been completed by the Vendor, provide the above information for the three largest projects performed in the last five (5) years for a private entity.
 - d. Terminations: A list of all projects (private or Public Works Projects) where the Vendor's Contract was terminated prior to completion, including the project name, description, original Contract sum, and explanation for termination.
 - e. Legal Proceedings: A list of any legal proceedings where the Vendor was a named entity for the past five (5) years.
 - f. Safety Record: The five (5) year history of the Vendor's workers' compensation experience modifier.
 - g. Compliance Record: Information on and evidence of the Vendor's compliance record with respect to MBE and WBE inclusion goals, if applicable on Public Works Projects within the past five (5) years.
2. References
- a. Project References: A list of references from owners, Vendors (as applicable), Architects (as applicable), Engineers (as applicable) from projects that the Vendor has performed within the past five (5) years. At least three references must be provided from at least two (2) different projects that the Vendor has performed within the past five (5) years. The list of references must include, at a minimum, project names and the names of the reference with a current address, telephone, and e-mail address.
 - b. Vendor's Credit References: A list of a minimum of five (5) credit references, including the current telephone number and e-mail address of a contact person from key vendors and banks.
 - c. Public Works Project Record: A list of all completed Public Works Projects during the past five (5) years with owner's name, current address, telephone and fax number and a contact person for each.
 - i. The Vendor's past work with the State of Rhode Island will be considered, including the quality of past work performed for the State of Rhode Island.
3. Ability to Complete Work:
Vendors who do not maintain permanent workforces, or who propose to subcontract a disproportionate percentage of project work shall be considered unqualified.

4. Financial Capacity:
 - a. Reviewed Financial Statement prepared by a licensed Certified Public Accountant. Vendors who are seeking prequalification for Purchase Orders over \$20,000,000 must provide Audited Financial Statements.
 - b. Revenue: A Vendor must provide its revenue under Contract for the next three (3) Fiscal Years.
 - c. Prompt payment of Subcontractors: All Vendors must provide Subcontractor lien releases for all projects performed within the past five (5) years.
- E. The University Purchasing Agent may conduct supplementary prequalification examinations of Vendors prior to Solicitation or award which include, but are not limited to:
 1. Requirement for additional certification(s);
 2. Requirement for demonstration of additional licensure;
 3. Requirement for recent financial information;
 4. Submission of an affirmative action employment plan; and/or
 5. Submission of the names of proposed MBE or WBE Subcontractors and the value of such subcontracts.
- F. Denial of Prequalification
 - a. The University Purchasing Agent, in their discretion, may deny prequalification to a Vendor for failure to meet the criteria above.
 - b. The University Purchasing Agent shall send notice of denial of prequalification to an applicant Vendor identifying the basis for the denial.
 - c. The University Purchasing Agent's decision on prequalification may be appealed pursuant to § 1.6 of these Regulations and RIGL § 37-2-52.

4.4 REVOCATION OF PREQUALIFICATION

- A. The University Purchasing Agent may revoke a Vendor's prequalification. Revocation may result from:
 1. Suspension or Debarment pursuant to Part 11 of these regulations;
 2. Lack of demonstrated responsibility or competency;
 3. Failure to update information contained in a Vendor's pre-qualification packet on file with the University Purchasing Department pursuant to 4.3(C) of this Part;
 4. When, in the judgment of the University Purchasing Agent, the Vendor does not possess the capacity, capability, or integrity requisite for the Procurement.
- B. The University Purchasing Agent shall give notice to a Vendor when its prequalification has been revoked in writing. Such notice shall:
 - C. State that the Vendor's prequalification has been revoked,
 - D. Provide the Vendor with the rationale for the decision, and
 - E. A statement that Protests of the revocation may be submitted pursuant to § 4.3 of this Part.
- F. The University Purchasing Agent's decision on prequalification may be protested pursuant to Section 1.5 of these regulations and RIGL § 37-2-52.

4.5 VENDOR DISQUALIFICATION, REJECTION OR REMOVAL

- A. The University Chief Purchasing Officer may disqualify a Vendor or Subcontractor from participating in University Procurements. Disqualification may result from failure to meet the requirements of a specific Procurement or Debarment, Suspension, Removal or Rejection.

- B. A Vendor's offer or Bid for a specific Procurement may be rejected if, in the judgment of the University Purchasing Agent, the Vendor does not possess the capacity, capability, or integrity requisite for the Procurement. Such judgment shall be adequately documented.

PART 5 COMPETITIVE REVIEW AND SOURCE SELECTION

5.1 COMPETITION

- A. A competitive environment shall be considered to exist when the following conditions are met:
 - 1. Two or more items or offers can be compared to determine relative merit;
 - 2. Objective standards of comparison are fairly and impartially applied;
 - 3. Offers are evaluated within a market context:
 - a. 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;
 - b. Market evaluation must be conducted using objective standards to assure fairness and to encourage participation;
 - 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.

5.2 CENTRALIZATION

- A. Except as otherwise provided for herein, the University 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.
- B. Delegated Purchases.
 - 1. The following Supplies and Services may be procured by University department officials without the express approval of the University Purchasing Agent in accordance with the provisions set forth herein:
 - a. Items purchased through and in accordance with the terms of; Master Pricing Agreements (MPA), Agency Price Agreements (APA), and University Price Agreements (UPA). All departments shall be authorized to order Price Agreement items directly from Vendors in accordance with procedures established by the University Purchasing Agent and as allowable through the University's financial system.
 - b. Items exempted from Competition by law, regulation or determination by the University Chief Purchasing Officer or their delegee.
 - c. Grants in the form of general Subsidies or assistance shall be administered by the University in accordance with legal mandates restricting or defining the use of such funds
 - d. Special delegations based on documented need and approved by the University Chief Purchasing Officer; (e.g., high volume food items for Dining Services such as Meat, Fish, Poultry and Cheese).
 - 2. Approval of subawards under Grants for sponsored research is delegated to the URI Office of Sponsored Projects.

- C. University department officials designated by the University Purchasing Agent shall be authorized to obtain quotes for Procurements reasonably not expected to be subject to the requirement for a public competitive Bid.
 - 1. Violation of these regulations may result in withdrawal of such authority by the University Purchasing Agent.
 - 2. Documentation of all quotes and Contract awards made under this section shall be stored in the University financial system or other location designated from time to time by the University Purchasing Agent.
- D. Violations of Purchase Authority
 - 1. The University Controller through its Accounts Payable Department shall periodically review all documents under which departments undertake purchasing actions and shall report suspected violations of Delegated Purchasing Authority to the University Purchasing Agent.
 - 2. Transactions which are determined by the University Purchasing Agent to be out of compliance with purchasing regulations and procedures shall be returned to departments for explanation and justification.
 - 3. Department abuses of University purchasing policies shall be reported to the University Purchasing Agent who will address them with department directors, who are responsible for violations in accordance with procedures to be established by the Chief Purchasing Officer.
 - 4. Deliberate disregard of purchasing regulations, policies and procedures shall be subject to disciplinary action, including dismissal.
- E. Additional delegated authority may be granted by the University Purchasing Agent upon reviewing written requests submitted by department officials.

5.3 STANDARDS AND SPECIFICATIONS

- A. Road, bridge and heavy Construction projects shall be in accordance with "Bluebook" Specifications issued by RIDOT where applicable.
- B. Certification by building commissioner. In accordance with RIGL § 37-2-38.1 the University 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 in writing that: (i) All permits required under RIGL § 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 RIGL § 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.
- C. Solicitations shall be prepared in a manner and form which enables Vendors to submit fully responsive and knowledgeable offers, and which clearly define the Proposal Evaluation Criteria to be used in evaluating responses.
- D. All material submitted by University departments for action shall be in sufficient detail and shall contain adequate supportive information to:
 - 1. adequately describe the purpose, use, or desired performance level of the requirement; and
 - 2. identify measurable Proposal Evaluation Criteria of offers including, but not limited to, acceptance testing.

- E. Wherever possible, Solicitations shall incorporate a standardized specification, describing the level of performance required, and Proposal Evaluation Criteria which define acceptance.
 - 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 University with regard to economies of scale, or cost or value analysis.
- F. Selection and Proposal Evaluation Criteria shall be clearly defined in all Solicitations.
 - 1. The Solicitation shall state whether award shall be made on the basis of the lowest price or the lowest evaluated or responsive bid price. If the latter basis is used, the Proposal Evaluation Criteria to be utilized shall be set forth in the Invitation for Bids.
 - 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.
 - 3. 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;
 - 4. Alternate terms and conditions may be considered only when the University Chief Purchasing Officer determines it to be in the best interest of the University to do so.
- G. 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 should be for the most part as comprehensive as those provided by the manufacturer for new equipment. When certification/warranties do not meet these requirements, the approval of the requisitioning department and the University Purchasing Agent is required prior to Procurement.
- H. The University shall, through its policy and practice, affirmatively promote the use of Recycled Products in compliance with the requirements of RIGL § 37-2-76.

5.4 GENERAL PROVISIONS

- A. Except as otherwise authorized by law, federal regulation, or as specifically exempted herein or in the Act, University Contracts shall be awarded as the result of:
 - 1. Competitive/Sealed Bidding; or
 - 2. Competitive Negotiation; or
 - 3. Noncompetitive Negotiation; or
 - 4. Small Purchases as set forth in Section 5.9; or
 - 5. Requests for Proposal; or
 - 6. Reverse Auction
- B. If a combination of funds including unrestricted, Restricted, Auxiliary and/or Sponsored funds are to be used for any Procurement transaction, those fund sources must be determined in advance of the purchase and no transfer of funds can occur retroactively which might alter the determination of the Procurement methodology employed. When a combination of fund sources is used, the most restrictive applicable statutes and regulations apply.
- C. Purchases made with federal funds must also conform to Code of Federal Regulations Uniform Guidance (2 CFR §200).

5.5 RULES FOR SOLICITATION

- A. In general, Solicitations will be sent to those Vendors who have formally expressed a desire to bid on the particular types of items which are the subject of the bid Solicitation; however, the University purchasing officers may determine that Competition would be

enhanced by inviting Bidders who are not on the established Bidders List to respond to a Solicitation.

- B. MBEs and WBE's should be solicited where practicable.
 - 1. A concerted effort should be made to solicit from at least one responsible Vendor certified by the Rhode Island Minority Business Enterprise Program as an MBE and WBE, where Vendors have been identified for the product or Services in question.
- C. For all formal public bid Solicitations, the University shall place appropriate requests for responses on an established Purchasing web site.

5.6 BIDDER SECURITY

- A. 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 a form satisfactory to the University.
 - 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.
 - 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.
 - 3. All such sureties shall be made payable to the University of Rhode Island.
 - 4. All sureties should contain an identification of the bid number for which the surety is intended.
- B. Bidder security shall be required for all competitive Sealed Bidding for Construction Contracts when the estimated price exceeds fifty thousand dollars (\$50,000). Nothing herein prevents the requirement of such bonds on Construction Contracts under fifty thousand dollars (\$50,000) when circumstances warrant.
 - 1. The University Purchasing Agent may require Bid Security for any Procurement that they judge to be substantial, or where in their 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 University otherwise require protection.
 - 2. Bidder's security shall be in an amount equal to at least five percent (5%) of the amount bid.
- C. When the Solicitation requires that Bid Security be provided, noncompliance requires that the bid be rejected, provided, however, that the University Purchasing Agent may set forth exceptions to this requirement in the event of substantial compliance.
- D. After the bids are opened, they shall be irrevocable for the period specified in the Solicitation, provided that if a Bidder is permitted to withdraw their bid before award because of a ministerial error in the bid as allowed by law or regulation, no action shall be taken against the Bidder or the Bid Surety.
- E. After the Bid Opening the University Purchasing Agent shall authorize the return of the sureties of all but the three (3) apparent most Competitive Bidders. When the Evaluation of Bid has been completed, the University Purchasing Agent shall return all but the selected Bidder's Bid Surety.
- F. After the selected Bidder has been notified of the University's intent to proceed with a Contract, the selected 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).

5.7 CANCELLATION OF INVITATION FOR BIDS AND REQUESTS FOR PROPOSALS

- A. A Solicitation may be canceled, or all bids or proposals may be rejected, if it is determined that the action is taken in the best interest of the University.
 - 1. If a Solicitation results in none of the proposals being reasonably close to expectations, the University may declare all bids unacceptable and resolicit the Procurement.
 - 2. If a Solicitation results in only one proposal, the price of which is not reasonably close to expectations, the University may declare the bid unacceptable and either resolicit the Procurement or negotiate with the Vendor.
 - 3. The University may exclude from any re-solicitation Bidders whose offers are clearly noncompetitive prior to re-solicitation.
 - 4. The University's determination that the bid did not produce the most economical or effective outcome and requires new specifications be solicited.

5.8 CORRECTION OR WITHDRAWAL OF BIDS

- A. Correction or withdrawal of Bids may be allowed only to the extent permitted by these regulations.
- B. The University Purchasing Agent or their Designee shall be the sole determiner of whether correction or withdrawal of Bids may be made without penalty.
- C. Correction of a Bid.
 - 1. Correction of a Bid at any time prior to Bid Opening may be permitted without penalty when a Bidder requests that their Bid be returned or replaced with an updated submission which is clearly identified as such, and they resubmit a corrected Bid prior to the Bid Opening.
 - 2. A Bidder who fails to resubmit a corrected Bid before the Bid Opening will be considered nonresponsive, except as stated in 3 below.
 - 3. Requests by the apparent low Bidder for correction of Bids identifying technical error(s), ministerial error(s), or material error(s) of fact and specifying corrective action shall be submitted in writing to the University Purchasing Agent and shall be re-evaluated with all other offers within five (5) working days after the Bid Opening.
- D. Withdrawal of Bids.
 - 1. Requests for withdrawal of Bids shall be submitted in writing to the University Purchasing Agent, providing an explanation for the action.
- E. Withdrawal of Bids without the written consent of the University Purchasing Agent may result in forfeiture of Bid sureties, depending upon the severity of the violation.
- F. The University Purchasing Agent shall respond to requests for correction or withdrawal within ten (10) working days, notifying the Bidder of the status of their Bid and Bid Surety.

5.9 SOLICITATION CRITERIA

- A. Small Purchases. Public competitive Bids are not required for Procurements up to the threshold set forth in Appendix 1. Procurements shall not be artificially divided so as to constitute a Small Purchase under these regulations.
 - 1. Written quotes shall be solicited as identified in Appendix 1, including small Construction, except under specifically prescribed circumstances set forth herein or when deemed not practicable by the University Purchasing Agent.

2. Competitive Quotes shall be obtained from a sufficient number of Vendors. Three quotes shall be considered the minimum unless the University Purchasing Agent determines that two quotes provide adequate price Competition. The determination shall be made in writing and placed in the Contract File.

5.10 SOLICITATION METHODOLOGY

A. Public Competitive Bids

1. Sealed Bids shall be required for Procurements in accordance with the thresholds set forth in Appendix 1 unless such method is not practicable or is exempt as an exception to competitive bidding as set forth herein.
2. A public competitive Bid shall be distinguished by:
 - a. A specific date and time by which sealed written Bids must be submitted to the University Purchasing Department;
 - b. An opening of all Bids at a specified time by the University Purchasing Department;
 - c. The Solicitation of a minimum of three selected Vendors who are potential Vendors for the Commodity or Services to be procured.
3. All Solicitations requiring a sealed Bid shall be issued by the University Purchasing Department.
4. Sufficient public notice of the Solicitation shall be given to ensure adequate time to prepare a Bid prior to the date set forth therein for the opening of Bids. Such notice may include publication on the University or the State Division of Purchases Website for not less than seven (7) days or more than twenty-eight (28) days before the date set for the opening of the Bids. The University Purchasing Agent may determine that there is a need to waive the seven (7) or twenty-eight (28) day limitation. The written determination shall state the reason why the limitation is being waived and shall state the number of days, giving a minimum and a maximum, before the date set for the opening of Bids when public notice is to be given.
5. Bids shall be opened publicly at the time and place designated in the Invitation for Bids. Each Bid, together with the name of the Bidder, shall be recorded and a Bid Abstract made available for public inspection. Subsequent to the awarding of the Bid, all documents pertinent to the awarding of the Bid shall be made available and open to public inspection and retained in the Bid File.
6. In cases where the University Purchasing Agent determines that hand delivery of sealed competitive Bids is not practical, such as when soliciting foreign Vendors for Services outside the United States, the University Purchasing Agent reserves the right to make alterations to the process by allowing for facsimile or email responses to be submitted.

B. Competitive Quotes.

1. Competitive Quotes shall be required for purchases in accordance with the thresholds set forth in Appendix 1 unless the University Purchasing Agent determines that such method is not practicable or is exempt from competitive bidding as set forth herein.
2. A Competitive Quotes shall be distinguished by:
 - a. Lack of a specific time by which quotes must be submitted;
 - b. Lack of sealed written Bids;

- c. Lack of an opening and reading of Bids: The Solicitation of Competitive Quotes from selected Registered Vendors or Unregistered Vendors who are potential suppliers of the Commodity or Services to be procured and/or Vendors suggested for consideration by the University.
- 3. Competitive Quotes shall be solicited from a minimum of three Vendors.
- 4. All Solicitations for Competitive Quotes shall be conducted by the University Purchasing Agent or delegee in such fashion as to maximize the opportunity for participation of all responsible Vendors

C. Requests for Proposal

- 1. Requests for Proposal (RFP) may be utilized to solicit competitive offers in all cases where:
 - a. Price is not the sole or primary consideration to be used in determining an award; or
 - b. Performance is neither specific nor objective, and open to the Offeror's interpretation; or
 - c. It is otherwise anticipated that offers may be substantially different and that there is insufficient common ground for objective comparison; or
 - d. 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.
- 2. Wherever possible, the Request for Proposal shall define the performance or benefit required and shall set forth Proposal Evaluation Criteria to be utilized in evaluation of proposals.
- 3. Proposals shall be evaluated by a technical review committee on the basis of:
 - a. The qualifications of the Offerors, established by professional accomplishment and previous experience.
 - b. Aspects of proposals which provide benefit, other than those based on cost; and
 - c. Other provisions of proposals which are determined to serve the best interests of the University.
- 4. The evaluation of proposals, including the weight assigned to various aspects of the Offeror, and all award determinations, including the reasons for a selection recommendation, shall be fully documented.
- 5. Nothing herein shall be construed to preclude the possibility of determining an award solely on the basis of cost, from among proposals of those Offeror who have been deemed technically qualified by the technical review committee.

5.11 SOURCE SELECTION AND CONTRACT AWARD

- A. A Vendor's proposal for a specific Procurement may be rejected for:
 - 1. Any of the causes described for Suspension, Removal, Rejection or Debarment in Part 11 of these regulations;
 - 2. When, in the judgment of the University Purchasing Agent, the Vendor does not possess the capacity, capability, or integrity requisite to meet the requirements of the Procurement; or
 - 3. When, in the judgment of the University Purchasing Agent, the Vendor is not a Responsive Bidder or is not a Responsible Bidder.

- B. Responsible Bidders: A reasonable inquiry to determine whether a Vendor is responsible may be conducted pursuant to RIGL § 37-2-24. To determine responsibility, the University Purchasing Agent may utilize any of the criteria set forth in § 4.6(D) of these regulations.
1. Ability to meet Performance Bond requirements set forth for Public Works Contractors in RIGL Chapter 37-12 and RIGL § 37-13-14 shall be required. The ability to meet Performance Bond requirements shall not be the sole criteria for determination of responsibility. Bidder security is required in accordance with RIGL § 37-2-40(a).
 2. Vendors who have been determined by the University Purchasing Agent to be brokers or jobbers will not be issued a Purchase Order or other award.
 - a. Vendors bidding on Construction or building renovation should demonstrate an ability to perform a substantial portion of the subject work using their own forces. Vendors who do not maintain permanent workforces, or who propose to subcontract a disproportionate percentage of project work may be considered unqualified, and the University Purchasing Agent reserves the right to reject their Bids.
 3. The University Purchasing Agent may require interested Vendors to submit completed Bidder Certification Cover Forms to the Purchasing Department for consideration by the University Purchasing Agent.
 - a. The Bidder Certification Cover Form shall be signed by a representative of the Vendor 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:
 - i. any and all information on the Bidder Certification Cover Form is true and accurate;
 - ii. the existence of relationship (blood, spousal, adoptive, financial, etc.) between a principal of the firm and any University or State employee where a conflict of interest may exist has been disclosed;
 - iii. that falsification of information contained on a signed Bidder Certification Cover Form may be grounds for criminal charges of perjury and that conviction of such charges may be grounds for Debarment;
 - iv. that the Vendor has reviewed, understands and accepts the General Conditions of Purchase.
 - b. As a prerequisite condition for Contract award, the University Purchasing Agent may require any Bidder to complete a Bidder Certification Cover Form and/or submit current certifications of financial responsibility, affirmative action compliance, drug-free and barrier free environment, and status as small, Veteran-owned business as defined in these regulations.
- C. 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 Bid Price or responsive Bid price.
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 the express permission of the University Purchasing Agent and may be subject to penalty at the University Purchasing Agent's discretion.
 2. The University may, after considering the overall cost, and prior to making a final determination of award, apply special consideration to the offers of MBE/WBEs when:

- a. the Solicitation provides for such consideration;
- b. the proposal is fully responsive to the terms and conditions of the Solicitation; and
- c. the price offered by the MBE or WBE 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
- d. the Vendor making the offer conforms to the required certification by the State MBE/WBE Program.
- e. In the case of Procurements exceeding the threshold for Construction Small Purchases as set forth in Appendix 1, where it has been determined that subcontracting opportunities will exist under the Contract and where certified and qualified MBE or WBE Vendors are available, ten percent (10%) of the dollar value of the work performed against such Contracts should be performed by MBEs or WBEs, in accordance with RIGL § 37-14.1.
- f. The University's annual goal for veteran-owned small business enterprises to participate in University Procurements shall be no less than three percent (3%) of the total value of all Contracts available to businesses in each Fiscal Year, in accordance with RIGL § 37-14.3.

PART 6 NEGOTIATION

6.1 GENERAL PROVISIONS

- A. These sections refer to Competitive Negotiation, Noncompetitive Negotiation, sole source and Emergency Procurements.
- B. The objective of Negotiation shall be to secure advantageous terms and conditions, and/or to exact improvements in terms and conditions offered and to reduce potential cost to the University.
- C. Negotiation may be used to establish or modify contractual provisions in cases where:
 1. Responsive firm, fixed pricing is not the sole determinant for award;
 2. Responses to competitive Solicitations suggest that lower pricing, or other improvements in offers, are achievable;
 3. Single Source or Sole Source Procurements are made;
 4. Responses to Requests for Proposal do not permit effective comparison, due to the differing nature of the responses;
 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. The University Purchasing Agent has determined in writing that a product, or the market in which a product is sold, is noncompetitive in nature.

6.2 COMPETITIVE NEGOTIATION

- A. When, the University Purchasing Agent determines that the use of competitive Sealed Bidding is not practicable, a Contract may be awarded by Competitive Negotiation.
- B. Contracts may be competitively negotiated when it is determined by the University that the Bid prices received by competitive Sealed Bid are either unreasonable as to all or part of the requirements, or were not independently reached in open Competition, and for which:
 1. Each Competitive Bidder/Offeror has been notified of the intention to negotiate and is given reasonable opportunity to negotiate; and

2. The negotiated price is lower than the lowest rejected Bid by any Competitive Bidder/Offeror; and
 3. The negotiated price is the lowest negotiated price offered by a Competitive Bidder or Offeror who has participated in the Competitive Negotiation.
- C. 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 Solicitation 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

A. Request for Proposal

1. Adequate public notice of a Request for Proposals shall be given in a manner that maximizes Competition and benefit to the University.
2. Requests shall describe and enumerate the item(s) covered, their Specification(s), Contract terms(s), and any other special provisions or requirements. The Request for Proposals shall indicate the relative importance of price and other evaluation factors.
3. At a public opening of sealed Bids responding to RFPs, the University 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.
4. Selection Process: The University shall establish a technical review committee to evaluate the qualifications of potential Vendors. Membership on the technical review committee shall be determined on a case-by-case basis by the University Purchasing Agent but shall include only University or State employees or employees of a University affiliate such as the Board, the University of Rhode Island Foundation and Alumni Engagement, etc. so long as there is no conflict of interest.

B. Review and Discussion

1. Written or oral discussion shall be conducted with all Responsible Bidders 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 Bidders. 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.
2. Responses to the Request for Proposal shall be evaluated:
 - a. To determine nonresponsive offers that will be eliminated from further consideration,
 - b. To determine the lowest-cost combination of options, terms, and conditions, establishing a baseline, whenever deemed practicable.
 - c. To determine which offers serve the best interests of the University and meet the requirements of the Request for Proposals.

3. Where there is more than one Bidder, Competitive Negotiations shall be conducted with the three (two if there are only two) Bidders/Offerors determined to be the lowest Responsive and Responsible Bidders to the competitive Solicitation. 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 Evaluated Bid Price taking into consideration all established Proposal Evaluation Criteria, submitted by any Responsive and Responsible Bidder.
 - c. The provisions of RIGL § 37-2-20(b) may be waived in any case where the lowest-cost response is at least ten percent (10%) lower than the next lowest cost offered.
- C. The University Purchasing Agent may negotiate with Vendors who maintain a General Service Administration (GSA) price agreement or other consortium agreements 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 GSA and the Vendor in question or in a consortium agreement among the United States of America or any agency thereof and the Vendor in question and others.
- D. Request for Best and Final Offer
 1. On the basis of discussions and negotiations with Bidders, the University Purchasing Agent may issue to all Bidders still under consideration a Request for Best and Final Offer, which describes the requirements of the Procurement in the final form.
 2. Each Bidder shall submit a written best and final offer which defines their best price and other terms as set forth in writing by the University Purchasing Agent, for the Procurement.
 3. Best and final offers shall be evaluated in the same fashion as a Competitive Bid.
 - a. Award shall be made to the Responsible Bidder whose proposal is determined in writing to be the most advantageous to the University taking into consideration price and the evaluation factors set forth in the Request for Proposals as amended by the University Purchasing Agent at the end of the negotiation period.

6.4 NONCOMPETITIVE NEGOTIATION

- A. 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 best interest of the University will not permit the delay attendant to a re-Solicitation with a revised Specification, or for revised quantities, under competitive Sealed Bids, then a negotiated award may be made as set forth in this Section.
- B. Noncompetitive Negotiation may be used to improve the price offered in the evaluated lowest-cost Bid to any Solicitation.
- C. The University may award a Contract on the basis of Noncompetitive Negotiation, where the University Purchasing Agent has determined that:
 1. A Single Source or Sole Source Procurement is involved, or
 2. The product, or market in which a product is sold, is noncompetitive in nature, or

3. Collusive bidding or corrupt combination” or exclusionary selling practices are in evidence.
- D. 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 Vendor, or the Contract term is not extended except in response to a request by the Vendor in consideration for other substantive changes, and where such extension of term of Contract is determined by the University to be in its best interest.
- E. In all negotiations, 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 and placed in the Contract File.

6.5. TRUTH IN NEGOTIATIONS REQUIREMENTS - COST OR PRICING DATA

- A. A Vendor may be required to submit cost or pricing Data and shall certify that, to the best of their 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:
 1. The pricing of any negotiated Contract where the total Contract price is expected to exceed fifty thousand dollars (\$50,000);
 2. 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 University.
- B. Applicability
 1. This section applies to Purchase Order supplements over \$25,000, calculated by incorporating an aggregate of changes equal to this value, e.g., an additive change 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.
 2. The requirements of this section need not be applied to Contracts where the price negotiated is based on adequate price Competition, Established Catalog Price 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 University that the requirements of this section may be waived, and the reasons for such waiver are stated in writing.
- C. 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 Vendor 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.
- D. The requirement for submission of cost or pricing Data is met when all Data reasonably available to the Vendor 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

- A. Prime Contractors shall require Subcontractors to submit cost or pricing Data for Procurements in excess of fifty thousand dollars (\$50,000) unless exempted herein.
- B. 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.
- C. Any Contract, change, or modification thereto under which such a certification is required shall contain a provision that the price to the University, including profit or fee, shall be adjusted to exclude any material sum by which the University Purchasing Agent finds that such price was increased because the cost or pricing Data furnished by the Vendor as of the date agreed upon between the parties, was inaccurate, incomplete, or not current.
- D. Prime Contractors must agree that the prime Contract price shall be reduced by any material sum 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

- A. The University Purchasing Agent or delegee shall document at the conclusion of each Negotiation phase the principal elements of the price Negotiation.
 - 1. Sufficient detail shall be recorded to reflect the most significant considerations controlling the establishment of the price.
 - 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.
- B. Contracts shall contain an audit clause which provides that if, after award, the University 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 may be undertaken, at the discretion the University.
- C. Contracts shall contain to the extent possible language which provides for unit pricing for potential Change Orders.
- D. The University Purchasing Agent 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 Bids.
- E. In the Negotiation of settlements of Contracts which have been terminated before the Supplies are supplied or the Services completed:
 - 1. Contract settlement shall be made in accordance with terms specified in the Purchase Order or Contract.
 - 2. In the absence of appropriate Contract language, the Vendor shall be paid for costs incurred.
 - 3. Penalties due to the University in accordance with a Contract may be deducted from any payment to which a Vendor is entitled.
- F. To determine the allowability of incurred costs for the purpose of Reimbursement of costs under Contract provisions which allow for Reimbursement of costs, Reimbursements shall be made only upon the presentation of documentation acceptable to the University in its sole discretion that the Vendor has incurred an eligible expense.

PART 7 SUPPLEMENTAL SERVICES

7.1 GENERAL PROVISIONS

- A. The University's Office of Human Resource Administration (HR) shall have the responsibility to determine if a Vendor who is an individual is a contract employee, in which case HR is responsible for the hiring of such individual, or an Independent Contractor, in which case the Procurement of the Services of this individual are considered Supplemental Services subject to these regulations.
- B. To the extent practicable, selection of Supplemental Services providers shall be based upon Competition. The University Purchasing Agent may require that, whenever possible, a scope of Services be defined for which a Bid or a response to a Request for Proposals may be solicited.
- C. Except for legal, medical, dental and Special Services, when a determination is made in writing by the University 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 Services shall be deemed to be of a consulting nature and subject to all requirements set forth for the selection of Consultants.
- D. Requirements for the selection of Construction management Vendors shall be the same as those for the selection of Architects and Engineers.

7.2 ARCHITECTURAL, ENGINEERING AND CONSULTANT SERVICES SELECTION PROCESS FOR SERVICES (Not to exceed \$20,000)

- A. For every project requiring architectural, engineering, or Consultant Services, the fees for which are not reasonably expected to exceed twenty thousand dollars (\$20,000), the University Chief Purchasing Officer shall be responsible for the final selection of a qualified architectural, engineering, or Consultant firm for the project. The University Chief Purchasing Officer shall report that selection to the Board. The University Chief Purchasing Officer shall use the criteria set forth in RIGL § 37-2-66 in making the determination. That determination shall be justified in writing
- B. When an Architect, Engineer, or Professional Consultant Contract is estimated (reasonably) to be between ten thousand dollars (\$10,000) and twenty thousand dollars (\$20,000) the University Purchasing Agent may establish a technical review committee in conjunction with the client department to evaluate the qualifications of a minimum of three potential Vendors. Membership shall be determined on a case-by-case basis by the University Purchasing Agent.

7.3 EVALUATION FOR SELECTION

- A. Criteria for evaluation of candidates for Supplemental Services shall include, but shall not be limited to:
 - 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;
 - 2. Ability to perform the Services as reflected by workload and availability of adequate personnel, equipment, and facilities to perform the Services expeditiously;
 - 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
 - 4. In the case of Consultant Services, the Vendor's proposed approach to the project/assignment shall be an additional criterion.

7.4 SELECTION

A. A selection rationale shall be documented by the client department which may include a summary of the score sheet of the Proposal Evaluation Criteria. The University Purchasing Agent shall make the respective selection recommendation to the University Chief Purchasing Officer for final approval in accordance with RIGL § 37-2-69(b).

7.5 NEGOTIATION

- A. The University shall negotiate with the highest qualified firm for a Contract for architectural, engineering, or Consultant Services for compensation which is determined to be fair and reasonable. In making such determination, the University shall consider the following: professional competence, technical merits and price.
- B. The University 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.

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

- A. University requests for architectural, engineering and Consultant Services in excess of twenty thousand (\$20,000) shall be pursued in accordance with RIGL § 37-2-64 thru 68.
- B. Solicitation
 - 1. Public Announcement pursuant to RIGL § 37-2-65. The University Chief Purchasing Officer shall give public notice of the need for professional architectural, engineering or Consultant Services.
 - 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.
 - 3. The notice shall:
 - a. contain a brief statement of the Services required,
 - b. describe the project,
 - c. specify how specific information, including the written Solicitation, on the project may be obtained and,
 - 4. Under RIGL § 37-2-66, the Solicitation shall describe the University's requirements and set forth Proposal Evaluation Criteria for the selection of the successful candidate and shall be distributed to interested Persons.
- C. A Bidders' conference, if appropriate, shall be held at which the following shall be provided:
 - 1. a description of the Proposal Evaluation 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.
- D. The technical review committee shall select no more than three (3) firms evaluated as being professionally and technically qualified.
 - 1. Final Selection:
 - a. Selection Process: Engineering, Architectural, and Consultant Services exceeding \$20,000; the University shall establish a technical review committee to evaluate the qualifications of potential Vendors. Membership on the committee shall be determined on a case-by-case basis but shall include only University Employees or Board members, or employees from a University affiliated organization, so long as there is no conflict of interest.

- b. Individuals who do not fit the above description may serve as technical advisors, but shall not be considered members of the committee and shall not be entitled to vote on the selection of candidates.
- c. The University Purchasing Agent shall select two or three qualified finalists, negotiate with the finalists and make a recommendation for selection to the University Chief Purchasing Officer, who shall be responsible for the final selection of a qualified architectural, engineering, or Consultant firm for the project. The University Chief Purchasing Officer shall report such selections to the Board. The University Chief Purchasing Officer shall use the criteria set forth in § 37-2-66 in making the determination. That determination shall be justified in writing.

7.7 REQUIREMENTS FOR OTHER SUPPLEMENTAL SERVICES

A. External Auditing

- 1. In accordance with RIGL § 35-7-13, the employment of external auditors shall be approved by the Board, the Director of Administration of the State of Rhode Island and the Auditor General of the State of Rhode Island prior to the employment of such auditors.
- 2. Requisitions for independent audit Services shall be submitted to the University Purchasing Department with written verification of the Auditor General's approval of the proposed Services to be provided. Copies of correspondence from the Auditor General to the University Chief Purchasing Officer approving the requisition of such services shall be considered sufficient authorization to proceed.
- 3. Contract amendments which increase the original approved scope of external auditing work shall require the Auditor General's authorization.

B. Medical and Dental Services

- 1. Prior to procuring the Services of a physician or dentist, the University department in need of the Services shall demonstrate to the satisfaction of the University Chief Purchasing Officer (or their Designee) that the professional has the necessary expertise and experience to perform the needed Services effectively and efficiently.
- 2. The justification of need for the Services of a physician or dentist shall be submitted to the Director of Health Services
 - a. Justifications of need may include, but need not be limited to, consideration of legal mandates/court orders or consent decrees; licensing/certification requirements; health and safety concerns; minimum standards of services; and union workload agreements.
 - b. Documentation for justification shall include relevant laws, standards or other citations.
 - c. The scope of Services shall describe the time period for the proposed Contract and Services or outcomes (tasks, reports, or other products).
 - d. Indication of whether the proposed contracted work involves supplemental functions or is for temporary staff coverage.
 - e. If such Services are proposed to be provided on a supplemental basis by Employees of the University, documentation shall indicate whether the Services are in addition to, or an extension of, the Employees' normal duties.
- 3. Demonstration that physicians or dentists meet minimum requirements may be accomplished by the University using the following:
 - a. Obtain annual verification of the status of medical doctors and medical professionals from the Department of Health.

- b. Obtaining opinions of qualified Persons that the professional has the necessary expertise and experience to perform the needed Services effectively and efficiently.
 - 4. Professional Services – Medical and Dental Services. Before procuring the Services of a physician or dentist, the University shall demonstrate the following:
 - a. For medical/dental Consultant Services:
 - i. The need for the Services required including the scope of the Services to be performed;
 - ii. That no medical/dental personnel employed by the University on a fulltime basis is available to perform such Services;
 - iii. That funding is available, indicating from which sources such funding is to be provided;
 - iv. That the 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:
 - i. The need for such Services, including the detailed scope of work, to be performed;
 - ii. That no full-time University Employee(s) is/are available to perform such Services;
 - iii. That funding is available, indicating from which sources such funding is to be provided;
 - iv. That such medical/dental Services 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 fulltime University Employees (doctors, dentists, nurses etc.) during their absence. Such Procurements for those Services shall be obtained through the use of a blanket type of Contract arrangement. The following shall be provided to the satisfaction of the University Chief Purchasing Officer:
 - i. Rationale that such Services are required; and
 - ii. Certification that the 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.
 - 5. Nothing in these regulations shall prohibit nor shall anything in these regulations be interpreted to prohibit appropriate action by the University Chief Purchasing Officer or their designee to provide needed medical Services whether on a regular or emergency basis.
- C. Professional Services – Legal.

1. Before procuring the Services of an outside attorney the following must be demonstrated to the satisfaction of the University Chief Purchasing Officer or their designee:
 - a. The need for the Services required, including the scope of the Services to be performed;
 - b. That no legal personnel employed by the University on a full-time basis is available to perform such Services;
 - c. That funding is available, indicating from which sources such funding is to be provided; and
 - d. That attorneys to be engaged meet the following minimum requirements;
 - i. Appropriate professional licensing,
 - ii. Competence to perform such Services as reflected by formal 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, and
 - iii. Ability to perform the Services as reflected by workload and availability of adequate personnel, equipment and facilities to perform the Services expeditiously.
2. The attorney or law firm shall enter into a letter of engagement with the University that includes the following:
 - a. The rate of compensation,
 - b. The scope of the Services to be performed for the compensation,
 - c. Provision for the payment of expenses incurred in connection with legal Services,
 - d. Certification that the rate of compensation does not exceed the rate of compensation charged by counsel to their preferred public or private clients, and

A term of no more than one (1) year.

PART 8 CONTRACTS

8.1 FUNDAMENTAL REQUIREMENTS AND PRINCIPLES

- A. In accordance with RIGL § 37-2-54(c), no purchase or Contract shall be binding on the University unless approved by the Purchasing Department or made under general regulations which the University Chief Purchasing Officer may prescribe.
 1. A Contract is 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.
 - a. The terms and conditions of a valid Purchase Order and its supplements, as issued by the University purchasing office, shall constitute the primary contractual instrument.
 - b. Unless specifically established by law, regulation or procedures no other instrument shall constitute the University purchasing Contract.
 - c. Oral Agreements - Any alleged oral agreement or arrangements made by a Bidder or Vendor with any Employee of the University may be disregarded and shall not be binding on the University except in Emergency situations.
- B. These purchasing regulations shall be considered to be incorporated by operation of law in all Contracts issued by the Purchasing Department.
- C. Contract provisions and Contracts entered into in violation of State and Board purchasing regulations shall be void "ab initio" [from inception].
- D. Supplemental Principles of Law - Obligation of Good Faith.
 1. 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.
2. Every Contract or duty under these regulations shall impose upon both parts the obligation of Good Faith in its performance and/or enforcement.
- E. In accordance with RIGL § 28-5.1 Vendors 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 or the University's Equal Opportunity Office.
- F. Bonds for Public Works Contracts.
1. RIGL § 37-12 requires that every Person awarded a Public Works Contract in excess of one hundred fifty thousand dollars (\$150,000) shall furnish to the University 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 Public Works Contractor, principal in said bond, the Person's executors, administrators or successors, shall keep and perform the covenants, conditions and agreements in the Contract.
 2. In accordance with RIGL § 37-13-14 a Vendor's Performance Bond must be furnished by a surety company authorized to do business in the state of Rhode Island.

8.2 GENERAL CHARACTERISTICS OF UNIVERSITY CONTRACTS

- A. General Conditions of Purchase - The General Conditions of Purchase shall (1) be referenced and made a part of all Solicitations for proposals and quotations; all Purchase

- Orders, Contracts, and letters of authorization; and Bidder registration documentation and (2) provide notice to Bidders that Contract award may be conditioned upon the Bidder signing an affirmation (certification) regarding certain legal requirements or restrictions relating to foreign corporations, disadvantaged business enterprises, labor rates, local product preference, etc., as required by the University Purchasing Agent.
- B. When a Contract has been entered into between the University 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.
 - C. All Contract pricing shall be firm and fixed unless Contract language provides for reconsideration.
 - D. 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.
 - E. Changes in scope, price, and length of Contract period shall require Contract amendments which are specified in writing.
 - 1. Unanticipated changes may be considered with the express consent of both parties.
 - 2. The issuance of a Change Order to a Purchase Order in accordance with the provisions of the Contract and other requirements specified herein shall be considered a binding Contract.
 - F. Termination - As appropriate, University Contracts may include clauses which address special conditions/procedures for termination of Contract not contained in the General Conditions of Purchase; e.g., provisions for penalties or forfeitures for Contract noncompliance may be included; a convenience for termination clause which permits the University to terminate at the University's discretion, the performance of work in whole or in part and to make a settlement of the Vendor's claims in accordance with applicable contractual conditions.
 - G. Mutual Agreement - The agreement shall consist of an offer by one party, called the Bidder or Offeror, and an acceptance by the other party, called the University of Rhode Island.
 - 1. When a Purchase Order is issued which does not differ from the Bid submitted by a Bidder, mutuality shall be assumed.
 - 2. In accordance with the General Conditions of Purchase which notify Vendors that the University 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 a Bidder.
 - 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 a Purchase Order made by the University Purchasing Agent, or by the University official with written Delegated Purchasing Authority, shall be considered a binding Contract.
 - H. Consideration - Although consideration under a Contract may assume other forms, generally it means 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:
 - 1. terms of payment for partial delivery or completion;
 - 2. unit of cost (hourly rate, per report rate), if appropriate;

3. frequency/conditions for payment -weekly, monthly, upon completion of percentage of work, etc.; and
 4. retainage, when appropriate.
- I. Capacity of Parties - The contracting parties must have the legal authority to enter into Contracts.
 - J. Competence of Parties - The contracting parties shall be of legal age and of sound mind.
 - K. Length of Contract period shall be specified.
 - L. A University official (indicated by name or by title) from whom the Vendor shall obtain direction shall be named and/or a format for written authorization to deliver (e.g., Request for Delivery Form, Master Price/Term Price Agreement) shall be specified.
 - M. Public Works/Construction Contracts shall provide for the following additional considerations:
 1. Certificates of insurance to protect the general public or the University's property from injury or loss arising from actions or inaction of the Vendor during the progress of a Contract.
 2. Each Vendor shall be responsible for providing satisfactory evidence of complete coverage of all insurance, permits, and licenses required by state, city or town statutes, ordinances, and/or regulations.

8.3 THE PURCHASE ORDER CONTRACT

- A. The Purchase Order shall contain statements as to the quantity, description, and price of the Supplies 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.
- B. The entire agreement with the Vendor shall, at all times, reside solely in the Purchase Order and its referenced supplements.
- C. Purchase Order Supplements shall consist of all of the following documents by reference or incorporation:
 1. The General Conditions of Purchase;
 2. The University's request for quotations or proposals, including Specifications;
 3. The Vendor's offer which is responsive to the Solicitation; and/or
 4. As appropriate, additional Contract provisions.

8.4 MULTI-YEAR CONTRACTS

In accordance with the requirements of RIGL § 37-2-33, multi-year Contracts for Supplies and Services may be entered into for periods extending beyond the end of the Fiscal Year in which the Contract was made, if funds for the first Fiscal Year of the contemplated Contract are available at the time of contracting and the Contract states that payment and performance obligations for succeeding Fiscal Years shall be subject to the availability of funds therefor. In order to ensure compliance with this requirement (i) the University Purchasing Agent is hereby required to ensure that funds have been appropriately identified and reserved sufficient to meet the payment requirements of the Contract for at least the initial Fiscal Year, and (ii) the University has included a provision in the General Conditions of Purchase which shall serve to insert in all Contracts subject to these Regulations, the required provision stating that the University's payment and performance obligations for succeeding Fiscal Years shall be subject to the availability of funds therefor. Notwithstanding the foregoing, the University must act in Good Faith as that term is defined in RIGL § 37-2-3(b), and it is the University's policy that it shall not cancel or terminate a Contract due to the unavailability of

funds hereunder unless the unavailability of funds is due to causes outside of the University's control, and not due to the failure or refusal of the University to allocate sufficient funds within its discretion. Multi-year Contracts shall specify the annual costs and total value of each Contract.

8.5 LETTER OF AUTHORIZATION

- A. When the University 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 University Purchasing Agent may, after obtaining approval from the University Chief Purchasing Officer, issue a Letter of Authorization.

8.6 CHANGES TO PURCHASE ORDERS

- A. Agreements and changes to scope of work, price, or other terms shall be incorporated into Purchase Orders via Change Orders incorporating Contract amendments.
- B. Change Orders issued in writing by the Purchasing Department shall be the only binding documents which may create a change in a Purchase Order.
- C. Personnel shall not commit the University to technical/contractual changes to Purchase Orders without first securing all necessary approvals.
- D. All discussions of potential changes (oral or written) may be disclaimed as not being binding on the Vendor or the University until formally incorporated in the Purchase Order.
- E. Change Orders shall be issued by the Purchasing Department following receipt of quotations and discussions of price and delivery with the Vendor. If circumstances preclude immediate issuance of a formal Change Order, interim direction to the Vendor may be made via a Letter of Authorization signed by the University Purchasing Agent.

8.7 TERMINATION OF CONTRACT

- A. If required Bidder certifications are determined to be invalid, the University Purchasing Agent shall declare the Purchase Order void.
- B. Notice of termination by either party shall be submitted in writing to the other party in accordance with the termination clause of the Contract.
- C. Termination or Cancellation of a Contract by University (for reasons other than unavailability of funding under Section 8.7 above);
 - 1. A Contract may be canceled or annulled at the Vendor's expense upon determination by the University Purchasing Agent that a condition of Nonperformance exists.
 - 2. Cancellation by the University Purchasing Agent for Nonperformance shall be subject to the following rules:
 - 3. A formal complaint of Nonperformance or unsatisfactory performance shall be submitted by an authorized official to the University Purchasing Agent. Such complaint shall provide a description of and justification for the complaint.
 - a. The University purchasing agent shall attempt to resolve the problem.
 - b. If the problem has not been resolved, the University Purchasing Agent shall notify the Vendor in writing that they are not in compliance with the Contract. Such notice of Nonperformance shall: specify the nature of the complaint; direct the Vendor to take corrective action; direct the Vendor to respond in writing to the notice of Nonperformance within a specified time period; and notify the Vendor that failure to respond as directed may result in cancellation of the order.

- D. If a Vendor fails to take corrective action and/or respond to a notice of Nonperformance, the University Purchasing Agent may issue a Change Order canceling the Contract.
- E. If, after reviewing the Vendor's response, the University Purchasing Agent determines that the Vendor is not out of compliance with the Contract requirements, the University Purchasing Agent shall so notify the complaining University unit or Employee and the Vendor in writing, providing a rationale for their decision.
- F. If the University Purchasing Agent determines that valid extenuating circumstances out of the control of the Vendor have prevented compliance with the Contract requirements, they shall so inform the complaining official and may amend the Contract to provide for a reasonable opportunity for the Vendor to perform the Contract, if necessary.
- G. If the University Purchasing Agent believes that a Vendor's action or lack thereof presents a clear and immediate danger to the public interest, they may direct in writing the immediate termination of the contractual relationship.
- H. Copies of all communications with a Vendor regarding Nonperformance shall be sent to the Vendor's bonding company, power of attorney and University legal counsel.
- I. If the Vendor is unwilling or unable to perform a Contract, the University shall:
 - 1. if a Performance Bond has been issued under the Contract, direct the Vendor's bonding company to assume responsibility for the performance of the Contract; and
 - 2. so notify the Vendor; and
 - 3. notify the Vendor that Suspension and/or Debarment procedures may be initiated and that the Vendor shall be responsible for any costs incurred by the University in the completion of the Contract.
- J. If a Contract Dispute is involved, the University, in accordance with, Section 1.4 may refer the issue to the University Chief Purchasing Officer.
- K. Neither the University nor the Vendor may terminate or cancel a Contract "for convenience" or "without cause" unless the University and the Vendor have specifically agreed to such a provision in writing and included in the Contract a provision giving either or both parties such a right.

8.8 TYPES OF CONTRACTS

- A. The University may enter into any type of Contract which will promote the best interests of the University, the Board, and the State, but cost reimbursement contracts are to be avoided, provided however that the University Chief Purchasing Officer may determine that it is likely to be less costly than any other type of contract or that it is impractical to obtain Supplies or Services except under a cost reimbursement contract.:
 - 1. Fixed Price (FP)
 - a. Firm Fixed Price (FFP) Contract
 - b. Fixed Price with Economic Price Adjustment (FP W/EPA) Contract
 - c. Fixed Price Redeterminable (FPR) Contract
 - d. Fixed Price Incentive (FPI) Contract
 - 2. Cost Reimbursement
 - a. Cost No Fee (CNF)
 - b. Cost Sharing (CS) Contract
 - c. Cost Plus Fixed Fee (CPFF)
 - d. Cost Plus Incentive Fee (CPIF)
 - e. Cost Plus Percentage of Cost (CPPC) Contract.
 - f. Time and Materials (TIM) Contract

3. To Be Determined (TBD) Contract
4. Blanket Order
5. Pricing Agreement (PA)
6. "Term Contract".

8.9 PRINCIPLES FOR SELECTION OF TYPE OF CONTRACT

- A. 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.
- B. In determining the type of Contract to be used, consideration should be given but not limited to such factors as:
 1. Type and complexity of the item or scope of work to be performed;
 2. Urgency of the requirement;
 3. Prospective period of Contract performance;
 4. Degree of Competition present;
 5. Extent of completion of baseline and detail design; which in turn may influence other considerations such as the adequacy and firmness of Specifications, and the availability of relevant historical pricing Data and prior experience;
 6. Availability of comparative pricing Data, or lack of firm market prices or wage levels;
 7. Prior experience with the Vendor;
 8. Extent and nature of subcontracting contemplated;
 9. Assumption of business risk;
 10. Vendor technical capability and financial responsibility;
 11. Administrative costs;
 12. Adequacy of the Vendor's accounting system; and
 13. Other concurrent Contracts.
- C. In accordance with RIGL § 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 Vendor'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 Vendor's accounting system is adequate to allocate costs in accordance with generally accepted accounting principles.
 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.
- D. Under RIGL § 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.
 1. Cost Reimbursement Contracts.
 - a. Under RIGL § 37-2-29, the Cost Plus a Percentage of Cost (CPPC) Contract is prohibited.
 - b. Under RIGL § 37-2-30(1), no Contract providing for the Reimbursement of the Vendor's cost plus a fixed fee (cost Reimbursement) may be made through Negotiation or in the case of a sole source contract or Emergency Procurements unless it is determined in writing by the University 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 Services of the kind or quality required except under such a Contract.

2. Under RIGL § 37-2-30(2), each Vendor under a Cost Reimbursement Contract shall obtain consent from the University 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].
 3. Under RIGL § 37-2-30(c), 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 University Chief Purchasing Officer will be Reimbursed.
- E. 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.
1. Types of economic adjustments shall include but shall not be limited to:
 - a. Price Adjustment - a modification of the original Purchase Order price based on increases or decreases in published or established prices of specific items.
 - b. Labor and Material Adjustment - a modification of the Contract original price based on increases or decreases of wage rates, specific material costs, or both, using agreed upon standards or indices.
 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 Vendors against contingencies which arise from inaccurate estimates of the quantities of labor or materials required for completion of a Contract.
- F. When PPR Contracts are employed the basis for adjustments shall be established when the Contract is negotiated and a cost baseline shall be established.
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.
 2. The establishment of a re-determinable type of Contract shall require the written authorization of the University Chief Purchasing Officer. Upon analysis conducted by the University Purchasing Agent, a request and justification for considering re-determinable pricing provisions shall be submitted in writing by the University Purchasing Agent to the University Chief Purchasing Officer.
- G. When FPI Contracts are employed:
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.
 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.
 3. The same Vendor cost Data shall be required as for a re-determination Contract.

- H. A CNF Contract may be used for research and development work – particularly with nonprofit organizations and educational institutions.
- I. A CS Contract is suitable for:
 - 1. Jointly sponsored research and development with educational institutions or other nonprofit organizations or
 - 2. Other research and development work where the results of the Contract may have commercial benefit to the seller.
- J. A CPFF Contract is suitable when:
 - 1. The scope and nature of work cannot be definitely specified.
 - 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.
 - 3. Specifications are not complete or major changes substantially affecting the scope of production or Construction work are expected.
 - 4. Work is to be performed in a state-owned facility with the use of state-owned equipment, materials, or personnel.
- K. A TIM Contract shall include the establishment of a cost limitation which the seller may not exceed (except at their own risk). A TIM Contract shall be used only in situations when:
 - 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:
 - a. engineering and design Services,
 - b. certain repair, maintenance or overhaul work,
 - c. emergencies.
 - 2. Provision is made for appropriate surveillance by state personnel during performance.
- L. L/H Contracts based solely on labor hours shall be considered a subcategory of TIM Contracts, subject to the same restrictions as the TIM Contract and shall be used only after the University Purchasing Agent has determined that no other type of Contract is suitable for meeting the needs of the requisitioner.
- M. Employment of TBD Contracts shall be prohibited except as authorized by the University Chief Purchasing Officer.
- N. Considerations for use of a University Purchase Agreement (UPA) Contract:
 - 1. The UPA shall specifically state the term and probable volume consideration of the agreement.
 - 2. The seller shall be authorized to ship to the University only those items specified by a delivery request (on a form to be provided) issued under the authority of the University Pricing Agreement. The University 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.
 - 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 Vendor, 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.

8.10 CONSTRUCTION CONTRACT MANAGEMENT

- A. The following methods of Construction Contract management may be employed in Public Works Contracts. The methods described herein are not mutually exclusive and may be combined on a project. In each project, these methods may be adapted to fit the circumstances of the project.
- B. Prime Contractor Method. The Prime Contractor method is typified by one business, acting as a Prime Contractor, contracting with the University to timely complete an entire Construction project in accordance with drawings and Specifications provided by the University. Further, while the Prime Contractor may take responsibility for successful completion of the project, much of the work may be performed by specialty contractors with whom the Prime Contractor has entered into subcontracts.
- C. Multiple Prime Contractors Method. Under the multiple Prime Contractor method, the University contacts directly with any number of Contractors, often who are representing different trades, to complete portions of the project in accordance with the University's drawings and Specifications. The University may have primary responsibility for successful completion of the entire project, or the Contracts may provide that one of the multiple Prime Contractors has the responsibility.
- D. Design-Build Method. In a design build project, a Vendor contracts directly with the University to meet the University's requirements as described in a set of design or engineering Specifications, bridging documents, or scope of work. Final design responsibility and Construction responsibility both rest with the design-build Contractor. This method can include instances where the design-build Contractor provides the site as part of the Design-Build package.
- E. Construction Manager at Risk is a Vendor 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 and deliver the Construction of the project within a guaranteed maximum price, which shall represent the maximum amount to be paid by the University for the building project, including the cost of the work, the general conditions, and the fee payable to the Construction Manager at Risk. The Construction Manager at Risk provides consultation Services during the preconstruction and Construction phases of the project. The project Engineer, Architect, or owner's program manager may not serve as the Construction Manager at Risk.
- F. Sequential Design and Construction Method. Sequential design and Construction denotes a method in which design of substantially the entire structure is completed prior to beginning the Construction process. The design and Construction Services may be provided by the same or different Vendors under the one or multiple Contracts.
- G. Phased Design and Construction Method. Phased Design and Construction denotes a method in which the Construction is begun when appropriate portions have been designed but before design of the entire structure has been completed. This method is also known as fast-track Construction. The design and Construction Services may be provided by the same or different Vendors under the one or multiple Contracts.
- H. Owners Program Manager shall be limited to certain Construction methods defined by RIGL § 37-2-7(32), as amended.
- I. Construction Contract Management Selection Criteria. The criteria to be used by the University Chief Purchasing Officer in determining which method of management Construction is to be used for a particular project shall be as follows:
 - 1. When the project must be completed or ready for occupancy or use;

2. The specific nature of the project, e.g., housing, offices, laboratories, roads, bridges, and heavy or specialized Construction;
 3. The extent to which the requirements of the procuring agency and the ways in which said requirements are to be met are known;
 4. The location of the project;
 5. The size, scope and complexity and economics of the project;
 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 monies, general obligation bonds or revenue bonds;
 7. The availability, qualification, and experience of agency personnel to be assigned to the project and how much time agency personnel can devote to the project;
 8. The availability, experience and qualifications of outside Consultants and Vendors to complete the project under the various methods being considered.
- J. Selection documentation: the University Chief Purchasing Officer shall review and approve the facts that led to the selection of a particular method of Construction Contract management, other than the General Contractor Method, pursuant to the criteria set above. The University Purchasing Agent 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 University Purchasing Agent's written statement may adopt in whole or in part any written statements provided by the University Chief Purchasing Officer as required herein.

8.11 CONTRACT ADMINISTRATION

- A. Subsequent to the award of any Contract for Supplies or Services and continuously over the life of any Contract, the ordering department of the University shall determine and verify that service(s) provided or Supplies received match exactly all Contract Specifications as to kind, quality, quantity, or frequency and price. The University shall document in detail all deviation(s) and submit formal complaint(s) to the University Purchasing Agent for follow-.
- B. Attestation and approval of payment vouchers by duly authorized agents of the University shall constitute acceptable evidence of such verification.

PART 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 University may waive requirements for competitive bidding.

9.2 EXCEPTIONS PERMITTED BY LAW

The following are exceptions to competitive bidding that are permitted by RIGL § 37-2-54 that may be utilized by the University, at the discretion of the University Chief Purchasing Officer (or their Designee the University Purchasing Agent); however, the University may require competitive bidding, at the discretion of the University Chief Purchasing Officer (or their Designee the University Purchasing Agent), in any circumstance where it is deemed that Competition may enhance the University's ability to attain cost savings:

1. Purchases of Supplies or Services for research or research related activities which are funded with federal funds or other third-party funds, up to the dollar thresholds specified in Appendix 1, may be deemed exempt from competitive bidding when the University Chief Purchasing Officer determines that it is in the best interest of the University and as permitted by the Code of Federal Regulations, Chapter 2, Part 200.
2. Contractual Services where no Competition exists, such as public utility services;
3. When, in the judgment of the University Chief Purchasing Officer, 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 University;
4. Instructional materials such as books, testing materials, etc., which are available from only one source;
5. Where rates are fixed by law or ordinance;
6. Library books; periodicals, magazines, newspapers;
7. Commercial items purchased for resale, including the University's Bookstore items;
8. Professional, technical, or artistic Services;
9. Interests in real property.
10. For works of art for museum and public display;
11. For published books, maps, periodicals, newspaper or journal subscriptions, and technical pamphlets;
12. For Services of visiting speakers, professors, performing artists, and expert witnesses.
13. For all other commodities, equipment and Services, which, in the reasonable discretion of the University Chief Purchasing Officer are available from only one source.

9.3 GOODS AND SERVICES OBTAINED BY ONE AGENCY FROM ANOTHER

- A. Goods and Services obtained from another state, quasi-state or Public Agency such as printing, furniture, moving and painting Services from Correctional Industries shall be exempt from Competition.

9.4 SMALL PURCHASES

- A. Pricing shall be obtained according to the methods set forth in Appendix 1, which establishes the methods for obtaining pricing.
- B. It shall be the responsibility of department personnel to exercise good judgment as to what is a fair and reasonable price.
- C. Specific action to verify the reasonableness of a price should 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.
- D. The University may establish guidelines and procedures to evaluate periodically the reasonableness of pricing for Purchase Orders.
- E. Under no circumstance shall purchases be artificially divided into component parts to circumvent the competitive process.

9.5 SOLE SOURCE.

- A. A Contract may be awarded for a supply, service, or Construction item without Competition when the University determines, at the discretion of the University Chief Purchasing Officer (or their Designee the University Purchasing Agent), that there is only one source for the required supply, service, or Construction item.
- B. Sole source categories may include:

1. items of a unique nature which are unavailable from other sources due to patents or proprietary processes;
2. Special Services for which there is only one documented accepted source, such as transactions involving unique professional Services and/or educational institutions.
3. cassettes, digital material and comparable media obtained from publishers
4. certain computer software;
5. licenses - computer software, electronic transmittal;
6. specialized replacement/repair parts or expansion parts necessary to
7. maintain the integrity of system or function, e.g., scientific research;
8. For licenses for use of proprietary or patented systems;
9. For products or Services comparable to peer institutions and are distinguished as a best practice or product and can be documented as such
10. Special 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;
11. repair/maintenance agreements with manufacturers; and
12. 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 for products or Services comparable to peer institutions and are distinguished as a best practice or product and can be documented as such.

9.6 EMERGENCIES.

- A. The University may 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 Vendor shall be included in the Contract File.
- B. Inadequate anticipation of need shall not be considered justification for Emergency Procurements.
- C. 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 Purchasing Department competitive purchasing process.
- D. If the Emergency occurs outside of business hours for purchasing office, the University shall be authorized to proceed in accordance with the principles and policies of sound Procurement practices.
- E. All Emergency purchases shall be documented. All Emergency documentation forms shall be signed by either a duly authorized official or the designated Emergency response official.

9.7 SPOT PURCHASES

- A. Certain items (e.g., food, heating oil, gas) sold on the basis of posted market prices may be considered Spot Purchases exempt from Competition when market analysis indicates that such Procurements are in the best interest of the University. Opportunities to take advantage of seasonal and supply/demand influences shall be considered when determining whether to pursue formal competitive procedures.

- B. The University Purchasing Agent may establish operational guidelines, to provide flexibility in Spot Purchases for commodities that are special (e.g., food), and are subject to price volatility.

PART 10 EXPENDITURES THAT ARE NOT PROCUREMENTS

10.1 RESPONSIBILITY TO PROMOTE COMPETITION IN AWARDING CONTRACTS

- A. Concessions. Contracts for Concessions are not Procurements. In general, awards of Concession agreements shall be made to the Offeror whose proposal represents the best value to the University.

10.2 EXCEPTIONS TO COMPETITION

- A. The following types of expenditures shall not be subject to the provisions of competitive Procurement:
1. Reimbursement to local governments (e.g., for educational expenses or Public Works Projects).
 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.
 3. Entitlements for specific recipients or categories of recipients as prescribed by legislative mandate (including federal programs).
 4. Goods or Services for replacement or restoration as a result and subject to Insurance Claims.
 5. Grants, Subsidies, Entitlements or Benefits purchased.
 6. Grants in the form of Subsidies or general assistance shall be administered by the University in accordance with legal mandates restricting or defining the use of such funds.
 7. 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.
 8. Employee expenses, subsidies, and Benefits. Examples include but shall not be limited to:
 - a. meals, parking, mileage and travel not covered by University or state Contract;
 - b. allowances (e.g., tools, clothing) per union Contract;
 - c. fees, dues/membership, tuition costs, conference registration/lodging;
 - d. tuition; and
 - e. tests/examinations/certifications.
 9. Claims - Reimbursement for damages. Vouchers for tort claims authorized by the University and/or the R.I. General Assembly, accompanied by a copy of the appropriate legal decision.

PART 11 VENDOR DEBARMENT AND SUSPENSION

11.1 SUSPENSION AND DEBARMENT

The University, acting through the University Purchasing Agent or University Chief Purchasing Officer, is authorized to take appropriate action, on behalf of the University, to suspend or Debar Vendors, in accordance with the following standards and procedures.

A. Applicability of Rulings:

1. A Debarment or Suspension judgment against a part of a corporate entity constitutes Debarment or Suspension of all of its divisions, officers, directors, owners 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 Vendor, when such offense or act occurred in connection with the affiliate's performance of duties for or on behalf of the Vendor, or with the knowledge, approval, or acquiescence of the Vendor or one or more of its principals or directors, or where the Vendor otherwise participated in, knew of, or had reason to know of the acts.
2. The fraudulent, criminal, or other serious improper conduct of any officer, director, shareholder, partner, employee, or any other individual associated with a Vendor may be imputed to the Vendor when the conduct occurred in connection with the individual's performance of duties for or on behalf of the Vendor, or with the Vendor's knowledge, approval, or acquiescence. The Vendor's acceptance of Benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.
3. Reliance on other Agency Debarment List: the University may rely on distributed lists of Bidders or Vendors Suspended or Debarred by State or Federal agencies, as deemed appropriate and prevent the listed Bidder from participating in that program or Solicitation.

B. Just cause for suspension shall be:

1. In lieu of Debarment, a Vendor may be suspended for any just cause for Debarment, at the sole discretion of the University Purchasing Agent, guided by a review of the severity of the violation;
2. An indictment or any information filed by a Public Agency charging a criminal offense as described above for Debarment;
3. Substantial evidence, as determined by the University Purchasing Agent, 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 Vendors, Contractors or Subcontractors by law or regulation;
4. Suspension by the federal government;
5. Material nonperformance on at least one Contract, subject to the notice provisions set forth in § 13.20 of General Conditions of Purchase, if applicable;
6. Lack of responsibility evidenced by:
 - a. Withdrawal of two or more Bids within a two-year period, even with the consent of the University Purchasing Agent, or
 - b. Correction following public or formal opening of two or more Bids within a two-year period, even with the consent of the University Purchasing Agent, or
 - c. Rejection for non-responsiveness of two or more Bids within a two-year period;
7. Commission of any act indicating a lack of business integrity or business honesty.

8. Lack of competence, financial responsibility, or other limitations related to the ability of a Vendor to provide Supplies and Services;
 9. Failure to pay Subcontractors for work performed and accepted in accordance with the Prompt Payment Statute, RIGL § 42-11.1-3;
 10. Any failure by a Vendor to perform a Contract in a workmanlike manner.
- C. Just cause for Debarment shall be:
1. Conviction or final adjudication by a court or administrative agency of competent jurisdiction of any of the following offenses:
 - a. 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
 - b. 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 Vendor's present responsibility as a public Contractor); or
 - c. Violation of state or federal antitrust laws relative to the submission of Bids or proposals (including those prescribing price fixing between competitors, allocation of customers between competitors, and Bid rigging); or
 - d. Violation of state or federal laws regulating campaign contributions;
 - e. Violation of state or federal laws regulating equal employment opportunity or accessibility for individuals with disabilities.
 2. Substantial evidence, as determined by the University Purchasing Agent of:
 - a. Violation of the terms of a public agreement or transaction so serious as to affect the integrity of any agency program;
 - b. Falsification of information on a Bid submission or Bidder Registration form, subcontracting plan, or MBE Utilization Plan;
 - c. Material nonperformance on two or more Contracts, subject to the notice provisions set forth in the University's General Conditions of Purchase, if applicable;
 - d. Debarment by the federal government;
 - e. Withdrawal, without written permission of the University Purchasing Agent, of two or more Bids after an award has been announced;
 - f. Commission of any act indicating a lack of business integrity or business honesty;
 - g. Lack of competence, financial responsibility, or other limitations related to the ability of a Vendor to provide Supplies and Services;
 - h. Failure to pay Subcontractors for work performed and accepted in accordance with the Prompt Payment Statute, RIGL § 42-11.1-3; or
 - i. Any failure by a Vendor to perform a Contract in a workmanlike manner.
- D. A Vendor who knowingly engages as a Subcontractor, for a Contract awarded by the University, a Vendor then under a ruling of suspension or Debarment by the University 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 University Purchasing Agent.
- E. The University Purchasing Agent may suspend a Vendor for up to a three-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.

11.2 NOTIFICATION, PROTEST AND RECONSIDERATION

- A. The University Purchasing Agent shall notify in writing any Vendor whom the University Purchasing Agent intends to Suspend or Debar. Notice shall be issued to the email address that the Vendor has on file with the University (or post office address if Vendor email address is not on file). Such notice shall:
 - 1. State the nature of and, in the case of Suspension, the duration of the sanction,
 - 2. Provide the Vendor with the rationale for the decision, and
 - 3. Provide a reasonable period of not less than fourteen (14) calendar days for reconsideration within which period the Vendor may provide justification for why such action should not be implemented.
 - 4. If a Suspension or Debarment is based upon charges of fraud or dishonesty pursuant to these regulations, the Vendor may request an opportunity to be heard by the University Purchasing Agent prior to the issuance of the Suspension or Debarment decision.
- B. If the University Chief Purchasing Officer determines that immediate Suspension is necessary to prevent serious harm to the University, the Suspension may take effect immediately upon transmittal of a written notice of such immediate Suspension to the Vendor. The written notice shall include the applicable provisions of the above. Notwithstanding any other provisions of this Part, any Vendor federally Suspended or Debarred shall by reason of such Suspension or Debarment be simultaneously Suspended or Debarred by the University.
- C. When a reconsideration hearing by the University Purchasing Agent has been requested in writing by a Vendor, the University Purchasing Agent shall, upon expiration of the reconsideration period, notify the affected Vendor of their final decision. Where no such request is received from the Vendor, the action shall be implemented without notice.
- D. Protests of a Suspension or Debarment may be submitted to the University Chief Purchasing Officer in accordance with Part 1.5 of these regulations.
- E. 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 University Purchasing Agent from directing that a Suspension or Debarment take effect immediately.
- F. No notice shall be required where the University Purchasing Agent rejects the offer of a Vendor for a single Procurement.
- G. A Vendor who has been Suspended shall not be reinstated until they have submitted a written request for reinstatement to the University Purchasing Agent, with evidence that the reason for suspension or revocation has been corrected, which has been accepted and approved by the University Purchasing Agent.

PART 12 DEFINITIONS

The following definitions shall be applicable to University Procurements and to the Board of Trustees Procurement Regulations:

“Act” means the “State Purchases Act,” RIGL § 37-2-1, et seq.

"Agency Price Agreement (APA)" means a pricing agreement issued by the State which has been established on behalf of the University for certain commodities or Services.

"Architect" means a person who, under the provisions of Chapter 5-1-2, by reason of their 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 their licensing as an architect in this state.

"APRA" means the "Access to Public Records Act," RIGL § 38-2-1, et seq.

"Auxiliary" means an entity that exists to furnish Supplies or Services to students, faculty, or staff and that charges a fee directly related to the costs of Supplies or Services and are considered "Restricted Funds." Auxiliary entities are managed as essentially self-supporting activities. Examples include but are not limited to residence halls, dining Services, and student health Services.

"Benefits" means monies or gifts provided by the state to or on behalf of individuals or entities (clients, patients, inmates, employees, and non-profit service providers) the distribution of which may not be prescribed by statute, regulation, or program provisions.

"Bid" means 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) through (h) "Competitive Sealed Bidding" and these regulations, or a Request for Quotation.

"Bid Abstract" means a summary of Bids by Responsive Bidders to a Solicitation.

"Bidder Certification Cover Form" means the form of that name, as amended from time to time, included in a Solicitation and required to be submitted with a Proposal, or supplemental to an unsolicited proposal.

"Bid File" means the file the University maintains documenting each Solicitation and responses thereto.

"Bid Opening" means the process through which Bids are opened and the contents revealed for the first time to the University and Bidders and to the public.

"Bid Security" or "Bid Surety" means 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.

"Bidder" means any Person submitting a competitive Bid in response to a Solicitation.

"Bidders Lists" means lists maintained by the University Purchasing Agent and the State purchasing agent containing the names and addresses of Vendors of various Supplies and Services from whom Bids, proposals, and quotations may be solicited.

"Blanket Order" means 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.

"Board" means the University of Rhode Island Board of Trustees.

"Business" means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or other legal entity through which business is conducted.

"Change Order" means a written order signed by the University Purchasing Agent or their designee or the Vendor directing or allowing the Vendor to make "changes which the changes clause of the Contract authorizes the University Purchasing Agent or Vendor to order without the consent of the Vendor or University Purchasing Agent.

"Collusive Bidding or Corrupt Combination" means the response to Bid invitations by two or more Vendors who have secretly agreed to circumvent laws and rules regarding independent and competitive bidding.

"Commodity" means 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.

"Competition" means 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.

"Competitive Bidder/Offeror" means Responsible Bidder or Offeror.

"Competitive Negotiation" means 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 University has solicited offers.

"Competitive Quotes" means price quotations obtained from a Vendor for the purchase of Supplies or Services by the University Purchasing Agent or delegee.

"Concession" shall be defined as the granting of permission to a commercial entity to conduct a commercial enterprise on Board premises to provide a service to the University community for which the University does not pay.

"Confidential Information" means confidential information as defined in Section 13.17, Board General Terms and Conditions

"Consultant" means any Person with whom the University have 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.

"Construction" means 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, provided, however that "Construction" shall not include the routine maintenance or repair of existing structures, buildings, or real property routinely performed by salaried Employees of the University in the usual course of their jobs.

"Construction Purchases" means Procurements above the threshold set forth under Large Purchases in Appendix 1.

"Contract" means all types of agreements, Purchase Orders, 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. "Supplemental Agreement" means any Contract Modification which is accomplished by the mutual action of the parties. With respect to the procurement regulations set forth herein, "Contract" shall not apply to labor contracts with Employees of the Board or the University.

"Contract Addendum" means 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.

"Contract Dispute" means a circumstance whereby a Vendor and University are unable to arrive at a mutual interpretation of the requirements, limitations, or compensation for the performance of a Contract.

"Contract File" means the file the University maintains pertaining to each Contract awarded and contains written documentation.

"Contract Modification" means 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.

"Contractor" means any Vendor having a Public Works Contract with the University or the Board.

"Cost No Fee (CNF)" Contract means one under which the seller receives no fee.

"Cost Plus Fixed Fee (CPFF)" Contract means one which provides for the payment of a fixed fee to the seller.

"Cost Plus Incentive Fee (CPIF)" Contract means 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.

"Cost Plus Percentage of Cost (CPPC)" Contract means one which provides for a fee which is adjusted by percentage formula in accordance with the relationship to total cost. Such Contracts are explicitly prohibited.

"Cost Reimbursement Contract" means a Contract under which the University Reimburses the Vendor for those Contract costs, within stated ceiling, which are allowable and allocable in accordance with cost principles established by the University and a fixed fee.

"Cost Sharing (CS)" Contract means one under which the seller not only receives no fee but is Reimbursed for only an agreed upon portion of its allowable costs.

"Data" means recorded information, regardless of form or characteristic. See RIGL § 37-2-7(8).

"Debar" means to issue a Debarment to a Vendor.

"Debarment" means permanent removal from University Bidders Lists, exclusion from all subsequent Procurements as a Vendor or Subcontractor, and termination of all outstanding Contracts, subject to Part 11 of these regulations and the terms of any relevant Contracts.

"Delegated Purchasing Authority" means the transfer of purchasing authority from the State Chief Purchasing Officer to the Board or the University in accordance with the provisions and limitations of the Act and regulations pursuant thereto.

"Designee" means a duly authorized representative of a Person holding a superior position.

"Emergency" means a situation to which an urgent response is required. Immediate dangers to health and safety, threats to property, research and necessary functions, and failures of critical equipment constitute emergencies.

"Employee" means an individual drawing a salary from the University or its affiliates, whether elected or not, and any non-salaried individual performing Personal Services.

"Employee Contractor" means 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.)

"Employee Service Contractor" means a person on a state or Public Agency payroll who has been employed by a state agency in a service capacity. (An example of such employment would be RIC professors hired by DCYF to provide social worker training.)

"Engineer" shall mean a person who, under the provisions of Chapter 5-8-2, by reason of their 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 their registration as an engineer.

"Entitlements" means 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.

"Established Catalog Price" means the price included in the most current catalog, price schedule or other form that:(a) is regularly maintained by a manufacturer or Vendor of an item; (b) is either published or otherwise available for inspection by customers; (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. See RIGL § 37-2- 15(2).

"Evaluated Bid Price" means the dollar amount of a Bid after Bid price adjustments are made pursuant to Proposal Evaluation 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. See RIGL § 37-2-15(3).

"Evaluation of Bid" means 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.

"Firm Fixed Price (FFP)" Contract means 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.

"Fiscal year" means 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.

"Fixed Price Incentive (FPI)" Contract means 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.

"Fixed Price Redeterminable (FPR)" Contract means one which permits reconsideration of price at a stated time after Contract initiation when the only Vendor capable of performing a job cannot quote a fixed price with full assurance that it will be fair and reasonable.

"Fixed Price with Economic Price Adjustment (FP W/EPA)" Contract means 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.

"General Condition Addenda" is defined in Section 13.34 herein.

"General Conditions of Purchase" means the Board General Conditions of Purchase contained in Part 13 of these regulations, as amended from time to time.

"Governmental Body" means any department, commission, council, board, bureau, committee, institution, legislative body, agency, or government corporation.

"Grants" means monies provided by third parties to the University to underwrite specific research or programs. Although grants may be distributed for specific purposes, payment is not based upon supply of specific units of service or products.

"Good Faith" means honesty in fact in the conduct or transaction concerned and the observance of reasonable commercial standards of fair dealing.

"Independent Contractor" means a Person (individual or firm) who, in various degrees and/or combinations: is available to the general public on a regular and consistent basis; is free to work when and for whom they please; is employed by more than one Person or company at a time; makes a significant investment in facilities not typically maintained by an employee; and can realize a profit or loss as a result of providing Services or products.

"Informal Quotation" "or Request for Quotation" means a document or oral solicitation used for seeking competition on small purchases or on any purchase lower than the amount that requires competitive bidding.

"Invitation for Bids" means all documents, whether attached or incorporated by reference, utilized for soliciting proposals in accordance with the procedures set forth in RIGL § 37-2-18.

"Large Purchase" means a Procurement with a value above the threshold set forth under Large Purchases in Appendix 1.

"Leased Employee" means 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.

"Letter of Authorization (LA)" means a written instrument, binding only when signed by the University Chief Purchasing Officer or University Purchasing Agent, which authorizes immediate commencement of implementation of the delivery of Supplies or the performance of Services.

"Master Price Agreement (MPA)" means a pricing agreement issued by the State Division of Purchases which has been established on behalf of one or more than one state agency for certain commodities or Services.

"MBE" means a small business enterprise that is owned and controlled by one or more individuals who are minorities as defined by RIGL § 37-14.1-3 To be recognized as an MBE, the business must be certified as an MBE by the Rhode Island Office of Disability and Equal Opportunity ("ODEO");

"Negotiation" means the process of establishing contractual provisions and of gaining contractual acceptance, other than solely as the result of normal competitive bidding.

"Noncompetitive Negotiation" means 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.

"Nonperformance" means lack of compliance with the Contract Specifications and/or terms and conditions.

"Offeror" means an individual who proposes a specific offer to sell Supplies and Services to the state or the University whether in response to a Bid or Request for Proposals or unsolicited.

"Performance Bond" means a Contract of guaranty executed subsequent to award by a successful Bidder to protect the state, the Board, and the University from loss due to Vendor inability to complete a Contract.

"Person" means any business, individual, organization, or group of individuals unless the context clearly dictates otherwise. See RIGL § 37-2-7(14).

"Personal Services" means Services provided by persons who are paid directly by the University or the state but are not on the University/state payroll. Personal Services may consist of the following relationships: employee, Leased Employee, Employee Contractor, and employee Service Contractor.

"Post-Consumer Content" means 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."

"Pre-Consumer Content" means any material generated during any steps in the production of an end product, but does not include any waste material or by-product that can be reused or has been normally reused within the same plant or another plant of the same parent company.

"Prime Contractor" means a Vendor who engages Subcontractors in the course of satisfying the requirements of fulfilling a Contract.

"Procurement" means 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. See RIGL § 37-2-7(15).

"Professional Consultant" means 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.

"Prompt" means five (5) working days unless otherwise specified by the University Purchasing Agent.

"Proposal Evaluation Criteria" means 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.

"Proposer" means an Offeror which submits a proposal in response to a Request for Proposal.

"Proprietary Information" means 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."

"Protest" means a protest, complaint or challenge by an aggrieved actual or prospective Bidder or Offeror (hereinafter "protestor") in connection with the Solicitation or selection for award of a Contract for the purchase of Supplies, Services, and or Public Works Projects. For the purpose of these regulations the term "aggrieved" means that the protestor has an economic interest which will be adversely impacted by the Solicitation or award of a Contract.

"Public Agency" means agencies and any other body corporate and politic is hereinafter created or established by Act of the General Assembly including, but not limited to the Board as established in RIGL § 37-2-7(16).

"Public Works Contractor" means a Contractor, in accordance with RIGL § 37-12-1.

"Public Works Project" means 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. Public Works Projects shall not include the supply of Supplies, materials, products, professional Services, or maintenance Services except as a required element of a Solicitation for the aforementioned work.

"Purchase Agreement" means a written document issued by the State Purchases Division or the University Purchasing Department to a Vendor that binds the parties to general terms, but does not represent a specific order for Supplies or Services. See Master Price Agreement, Agency Price Agreement and University Purchase Agreement.

"Purchase of Services" means monies expended for the provision of specific units of time and effort rather than an end product.

"Purchase Order" means a document to formalize a purchase transaction with a Vendor.

"Recycled Product" means a product containing Pre-Consumer Content and Post-Consumer Content.

"Registered Vendors" - the names of interested Vendors who have submitted completed Bidder Registration Forms to the State Division of Purchases or the Purchasing Department.

"Reimbursement" means monies paid to a beneficiary, client, or claimant to make restoration for expenses such person has undertaken and variants of the verb to "Reimburse" means making such payment of monies.

"Rejection" means rejection and non-consideration by the University of a Bid or offer submitted for a particular Procurement based on lack of demonstrated responsibility or competence.

"Removal" means deletion from University Bidders Lists without interruption of outstanding Contracts and without limiting the ability of the Vendor to participate in subsequent Procurements.

"Request for Proposal (RFP)" means a Solicitation which does not have a completely defined scope for Supplies or Services and means all documents, whether attached or incorporated by reference, utilized for soliciting (competitive) proposals.

"Request for Quotation (RFQ)" See Informal Quotation.

"Requisition" or a purchase request means a document that requests that a Contract be entered into to obtain Supplies and/or Services for a specified need. A "requisition" may also mean an internal document which initiates Procurement. The request may include, but is not limited to, a performance or technical description of the requested item, delivery schedule, transportation mode, Proposal Evaluation Criteria, suggested sources of supply, and information related to the making of any written determination required by policy or procedure.

Responsible Proposer" means a Proposer who is determined by the University to meet standards of business competence, reputation, financial ability, and product quality, who has the capability in all respects including financial responsibility to perform fully the Contract requirements, and who has the integrity and reliability which will assure good faith performance.

"Responsive Proposer" means a Proposer who has submitted a Bid which conforms in all material respects to the Invitation for Bids or proposals, so that all Proposers may stand on equal footing with respect to the method and timeliness of submission and as to the substance of any resulting Contract as set forth in RIGL § 37-2-15(7).

"Restricted Funds" means those funds expendable for operating purposes but restricted by donors or other outside agencies as to the specific purpose for which they may be expended (e.g., endowment funds, gifts, scholarships, governmental grants, private grants, Auxiliary entities, restricted operational purposes with use-restrictions designated by the appropriating body). Restricted Funds do not include Sponsored Funds (see Sponsored Funds).

"Request for Best and Final Offer" means a request of the requirements of the Procurement in the final form to all Offerors still under consideration. Each Offeror shall submit a final offer, which states their best and final price and other terms for the Procurement. Best and final offers shall be evaluated in the same fashion as a normal competitive Bid.

"RIGL" means Rhode Island General Law.

"Sealed Bid" means a Bid which has been submitted in a sealed envelope or digital lock box to prevent its contents being revealed or known before the deadline for the submission of all Bids to enhance fair Competition.

"Services" means the rendering, by a Vendor, 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. It does not include labor Contracts with employees of state agencies. See RIGL § 37-2-7(20).

"Single Source" means a Procurement in which two or more Vendors are capable of supplying the Supplies or Services required but in the judgment of the University Purchasing Agent one Vendor has greater expertise or experience with similar contracts.

"Small Purchases" means, in accordance with RIGL 16-32-2(e)(1), Procurements not exceeding the thresholds set forth in Appendix 1.

"Sole Source" means a Procurement where only one Vendor is qualified to provide the Supplies or Services required.

"Solicitation" means the process of notifying prospective Proposers that the University wish to receive Bids for furnishing Supplies and Services. The process may consist of public advertising, mailing Invitations for Bids, posting notices, and/or telephone, fax or telegraph messages to prospective Proposers.

"Source Selection" means 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.

"Special Services" means Services which the Board or the University deem 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), (4) visiting speakers or professors and (5) training.

"Specification" means a description of what the purchaser seeks to buy, and consequently, what a Proposer must be a Responsive Proposer 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, Supplies or Services. It may include a description of any requirements for inspecting, testing, or preparing Supplies or Services items for delivery; a purchase description.

"Sponsored Funds" consists of funds provided by donors or other outside agencies for research or research-related purposes.

"Spot Purchase" means a one-time purchase occasioned by a small requirement, an unusual circumstance, or to take advantage of a favorable market condition.

"Standard" means 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.

"State" means the State of Rhode Island and any of its departments, agencies, or public agencies. See RIGL § 37-2-7(22).

"State Funds" means funds other than Restricted, Sponsored, Auxiliary or other third-party funds..

"Subcontractor" means any Person undertaking part of the work under the terms of a Contract, by virtue of an agreement with the Prime Contractor, who, prior to such undertaking, receives in writing the consent and approval of the University.

"Subsidies" means monies provided by the state to or on behalf of individuals or entities to assist in defraying general expenses.

"Supplemental Code of Procurement Ethics" is defined in Section 3.1(B) of these regulations

"Supplemental Services" means Services performed by an individual Vendor in a capacity which supplements the basic staffing of the University.

"Supplies" means all property, printing and insurance, except interests in real estate. See RIGL § 37-2-7(24).

"Suspend" means to issue a Suspension to a Vendor.

"Suspension" means temporary removal from University Proposers List and exclusion from subsequent Procurements, and, at the discretion of the University Chief Purchasing Officer, termination of outstanding Contracts for a specified period of time, subject to Part 11 of these regulations and the terms and conditions of the relevant Contract(s);

"They" means, depending on the context, either a singular person whose gender is unknown or irrelevant to the context, or two or more persons.

"Time and Materials (T/M)" Contract means 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.

"Trade Secret" means a formula, pattern, device, or compilation of information which is used in a Vendor's business and which gives a Vendor the opportunity to obtain advantage over competitors who neither know or use it. See "Proprietary information."

"University" means the University of Rhode Island.

"University Proposers List" means

"University Chief Purchasing Officer" means the Vice President for Administration and Finance for the University or their delegee.

"University Price Agreement (UPA)" means a pricing agreement which has been established by the University. The UPA shall specifically state the term, price and unit of issue of items covered in the agreement. 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 Vendor, 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.

"University Purchasing Agent" means the Director of Purchasing for the University or their delegee.

"University Purchasing Department" means the department of the University headed by the Director of Purchasing and charged with ensuring that the Procurements of the University are conducted in accordance with State or Board purchasing regulations as applicable.

"Unregistered Vendors" means Vendors that have not expressed interest in selling to the state by submitting a Bidder Registration Form.

"Vendor" means any individual, firm, corporation, partnership or other entity submitting a proposal to the University indicating a desire to enter into Contracts with the University, or with whom a Contract is executed by the University Purchasing Agent."

"Vendor's Agents" means Vendor's employees, officers, Independent Contractors, and Subcontractors, agents and any other entities acting on Vendor's

"WBE" means a small business enterprise that is owned and controlled by one or more individuals who are women. To be recognized as a WBE, the business must be certified as an WBE by the Rhode Island Office of Disability and Equal Opportunity ("ODEO");

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PART 13 BOARD GENERAL CONDITIONS OF PURCHASE

13.1 PURPOSE

The purpose of the General Conditions of Purchase is to provide a comprehensive, clear, consistent and reasonable set of contractual terms to serve as the base agreement between the University and a Vendor. These General Conditions of Purchase, along with items specified in 13.4 of this Part herein, shall serve as the Contract with the University regardless of the method of Procurement.

13.2 DEFINITIONS

All terms contained in the Board of Trustees Procurement Regulations and used herein shall have the same meanings.

13.3 PROCUREMENT PROCESS

- A. Pricing. All pricing offered or extended to the University is considered to be firm and fixed unless expressly provided for to the contrary in the Purchase Order or Purchase Agreement.
- B. Cost of Preparation. All costs associated with the preparation, development and submission of Bids or proposals and/or protests arising therefrom, in response to Solicitations issued on behalf of the University, shall be the Vendor's sole responsibility. The University will not Reimburse any Vendor for such costs.
- C. Selection
 1. Vendor Bids and proposals shall be evaluated and Purchase Orders or Purchase Agreement issued with reasonable promptness and by written notice to the successful Vendor (only); Bids and proposals are considered to be irrevocable for a period of sixty (60) days following the opening date unless expressly provided for to the contrary in the Solicitation document, and may not be withdrawn during the specified period without the express written permission of the University Purchasing Agent.
 2. The University reserves the right, before making an award, to initiate investigations as to whether or not the materials, equipment, Supplies, Services, qualifications, integrity, capability, capacity, and/or facilities offered by the Vendor meet the requirements set forth in the Solicitation and are ample and sufficient to ensure the proper performance of the Contract in the event of award. Failure to pay Subcontractors on previous Vendor Contracts may be considered (also see 13.5 of this Part herein). If upon such examination it is found that the conditions of the Solicitation are not complied with, and/or that the Supplies or Services proposed to be furnished do not meet the requirements called for in the Solicitation, and/or that the Services, qualifications, integrity, capability, capacity and/or facilities of the Vendor are not satisfactory, then the University may reject Vendor's Bid or Proposal at the University's sole discretion. Nothing in the foregoing shall mean or imply that it is obligatory upon the University to make any examinations before issuance of a Purchase Order or Purchase Agreement. If such examination is made, it in no way relieves the Vendor from fulfilling all requirements and conditions of the Contract.
 3. Qualified or conditional offers which impose limitations of the Vendor's liability or modify the requirements of the Solicitation, offers for alternate Specifications, or offers which are made subject to different terms and conditions, including form Contracts, other than those specified by the University may be, at the sole discretion of the University Purchasing Agent:

- a. Rejected as being non-responsive; or,
 - b. Set aside in favor of the requirements set forth in the Solicitation (with the consent of the Vendor); or,
 - c. Accepted, if the University Purchasing Agent determines in writing that such acceptance is in the best interest of the University.
 - d. Acceptance or rejection of alternates or counteroffers by the University Purchasing Agent shall not constitute a precedent and shall not be binding on successive Solicitations or Procurements.
4. Vendor Bids and proposals must bear an authorized signature or certification in a form approved by the University Purchasing Agent. Vendor Bids and proposals which do not bear the required signature or certification may be deemed to be non-responsive to the Solicitation. Bids submitted in pencil will not be accepted.
 5. Vendor Bids and proposals must utilize the unit of measure specified in the Solicitation. In the event of any discrepancy between unit prices and their extensions, the unit price will govern.
 6. The University Purchasing Agent reserves the right to determine whether a Vendor is a Responsive Proposer to a Solicitation and whether a Vendor is Responsible.
 7. The University Purchasing Agent reserves the right to reject any and all Bids or proposals in whole or in part, to waive technical defects, irregularities, and omissions, to consider a Vendor's past performance where, in the University Purchasing Agent's judgment, the best interest of the University will be served, to require additional Competitive Negotiations and/or to issue a Request for Best and Final Offers.
 8. The University 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 Solicitation, unless the Vendor expressly indicates otherwise in its Bid or proposal that doing so is not acceptable.
 9. Preferences may be given as authorized by law or regulation, including, but not limited to, the following:
 - a. Preference may be given to Bids for products raised or manufactured in Rhode Island, if all other things are equal. Contracts funded entirely by State funds, when all factors are equal, a Vendor or Services provider whose headquarters or primary place of business is located within the State, or in the event of a joint venture with a Vendor or Services provider whose headquarters or primary place of business is within the State, shall receive preference.
 - b. **MINORITY BUSINESS ENTERPRISES** - Pursuant to the provisions of RIGL Chapter 37-14.1 the University reserves the right to apply additional consideration to offers, and to direct awards to Proposers other than the Responsive Proposer with the Bid representing the lowest price where:
 - i. The offer is fully responsive to the terms and conditions of the Request;
 - ii. 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;
 - iii. The firm making the offer has been certified by the State Office of Diversity Equity and Opportunity ("OPDES") to be a small business

concern meeting the criteria established to be considered an MBE or WBE;

- iv. A minimum of ten percent (10%) of the dollar value of the work performed against Contracts may be performed by certified MBEs or WBEs where it has been determined that subcontract and/or supply opportunities exist, and where certified MBEs or WBEs are available. Awards of this type shall be subject to approval by the State Director of Administration of a Subcontracting Plan submitted by the Proposer receiving the award.
- v. In the event federal funding requirements impose additional or different requirements relating to contracting with MBEs, WBEs or other underrepresented businesses, those federal requirements must be followed.

10. The University Purchasing Agent reserves the right to act in the University's best interest regarding awards caused by clerical errors or omissions by the University Purchasing Department.

11. Any Contract issued by the University Purchasing Department is subject to the resolution of any timely Protest.

12. Any objections to Specifications or requirements in a Solicitation must be received by the University Chief Purchasing Officer in accordance with University Procurement Regulation, Section 1.5 ("Resolution of Protests").

D. Public Records. Vendors are advised that all records submitted to the University Purchasing Department may be subject to disclosure in accordance with APRA and/or in the course of litigation through discovery. Any records submitted which a Vendor believes are of a privileged or confidential nature or are not subject to disclosure in accordance with RIGL § 38-2-2 or other applicable laws, should be clearly marked. The Vendor should provide a brief explanation as to why each portion of information marked as confidential or privileged should be withheld from public disclosure and cite the specific provision of RIGL § 38-2-2. In the event the Vendor makes a reasonable assertion of confidentiality or privilege, the University Purchasing Department will use reasonable efforts to honor the Vendor's request.

E. Product Evaluation

- 1. All Standards are minimum Standards except as otherwise provided for in the Solicitation.
- 2. Samples must be submitted to the University Purchasing Department in accordance with the Solicitation. Samples must be furnished free of charge with the understanding that they shall not be returned to the Vendor.
- 3. All samples submitted by Vendors may be subject to examination or testing by any laboratory the University Purchasing Agent may designate.

F. COLLUSION - Vendor warrants that it has not, directly or indirectly, entered into any agreement or participated in any collusion or otherwise taken any action in restraint of full competitive bidding.

G. PROHIBITION AGAINST CONTINGENT FEES AND GRATUITIES - Vendor warrants that it has not paid, and agrees not to pay, any bonus, commission, fee, or gratuity to any Employee or official of the University for the purpose of obtaining any Contract or award issued by the University. Vendor 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 University, except as shall have been expressly communicated to the University Purchasing Agent in writing prior to acceptance of the Contract or award in question. Subsequent discovery by the University of non-compliance with these provisions shall constitute sufficient cause for immediate termination of all outstanding Contracts and suspension or Debarment of the Proposer(s) or Vendor(s) involved.

13.4 ENTIRE AGREEMENT

- A. Incorporation. The Purchase Order, Purchase Agreement or Letter of Authorization issued by the University Purchasing Department, together with associated documents referenced therein, shall constitute the entire and exclusive agreement between the University and any Vendor receiving an award. As noted in § 13.1 of this Part, the resulting Contract shall incorporate by reference:
1. Applicable provisions of the Act;
 2. These regulations;
 3. The URI Proposer/Vendor Certification Form;
 4. All other applicable provisions of the Rhode Island General Laws and applicable federal laws;
 5. The specific requirements described in the Solicitation and related Solicitation documents;
 6. These General Conditions of Purchase, along with applicable General Condition Addenda as defined in Section 13.34 herein; and
 7. The offer/proposal submitted by Vendor and accepted by the University.
- B. Order of Precedence. Unless otherwise approved by the University Purchasing Agent, in the event of any express conflict or dispute regarding a Vendor's proposal, a Vendor's proposed standard terms of sale, the Solicitation documents, statutes, regulations and/or these General Conditions of Purchase, the following order of precedence shall generally apply (with 1 being the highest level of precedence):
1. Federal laws and/or regulations (for federally funded Contracts only)
 2. Rhode Island General Laws;
 3. The University of Rhode Island Board of Trustees Procurement Regulations, General Conditions of Purchase and General Condition Addenda;
 4. The Purchase Order or Purchase Agreement issued by the University Purchasing Department;
 5. The offer, proposal or Bid submitted by the Vendor and to the extent accepted by the University Purchasing Department;
 6. Solicitation documents issued by the University Purchasing Department; and
 7. To the extent allowed by law, for an individual Procurement, the University Purchasing Agent may agree to an alternate order of precedence to serve the best interest of the University and/or to protect the health, safety and welfare of the University and its community.
- C. Contract Contingencies
1. All Contracts are subject to the following:
 - a. All material communication between the University and any Vendor pertaining to any Solicitation, award or management of a Contract shall be set forth in writing.
 - b. Vendor proposals shall be accepted by the University Purchasing Department with the understanding that the issuance of a Purchase Order,

Purchase Agreement or Letter of Authorization shall be the only document which creates a binding Contract between the Vendor and the University. The Purchase Order, Purchase Agreement or Letter of Authorization shall bind the Vendor on its part to furnish and deliver Supplies and/or Services at the prices and in accordance with the conditions of Vendor's proposal. A Contract shall be deemed executory only to the extent of funds available for payment of the amounts shown on the Purchase Order. Additionally, any Contract shall be contingent upon the resolution of a timely Protest.

- c. No alterations or variations of the terms of the Contract shall be valid or binding upon the University, or its Board unless submitted in writing and accepted by the University Purchasing Agent through issuance of an approved Purchase Order or Change Order. All Contracts and changes must be approved by and emanate from the University Purchasing Department.
- d. Oral agreements or arrangements made by a Vendor with anyone, including a University Employee, shall not be binding upon an agency, the University or its Board unless and until reduced to writing and approved by the University Purchasing Agent through the issuance of an approved Purchase Order, Purchase Agreement or Change Order.
- e. Contracts shall remain in force for the term specified in the Purchase Order or Purchase Agreement or until all articles or Services ordered before date of termination shall have been satisfactorily delivered or fully rendered and accepted by the University and thereafter until all terms and conditions have been met, unless:
 - i. Terminated prior to expiration date by satisfactory delivery against orders of entire quantities, or
 - ii. Extended upon written authorization of the University Purchasing Agent to permit ordering of the unordered balances or additional quantities at the Contract price and in accordance with the Contract terms, or
 - iii. Canceled by the University in accordance with other provisions stated herein.
- f. All Vendor obligations as described herein shall survive expiration, termination and/or cancellation of the Contract.

13.5 RELATIONSHIP OF PARTIES

The selected Vendor must be fully qualified and capable in all material respects to provide the specified Supplies and/or Services. Unless specifically provided for in the Solicitation, the Vendor shall be an Independent Contractor and not an Employee, agent, partner or joint venturer with the University. Nothing herein shall be construed as creating any contractual relationship or obligation between the University and any sub-Proposer, Subcontractor, supplier of the Vendor, and/or employee of the Vendor. With that said, the University may consider Vendor non-payment of Subcontractors or suppliers in determining whether an award to the Vendor is in the best interest of the University. If the Solicitation allows, and the Vendor is a joint entity consisting of more than one individual, partnership or corporation or other business organization, all such entities shall be jointly and severally liable for performing the Contract; however, one entity shall be designated as the lead Vendor for contracting purposes.

13.6 SPECIFIED QUANTITY REQUIREMENTS

- A. Except where expressly specified to the contrary, all Solicitations are predicated on a specified quantity of Supplies or Services, or for a specified level of funding. Provided, however, that:
1. If stated in the Solicitation, the University 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 Vendor; and,
 2. The University shall not accept quantities in excess of the specified quantity except where the item is normally sold by weight (where sold by weight, the University shall not accept quantities greater than ten per cent [10%] of the specified quantity), or where the Solicitation provides for other than exact quantities; and,
 3. Quantities and performance periods set forth in a Purchase Order or a Purchase Agreement may be increased or extended with approval of the University Purchasing Agent provided; however, that any such increase or extension shall be documented through issuance of a Change Order issued by the University Purchasing Department.

13.7 TERM AND RENEWAL

The term (i.e., duration) of the Contract shall be specified in the Contract and may not exceed any limits imposed by applicable law. While automatic renewal provisions are generally disfavored, no Contract shall in any case be automatically renewed for periods in excess of any Contract duration limitations imposed by applicable law.

In the case of multi-year Contracts, in accordance with the limitations relating to “multi-year Contracts” imposed by RIGL §37-2-33, the University’s payment and performance obligations, after the first year of such Contract, shall be subject to the availability of funds therefor, provided however, that it must do so in “good faith” as that term is defined in RIGL §37-2-3(b), and it is the University’s policy that it shall not cancel or terminate a Contract due to the unavailability of funds hereunder unless the unavailability of funds is due to causes outside of the University’s control, and not due to the failure or refusal of the University to allocate sufficient funds within its discretion.

13.8 DELIVERY

- A. Delivery must be made as ordered and in accordance with the Solicitation and Vendor’s proposal. If delivery qualifications do not appear on the Vendor’s proposal, then the proposal shall be interpreted to mean that Supplies are in stock and that shipment will be made within seven (7) calendar days after issuance of the Purchase Order. The decision of the University Purchasing Agent as to reasonable compliance with the delivery terms shall be final. The burden of proof for delay in delivery of an order shall rest with the Vendor. Except when authorized on the Purchase Order:
1. All prices shall be quoted F.O.B. destination, freight pre-paid with all transportation and handling charges paid by the Vendor;
 2. Responsibility and liability for loss or damage shall remain with the Vendor until final inspection and acceptance when responsibility shall pass to the University except as to latent defects, fraud and or Vendor’s warranty obligations;
 3. Deliveries shall be inside deliveries to other than a loading dock, front lobby or reception area and as designated in the Purchase Order; and,

4. Costs shall include all packaging and/or crating charges which shall be of durable Construction, good condition, properly labeled and suitable for handling of contents.

13.9 FOREIGN ENTITIES

In accordance with RIGL § 7-1.2-1401, no business entity shall have the right to transact business in Rhode Island until it shall have procured a certificate of authority to transact business in the State from the Rhode Island Secretary of State. The term "Entity" means a corporation, a business trust, or association, a real estate investment trust, a common-law trust, a sole proprietorship or any other unincorporated business, or entity including a partnership, whether general or limited, (including a registered limited liability partnership), a foreign limited liability company, or as defined in RIGL § 7-1.2-1401.

13.10 PRODUCT ACCEPTANCE

- A. Quality. All Supplies offered or otherwise provided by Vendors shall be new, of the latest model or design, sourced from regular stock product inventories with all parts regularly used with the type of Supplies offered, without attachment(s) or part(s) substituted or applied contrary to manufacturer's recommendation and standard practice, of prime manufacture, and of first quality unless otherwise specified by the University.
- B. Rejection of Nonconforming Goods. The University reserves the right to reject all nonconforming Supplies, and to cause their return for credit or replacement, at the University's option. Contract deliverables specified for Procurement of Services shall be construed to be work product, and subject to the provisions of this Section.
 1. Failure by the University to discover latent defect(s) or concealed damage or non-conformance shall not foreclose the University's right to subsequently reject the Supplies in question.
 2. Formal or informal acceptance by the University of non-conforming Supplies shall not constitute a precedent for successive ordering, receipt, acceptance, or Procurement of non-conforming Supplies.
- C. If the Vendor fails to Promptly cure the defect or replace the Supplies, the University reserves the right to cancel the Purchase Order. The University may then Contract with a different Vendor and invoice the original Vendor 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 Vendor from University property within forty-eight (48) hours of notification, unless otherwise specified by the University. Rejected items left longer than forty-eight (48) hours or another time set by the University, shall be regarded as abandoned and the University shall have the right to dispose of those items at the Vendor's expense.

13.11 OWNERSHIP

Unless otherwise specifically provided for in the Solicitation, General Conditions of Purchase, or General Condition Addenda, all Data, material and documentation prepared for the University shall be considered work for hire and belong exclusively to the University.

13.12 PRODUCT WARRANTIES

- A. All product or service warranties normally offered by the Vendor shall accrue to the University's benefit, in addition to any special requirements or Benefits which may be stated in the Solicitation and/or additionally offered by the Vendor in its Bid or proposal.

During the term of any maintenance period, but for no less than one year from acceptance, the Vendor shall warrant:

1. The product or Services shall perform according to the specific claims and representations made by the Vendor in its Bid or proposal;
 2. The Services or product offered by the Vendor are suitable for the ordinary purposes for which such product is used or Services provided;
 3. The product or Services offered by the Vendor are suitable for any special purposes identified in the Solicitation or for which the University has relied on the Vendor's skill or judgment;
 4. The product was designed and the Services performed in a commercially reasonable manner; and,
 5. The product or Services are free from defects in material and workmanship.
- B. The University shall give notice of a warranty claim to the Vendor in a commercially reasonable manner, upon which, the Vendor shall repair or replace at no cost to the University the product or Services. If the repaired or replaced product or Services prove to be inadequate, or fail of their essential purpose, the Vendor shall refund the full amount of any payments that have been made by the University. The rights and remedies of the University under this Section are in addition to any other rights and remedies (including cover) provided by law or equity. Any alternate warranties proposed by a Vendor are subject to the provisions of 12.3(C)(3) of this Part.

13.13 PAYMENT

- A. Unless otherwise provided for in the Solicitation, Purchase Order or Agreement, payment (subject to retention or set-off, if applicable) shall not be made by the University until Supplies and are delivered or Services performed, in full, and accepted. After such acceptance, payment shall not be due until a properly submitted invoice, with satisfactory documentation, is delivered to the University. Payment then shall be made Promptly in accordance with RIGL § 42-11.1-1, *et seq.*:
1. Vendor payment terms other than as set forth herein may be rejected as being non-responsive.
 2. No partial shipments will be accepted, unless provided for by the Solicitation or Purchase Order.
 3. Where a question of quality or performance is involved, payment in whole or part against which to charge back any adjustment required, shall be withheld at the direction of the University Purchasing Agent.
 4. In the event a cash discount or rebate is stipulated, the withholding of payments, as herein described, will not deprive the University from taking such discount or rebate.
 5. If not rejected, payments for used portion of inferior or defective Supplies shall be made by the University on an adjusted price basis.
 6. Requests for payments on Contracts under architectural or engineering supervision must be authorized by the Architect or Engineer and submitted to the University for approval.

13.14 SET-OFF AGAINST PAYMENTS

Payments due the Vendor shall be subject to reduction by the University Controller equal to the amount of unpaid and delinquent State taxes (or other just debt owed to the State), except where

notice of deficiency for trust fund taxes is not a final assessment and still open for a hearing request or while the tax deficiency notice is pending in administrative hearing or from any judicial appeal therefrom.

13.15 CLAIMS

A. Setoff

Any claim against a Vendor may be deducted by the University from any money due it in the same or other transactions. If no deduction is made in such fashion, the Vendor shall pay the University the amount of such claim on demand. Submission of a voucher and payment, thereof, by the University shall not preclude the University Purchasing Agent from demanding a price adjustment in any case when Supplies or Services are delivered or are later found to deviate from the Contract.

B. Damages for Claims

The University Purchasing Agent may assess dollar damages against a Vendor determined to be non-performing or otherwise in default of its contractual obligations equal to the cost of remedy incurred by the University and make payment of such damages a condition for consideration for any subsequent award. Failure by the Vendor to pay such damages shall constitute just cause for disqualification, rejection, and/or suspension. Vendor may appeal any assessment of damages in accordance with Section 1.5 of these regulations ("Resolution of Protests").

13.16 UNUSED BALANCES

Unless otherwise specified, all unused quantities and/or unexpended funds shall be automatically canceled on the expiration of the specified term stated in the Contract. 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 University's sole option.

13.17 CONFIDENTIALITY

A. "Confidential Information"

1. Whenever used in a Contract, the term "Confidential information" means:
 - a. Information exempt from disclosure to the public or other unauthorized persons under either Rhode Island or federal statutes or regulations; or
 - b. Information related to the University's infrastructure, operations, security, or personnel unless otherwise identified by the University in writing as non-confidential at the time of disclosure; or
 - c. Any other information which the University has identified to the Vendor in writing as confidential at the time of disclosure or within thirty (30) days after disclosure; or
 - d. University Data which includes Vendor Data and the University's Data used, processed, hosted, stored, or generated as a result of the Services. User Data means any and all information reflecting the access or use of the Services by or on behalf of the University or any authorized user, including any end user profile, visit, session, impression, information, click-through or click stream Data and any statistical or other analysis, information or Data based on or derived from any of the foregoing; or
 - e. Information that would ordinarily be reasonably considered confidential or proprietary in the light of the circumstances surrounding disclosure.

B. Form of Confidential Information

1. Confidential Information may take the form of, but is not limited to, plans, calculations, charts, concepts, know-how, inventions, licensed technology, design sheets, design Data, diagrams, system design, materials, hardware, manuals, drawings, processes, schematics, Specifications, instructions, explanations, research, test procedures and results, equipment, identity and descriptions of components or materials used, any and all personal and/or confidential information pertaining to University Employees and/or University personnel, including, but not necessarily limited to, any and all personal and/or confidential healthcare and/or health and/or medical Data and/or any other similar and/or related personal and /or confidential information, pertaining to University Employees and/or University personnel or any other material or information supplied by or on behalf of the University, University Data or that is disclosed to or becomes known by Vendor as a result of its dealings with the University. Confidential Information may be in tangible or intangible form. The University's failure to expressly identify Confidential Information as such shall not in any way lessen or negate Vendor's obligation to keep such information confidential in accordance with these terms.

2. Exemptions to Confidential Information

- a. Notwithstanding the foregoing, and except as provided in the Contract or any Contract Addendum, the term Confidential information shall not be construed to include information that:
- i. Is or becomes readily available in public records or documents, other than as a result of an inappropriate disclosure by Vendor or other entity or persons acting on behalf of Vendor, or
 - ii. Can be documented to have been known by Vendor prior to its release to the Vendor by the University without an obligation of confidentiality, or
 - iii. Is disclosed pursuant to applicable Rhode Island law and/or federal law, judicial action or government regulations.

C. Vendor Acknowledgement. Vendor acknowledges that the Confidential Information is confidential and Proprietary Information and that its protection is essential to the security and mission of the University. It is understood that the Vendor is not granted an express or implied license or an option on a license, or any other rights to or interests in the Confidential Information other than any licensing provisions as defined in a Contract and/or agreement between the University and Vendor.

D. Vendor acknowledges and shall require Vendor's Agents to:

1. Copy, reproduce or use Confidential Information only for the purpose described in the Contract and not for any other purpose unless specifically authorized to do so in writing by the University; and
2. Not permit any other person or entity to use or disclose the Confidential Information for any purpose other than those expressly authorized by the Contract; and
3. Disclose such Confidential Information only to those of Vendor's Agents who require knowledge of the same for the purpose described in the Contract; provided such Vendor's Agents are obligated to maintain the confidentiality of

the Confidential Information and otherwise comply with the terms of the Contract; and

4. Implement physical, electronic and managerial safeguards to prevent unauthorized access to or use of Confidential Information, including without limitation, providing Vendor's Agents with a copy of the terms of the Contract and any other Non-Disclosure Agreement the University may provide for said Vendor's Agents signature. Such restrictions will be at least as stringent as those applied by the Vendor's own most valuable confidential and proprietary information and as required by the Contract.
5. The acts or omissions of Vendor's Agents with respect to the Confidential Information shall be deemed to be acts or omissions of the Vendor.

E. Additional Requirements

1. Vendor will not remove, obscure or alter any confidentiality or Trade Secret notation from the Confidential Information without the University's prior written authorization.
2. Confidential Information will remain the exclusive property of the University unless as otherwise provided for in any agreement and/or the Contract between the University and Vendor; upon completion of the project and/or Services, or whenever requested by the University, Vendor will Promptly destroy or return to the University, in a form acceptable to the University, any and all Confidential Information and all copies thereof, including summaries, reports or notes based thereon, unless otherwise expressly authorized otherwise by the University in writing.
3. Vendor agrees that the breach of these terms would cause irreparable damage to the University. Therefore, Vendor agrees that should it breach its obligations hereunder, Vendor shall defend, indemnify, release, and hold the University harmless from actual damages from losses that result from its breach, including, but not limited to, reasonable attorneys' fees and related litigation expenses. Also, the University has the right to seek an order to restrain the Vendor and Vendor's Agents, etc. from breaching these terms or otherwise commence any action in law or in equity.

13.18 TAXES

- A. The University is exempt from payment of any tax imposed directly on the purchaser of Supplies and Services under federal, state or local law with the sole exception of the Rhode Island Motor Fuel Tax, RIGL § 31-36-1, *et seq.* Except for the Rhode Island Motor Fuel Tax, federal, state and local taxes should not be included in the Vendor's Bid or proposal price or otherwise invoiced. Exemption Certificates will be furnished upon request. Vendors and their Subcontractors performing improvements to real property pursuant to a Contract with the University may purchase materials specifically allocated for the performance of said Contract from their Vendors provided that:
 1. The materials are essential to the project;
 2. The materials are incorporated into the project; and,
 3. The Vendor or its Subcontractors provide their suppliers with an exemption certificate.

13.19 INSURANCE/BONDS/OTHER SECURITY

- A. Insurance. Prior to issuance of a Contract, Vendor shall submit to the University Purchasing Department proof of insurance coverages as set forth in the General Condition Addendum A (General Insurance Requirements), other applicable General Condition Addenda and/or as required by the Solicitation (“Insurance Requirements”). Vendor shall comply with the minimum insurance requirements imposed by the University. If different or additional insurance requirements are set forth in the Solicitation, then Vendor shall comply with the insurance requirements specified in the Solicitation
- B. Payment and Performance Bonds. When required by the Solicitation or the General Condition Addenda, the successful Vendor shall furnish a payment and/or Performance Bond in the amount stated in the Solicitation from a surety licensed to conduct business in the State of Rhode Island upon the tentative selection.
- C. Other Security. The University Purchasing Agent reserves the right to consider and accept alternate forms and plans of insurance or other comparable forms of security, and/or to require additional or more extensive coverage for any individual Procurement. Vendors shall provide certificates of insurance and required endorsements for all insurance requirements of the Solicitation in form and terms acceptable to the University Purchasing Agent. Failure to comply shall result in a determination that the Vendor is not “responsible.” The University Purchasing Agent may change the insurance requirements contained in General Condition Addenda as necessary to protect the University’s interests.

13.20 TERMINATION, DEFAULT, CANCELLATION AND STOP WORK

- A. Non-Performance or Breach. A Contract may be rescinded, canceled or terminated by the University Purchasing Agent, at the Vendor’s expense upon non-performance or breach by the Vendor of any of its obligations. Failure of a Vendor to cure such non-performance or breach within ten (10) business days after the receipt of notice, unless otherwise determined by the University Purchasing Agent, shall be sufficient cause for the cancellation, rescission or termination of a Contract, the cancellation of all existing University Contracts and or subcontracts to which the Vendor is a party, and/or the suspension or Debarment of the Vendor from participating in future Procurements. The University may pursue any and all of its rights and remedies at law or in equity against the defaulting Vendor or its surety.
- B. Timeliness. Failure of a Vendor to deliver the required Supplies or perform Services within the time specified and in accordance with the applicable standards of professional skill and care, or within reasonable time as interpreted by the University Purchasing Agent, or failure of a Vendor to make replacement of rejected articles, when so requested, immediately or as directed by the University Purchasing Agent, may cause the University Purchasing Agent to purchase in the open market to replace those Supplies or Services rejected or not delivered. The University 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 Vendor, and/or its surety, agrees to Promptly Reimburse the University for excess costs occasioned by the Vendor’s default. Should the replacement cost be less, the Vendor shall have no

claim for the difference. Vendor who fails to commence within the time specified or complete an award made for repairs, alterations, Construction, or any other Services may be considered to be in default of Contract. The University Purchasing Agent may Contract for completion of the work with another Vendor and seek Reimbursement of all costs and expenses from the defaulting Vendor and/or its surety and pursue all rights and remedies at law or in equity.

- C. Availability of Funds. In the case of multi-year Contracts only, in accordance with the limitations relating to “multi-year contracts” imposed by RIGL §37-2-33, the University’s payment and performance obligations, after the first year of such Contract, shall be subject to the availability of funds therefor, provided however, that it must do so in “good faith” as that term is defined in RIGL § 37-2-3(b), and it is the University’s policy that it shall not cancel or terminate a Contract due to the unavailability of funds hereunder unless unavailability of funds is due to causes outside of the University’s control, and not due to the failure or refusal of the University to allocate sufficient funds within its discretion.

In the case of Contracts funded with federal monies, the University’s performance and payment shall be subject to and contingent upon the continuing availability of said federal funds.

If funds to effect payment of the above-described Contracts are not available, the University will provide written notification to Vendor. If the Contract is terminated under this paragraph, Vendor agrees to take back any affected Supplies not yet delivered, terminate any Services supplied to the University, and relieve the University of any further obligation thereof. University shall remit payment for Supplies and Services accepted prior to the date of termination in the notice.

- D. Convenience. Neither the University nor the Vendor may terminate or cancel a Contract “for convenience” or “without cause” unless the University and the Vendor have specifically agreed in writing, and included in the Contract, a provision giving either or both parties such a right.
- E. Stop Work. In the interests of health, safety and welfare, economic or otherwise, the University Purchasing Agent may issue a stop work order to a Vendor on any Contract for a reasonable period of time. The Vendor shall cease and desist any further work until so ordered by the University Purchasing Agent. In the event that the Vendor bears responsibility for the conditions requiring a stop work order, the University shall not be responsible for any delays.

13.21 INDEMNIFICATION

- A. General. Vendor shall defend, indemnify, release and hold harmless the University and its agencies, together with their respective officers, agents and Employees, from and against any and all third-party claims, demands, liabilities, causes of action, losses, damages, judgments and other costs and expenses (including attorneys’ fees) arising out of, or related to, directly or indirectly, in whole or in part, Vendor’s breach of the Contract or the act(s), error(s) or omission(s) of the Vendor or its employees, agents, Subcontractors or volunteers at any tier.

- B. Intellectual Property. Vendor shall defend, indemnify, release and hold harmless the University and its agencies, together with their respective officers, agents and Employees, from and against all claims, demands, damages, liabilities, death, injury, judgments and other costs and expenses (including attorneys' fees), arising out of or related to, directly or indirectly, in whole or in part, a claim that a product or Services or its use infringes the intellectual property rights of another person or entity.

13.22 VENDOR OBLIGATIONS

- A. In addition to the specific requirements imposed by the University in the Contract, a Vendor engaged in providing Supplies or Services to the University shall generally have the following standard responsibilities:
1. Perform Services in accordance with applicable standards of professional skill and care or as otherwise provided in the Solicitation or Contract. When applicable law requires that Services be performed by licensed professionals, Vendor shall provide those Services through the performance of qualified persons or entities duly licensed to practice their professions.
 2. To furnish adequate protection from damage for all work and to repair damage of any kind, for which it or its workmen are responsible, to the building or equipment, to its own work, or to the work of other Vendors.
 3. To clear and remove all debris and rubbish resulting from its work from time to time, as directed or required, at completion of the work to leave the premises in a neat, unobstructed condition, broom clean, and in satisfactory order and repair.
 4. To store equipment, Supplies, and material at the project site only upon approval by the University, and at its own risk.
 5. To perform all work so as to cause the least disruption and inconvenience to the University, and with proper consideration for the rights of other Vendors and workers.
 6. To acquaint themselves with conditions to be found at the project site, and to assume responsibility for the appropriate dispatching of equipment and supervision of its employees during the conduct of the work.
 7. To supervise Vendor employees and Subcontractors and to ensure that its employees are instructed with respect to special rules, regulations, policies, and procedures in effect for any University facility or project site, and that its employees comply with such rules, regulations, policies and procedures.
 8. To perform background checks of Vendor employees, Subcontractors and agents as required by the University.
 9. **EQUAL OPPORTUNITY COMPLIANCE, HANDICAPPED ACCESS AND AFFIRMATIVE ACTION** - Vendors of the University 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 RIGL Chapter 28-5.1. Affirmative action plans shall be submitted by the Vendor for review by the State Equal Opportunity Office. A Vendor'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.

10. DRUG-FREE WORKPLACE REQUIREMENT – Vendors who do business with the University and its Employees shall abide by the University's drug-free workplace policy. Specifically, Vendor agrees as follows:
- a. Vendor employees and agents are required to refrain from the abuse of alcohol and/or illegal and/or prescription drugs and must report to work in a fit condition to perform their duties or be subject to disciplinary action by the Vendor.
 - b. All Vendor employees, while on University business, on or off the workplace, are prohibited from purchasing, transferring, using, or possessing illegal drugs or from abusing alcohol or prescription drugs in any way that is illegal.
 - c. Vendors will take appropriate disciplinary action with all violators of this policy who are currently employed. Vendors will not knowingly consider for employment anyone who is known to currently abuse alcohol and/or illegal and/or prescription drugs.
11. In the best interest of the University, the University Purchasing Agent reserves the right to remove or have a Vendor immediately remove any Vendor employee, Subcontractor or agent of the Vendor working on a University Contract based on a good faith belief that the individual is not acting in an appropriate, professional and/or in a commercially reasonable manner.
12. To comply with the provisions of RIGL § 37-2-34 (Right to inspect facilities – Right to Audit) as necessary.

13.23 FORCE MAJEURE

Neither the University, nor its Vendors, shall be liable to the other for failure or delay in performance due to a cause not reasonably foreseen by, beyond the control of, and without the fault or negligence of the party declaring a force majeure event; provided that the party declaring a force majeure event shall have used its best efforts to avoid such failure or delay in performance, minimized the impact thereof, and given Prompt written notice to the other party when first discovered, fully describing its probable effect and duration. In such event of excusable delay or non-performance, the University shall have the right at its option and without liability to cancel by notice to the Vendor any and all portions of Vendor's performance so affected and to take such other action as may be necessary.

The University may, after ascertaining the facts and the extent of the delay, extend the time for completing performance when the facts so justify and amend the timetable accordingly. The University shall not be liable for any increased costs, including price escalation, beyond the performance or delivery date, due to a force majeure event. Force majeure shall not include a Vendor's financial distress or the financial distress of Vendor's parent, subsidiary, affiliated or associated company; claims or court orders that restrict Vendor's ability to deliver the Supplies, products or Services contemplated by the Contract; strikes; labor unrest; supply chain disruptions; Vendor's Subcontractor's or supplier's financial distress, conduct, negligence or default; or, as otherwise set forth within the Contract and associated documents.

13.24 COMPLIANCE WITH LAW

During the term of the Contract with the University, Vendors shall comply with all statutes, laws, regulations, codes, orders, policies, rules and regulations of federal, state or municipal authorities applicable to the furnishing of such Supplies or Services as set forth in the Solicitation and the

Vendor's Bid or proposal all of which are hereby incorporated by reference into any Purchase Order or Purchase Agreement issued by the University Purchasing Department. Vendors shall pay for all required permits, licenses and fees required for the delivery of Supplies or Services to the University unless otherwise stated in the Solicitation or Contract.

13.25 SUBCONTRACTING, ASSIGNMENT, MERGER OR ACQUISITION, KEY PERSONNEL, THIRD-PARTY PAYMENT, AND PROMPT PAYMENT OF SUBCONTRACTORS

- A. Subcontracting. Vendors shall not subcontract with any third party, except as set forth in its Bid or proposal, without the prior written consent of the University Purchasing Agent. Such consent, if granted, shall not relieve the Vendor of any of its responsibilities under the Contract, nor shall it create privity of contract between the University and the Subcontractor. If a Vendor uses a Subcontractor to fulfill its responsibilities, then the Vendor shall be responsible for the Subcontractor's performance, compliance with the applicable terms of the Contract and all applicable statutes, rules, regulations, and these General Conditions of Purchase. Upon request, Vendors must submit to the University Purchasing Department of Purchases a list of all Subcontractors to be employed in the performance of any Purchase Order or other Contract arising from this Request.
- B. Assignment. Vendors shall not, in whole or part, assign, transfer, convey, sublet, delegate or otherwise dispose of a Purchase Order, Purchase Agreement or Contract with the University or its right, title or interest therein, or its power to execute such Contract prior to issuance of a Purchase Order, to any other person, company, corporation, or entity without the written consent of the University Purchasing Agent. If consent is not granted, then the assignment, transfer, conveyance, sublet, delegation, or disposal shall be void ab initio.
- C. Merger or Acquisition. If subsequent to the submission of a Bid or proposal and prior to issuance of a Purchase Order or Purchase Agreement, a Vendor merges with or is acquired by another entity, then the Vendor shall provide appropriate and legally binding documentation between the Vendor and the successor entity ratifying acceptance of the Vendor's Bid, proposal and any Contract terms, conditions, and pricing submitted to the University Purchasing Department. The University Purchasing Agent may disqualify the Vendor if the successor entity is determined to be not responsible.
- D. If, after issuance of a Purchase Order, there is a material acquisition or change of ownership of a Vendor or its parent to another entity or person, the University Purchasing Agent may either authorize assignment of the Purchase Order or Purchase Agreement to the successor entity or cancel the Purchase Order or Purchase Agreement.
- E. Key Personnel. If the Vendor's Bid or proposal identified key personnel who would be responsible for fulfillment of the Vendor's performance obligations and said key personnel are for any reason no longer available, then the University Purchasing Agent may either authorize substitution of said key personnel by the Vendor or cancel the Contract.
- F. Third-Party Payment. Unless expressly provided for in the Solicitation, the University 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 University Purchasing Agent. If a Vendor's Bid or proposal is contingent upon such payment(s), then it must be clearly stated within the Bid or proposal and is subject to approval by the University Purchasing Agent.

- G. Prompt Payment of Subcontractors. In accordance with RIGL § 42-11.1-3(b) Vendors shall make Prompt payment for satisfactory subcontract work for which the University has made partial or full payment. The University reserves the right to determine whether a Vendor, who repeatedly fails to make Prompt payment to Subcontractors, is Responsible relative to future Procurements, and may Suspend, Debar or otherwise remove such Vendors from the University Proposers List.

13.26 ADVERTISING

Vendors shall not reference a University Contract for the purposes of advertising or promotion without written authorization from the University Chief Purchasing Officer or designated University official.

13.27 NON-EXCLUSIVE RIGHTS

The University reserves the right to issue multiple Solicitations for Supplies or Services similar or identical to Supplies or Services described in a Solicitation for which a Purchase Order or Purchase Agreement has been issued to a Vendor.

13.28 ELECTION OF REMEDIES

All rights exercisable by and remedies of the University shall be cumulative. The exercise or beginning of the exercise by the University of any of its rights and remedies will not preclude the University from exercising any other right hereunder or otherwise granted by law or in equity.

13.29 SURVIVAL

All Vendor obligations herein shall survive expiration, termination and/or cancellation of the Contract.

13.30 CONTRACT TRANSITION

Vendor agrees to act in Good Faith and a commercially reasonable manner at all times in the transition of a Contract to a new Vendor.

13.31 GOVERNING LAW, FORUM

- A. The construction and effect of any Solicitation, Contract or Purchase Order documents, Purchase Agreement or actions by the University through its Purchasing Department, shall be governed and construed in accordance with the laws of the State of Rhode Island, without reference to its principles of conflict of laws, except where the federal supremacy clause requires otherwise.
- B. After exhaustion of any administrative remedies, any suit, action or proceeding brought by a Vendor in connection with any Solicitation, Contract, or Purchase Order or actions by the University, by and through its University Purchasing Department, shall be brought solely in the Rhode Island Superior Court pursuant to RIGL § 37-2-49. Vendors irrevocably submit to the jurisdiction of said court and all courts of appeal from which an appeal may be taken from such court, waive any objection to the venue of said court and any claim that such suit, action or proceeding has been brought in an inconvenient forum. Nothing contained in this section shall be construed to waive any State immunity to suit or liability.

13.32 EFFECTIVE DATE AND COMMENCEMENT OF WORK

- A. Effective Date of the General Conditions of Purchase. The General Conditions of Purchase shall apply to all Procurements issued after the effective date of these regulations.
- B. Contract Effective Date. The effective date of any Procurement shall be the date contained in the Contract. No work or Services shall commence prior to the issuance of a Purchase Order or written authority to proceed formally issued by the University Purchasing Department. Any work or Services performed by the Vendor prior to issuance of a Purchase Order or approved Change Order shall not be subject to payment by the University.

13.33 AMENDMENTS TO GENERAL CONDITIONS

The University Chief Purchasing Officer or their Designee reserves the right to agree to alternate terms and conditions for a specific purchase in order to serve the best interests of the University and/or protect the health, safety or welfare, economic or otherwise, of the University and its community.

13.34 CONTRACT ADDENDA IN ADDITION TO THE GENERAL CONDITIONS OF PURCHASE

- A. In addition to the General Conditions of Purchase, the additional Contract Addenda (“General Condition Addenda”) listed below shall apply to specific types/categories of Contracts with the University at the direction of the University Purchasing Department. The University Purchasing Department shall indicate any applicable General Condition Addenda in the Solicitation or other Procurement. These General Condition Addenda shall be considered as additional Contract terms and conditions with the University.
- B. The General Condition Addenda may be amended from time to time without Board approval, and at the discretion of the University Purchasing Department. The General Condition Addenda shall be considered Contract terms and not regulations.
- C. The University Purchasing Department may post the current General Condition Addenda on the University Purchasing Department’s website for reference purposes and/or may include them with the Solicitation.
- D. The University Purchasing Department reserves the right to add General Condition Addenda as necessary without further promulgation of regulation. Any additional General Condition Addenda would be considered a Contract term.
- E. In lieu or in addition to any General Condition Addenda, the University Purchasing Department reserves the right to include any Contract terms in a specific Solicitation or Procurement as necessary.

13.35 SEVERABILITY

If any section, term, or provision of this regulation should be adjudged invalid for any reason, that judgment should not affect, impair, or invalidate any remaining section, term, or provision, which shall remain in full force and effect.

GENERAL CONDITIONS OF PURCHASE - ADDENDUM A GENERAL INSURANCE REQUIREMENTS

Defined terms used in this Addendum to the General Conditions of Purchase have the same meaning as set forth in Part 12 of the University of Rhode Island Board of Trustees Procurement Regulations unless separately defined herein.

Unless otherwise specified in the solicitation or procurement, the following insurance requirements shall apply. These insurance requirements establish minimum types and limits of insurance coverage for many contract situations entered into by the University. It is possible that certain contract exposures are not addressed. Risk management and insurance questions regarding any Contract to be entered into by the University, including any that may be deemed "high-risk procurement" (i.e., either by amount of the procurement or solicitation and/or Vendor scope of Supplies or Services to be provided) should be reviewed with the University's Enterprise Risk Management Department.

Schedule A1: General Requirements

Schedule A2: Professional Services

Schedule A3: Information Technology

Schedule A4: Public Works

Schedule A5: Road and Transportation Projects

For purposes of this Addendum and Schedules A1-A5, the term "Vendor" does not include any branches, departments, agencies, offices, or commissions of the State that may contract with the University or the Board.

Required Insurance

Vendor shall procure required insurance as set forth herein:

- a. At the sole cost and expense of Vendor.
- b. Obtain and maintain such required insurance in full force and effect during the entire term of the Contract until all obligations of Vendor have been discharged, including any warranty periods or extended reporting periods, against claims that may arise out of, are alleged to arise out of, directly or indirectly, in whole or in part, from or in connection with the Contract and/or result from the performance of the Contract.
- c. Any deductible, self-insured retention, or form of self-insurance under the policies shall be the sole responsibility of the Vendor and shall be disclosed to and acceptable to the University authorized personnel.
- d. Any required liability insurance policy that is to ensure any form of products liability

and/or completed operations exposure created by Vendor must provide extended coverage as follows:

1. When required liability insurance policy uses "Occurrence" coverage trigger (including that known as "Reported Occurrence"):
 - a. Policy issued by same insurer for Vendor as of effective date of Contract between the University and Vendor or by comparable insurer providing renewal insurance policy of 1-same coverage terms and conditions of prior expired policy or 2-coverage at least equal to that required by Contract.
 - b. Such coverage must be provided for a period of not less than five (5) years after the later of:
 - i. when the Contract has ended; or
 - ii. when products or services have been put to intended use; or
 - iii. when hardware, software, buildings, other physical structures or repairs have been put to intended use.
 - c. Such required insurance can be provided by annual insurance policies or by single runoff policy commonly referred to as "discontinued products or operations."
2. When required liability insurance policy uses any form of "claims-first made trigger:"
 - a. Policy issued by same insurer for Vendor as of effective date of Contract between the University and Vendor or by comparable insurer providing renewal insurance policy of 1-same coverage terms and conditions of prior expired policy or 2-coverage at least equal to that required by Contract.
 - b. Provide coverage with a retroactive date on or before the effective date of the Contract or at the beginning of Contract work.
 - c. Such coverage must be provided for a period of not less than five (5) years after the later of:
 - i. when the Contract has ended; or
 - ii. when products or services have been put to intended use; or
 - iii. when hardware, software, buildings, other physical structures or repairs have been put to intended use.
 - d. Such required insurance can be provided by annual insurance policies or by single runoff policy commonly referred to as "discontinued products or operations."
- e. If "claims-first made" liability insurance policy is cancelled or not renewed, and not replaced with another claims-made policy form with a retroactive date prior to the Contract date, the Vendor must purchase extended reporting coverage for a minimum of five (5) years after completion of work.
- f. Required insurance limits to be provided by single insurance policy or through "follow form primary" layered excess insurance policies to obtain overall required limit(s).
- g. Vendor's Subcontractors to maintain same insurance.
- h. Any insurance obtained by Vendor that includes an "insured vs. insured" exclusion must be revised to exclude the University and its Board of Trustees as Additional Insured.
- i. The University Purchasing Agent reserves the right, in consultation with the Office of Risk Control and Insurance, to consider and accept alternative forms and plans of insurance or to require additional more extensive coverage for any individual requirement and can modify types of insurance and revise limits required of Vendor at any time during the term of this Contract.

Schedule A1 – General Requirements

Defined terms used in this Addendum to the General Conditions of Purchase have the same meaning as set forth in Part 12 of the University of Rhode Island Board of Trustees Procurement Regulations unless separately defined herein.

Required Insurance:

Commercial General Liability Insurance. Commercial General Liability Insurance (“CGL”) based on Insurance Services Office (“ISO”) most recent version of Commercial General Liability policy form CG00 01, or its equivalent:

Covering bodily injury (including death), broad form property damage, personal and advertising injury, Independent Contractors, products and completed operations and contractual liability.

Such insurance coverage is subject to a minimum combined single limit of \$1,000,000 per occurrence, \$1,000,000 general aggregate and \$1,000,000 products/completed operations aggregate.

The general aggregate must be on a “per project” or “per location” basis.

Shall include waiver of subrogation in favor of the University.

Include the University and its Board of Trustees as additional insured on a primary and non-contributory basis.

The Vendor shall submit a copy of any policy endorsement, or blanket endorsement, evidencing the University and its Board of Trustees as additional insured on a primary and non-contributory basis and a waiver of subrogation in favor of the University. All endorsements shall be subject to review and approval by the authorized University personnel.

Automobile Liability Insurance, as applicable. Automobile Liability Insurance based on ISO most recent version of Business Automobile Policy (“BAP”) CA 00 01, or its equivalent:

Covering bodily injury and property damage for any vehicles used in conjunction with the performance of this Contract including owned, non-owned, and hired vehicles.

If a Vendor does not own any vehicle at any time during the duration of this Contract, then the Vendor can seek hired and non-owned automobile coverage as provided by BAP or by hired non-owned automobile coverage endorsement to CGL.

At a minimum Vendor must maintain hired and non-owned automobile coverage for the full duration of this Contract.

¹ Any time Vendor is responsible for construction of any kind the additional status for the University shall include additional Insured-products/completed operations in addition to additional insured-premises/operations.

Such insurance coverage is subject to a minimum combined single limit of \$1,000,000 per occurrence.

Shall include waiver of subrogation in favor of the University.

Include the University and its Board of Trustees as additional insured on a primary and non-contributory basis.

The Vendor shall submit a copy of any policy endorsement, or blanket endorsement, evidencing the University and its Board of Trustees as additional insureds on a primary and non-contributory basis and a waiver of subrogation in favor of the University. All endorsements shall be subject to review and approval by the authorized University personnel.

Workers' Compensation and Employers' Liability.

Statutory coverage as required by the workers' compensation laws of the State of Rhode Island, plus any applicable state law other than the State of Rhode Island if employee(s)' state of hire is other than the State of Rhode Island or employee(s)' work related to the Contract is not in the state of Rhode Island.

Policy form based on NCCI or its equivalent.

Employers' Liability with minimum limits of \$100,000 each accident, \$100,000 disease or policy limit and \$100,000 each employee or minimum amount necessary for umbrella/excess liability policy of Vendor.

A Vendor neither eligible for, nor entitled to, Worker's Compensation who is an independent Vendor under Rhode Island law must comply with the statutory procedure precluding an independent Vendor from bringing a workers' compensation claim against the University.

Policy to include waiver of subrogation in favor of the University.

The Vendor shall submit a copy of any policy endorsement or blanket endorsement evidencing the waiver of subrogation in favor of the University. All endorsements shall be subject to review and approval by the University authorized personnel.

Crime Insurance, as applicable. Crime Insurance to cover dishonest acts of Vendor that result in a loss of any University property, including funds or securities of any kind, plus any other entity or person's property, including funds or securities of any kind, entrusted to the University that is in the custody or control of the Vendor. The policy shall:

Include insuring agreements for employee dishonesty, forgery/alteration, theft of money and securities, robbery and safe burglary, money order and counterfeit currency, computer crime and funds transfer fraud.

Include an endorsement for "Client's Property" using the current edition of ISO form CR 04 01 or the equivalent;

Have minimum combined limits of not less than \$500,000 per occurrence; however, in no instance shall the combined limits be less than fifty per cent (50%) of the value of the Contract or based on the amount of funds that may be diverted, whichever is greater.

Name the University as loss payee based on the current edition of ISO CR 20 14 or the equivalent.

Not contain a condition requiring an arrest.

When Vendor has custody of University funds in excess of \$250,000 then Vendor must have crime coverage commonly referred to as Social Engineering Fraud ("SEF") in an amount equal to Computer Crime limit and/or Fraudulent Funds Transfer limit.

All required insurance shall be:

Placed with insurers:

Authorized to do business in Rhode Island and, when admitted insurers are not possible, then use of non-admitted insurers will be allowed to the extent acceptable to the University.

Rated "A-," class X or better by A.M. Best Company, Inc.

Any insurer with a lesser financial rating must be approved by the authorized University personnel.

The legal defense provided to the University under the policy and any endorsements must be free of any conflicts of interest, even if retention of separate legal counsel for the University is necessary.

As evidence of the insurance required by this Contract, the Vendor shall furnish to the University Certificates of Insurance, including confirmation of all required policy endorsements including, but not limited to, additional insured endorsements:

In form acceptable to the University prior to an award. Failure to comply with this provision may result in rejection of the bid offer.

All certificates of insurance, whenever issued, shall include the requirement of the insurer for thirty (30) days advance written notice to the University of cancellation, non-renewal, potential exhaustion of policy limits or any other changes to any insurance policy. .

Certificates of Insurance and required endorsements shall thereafter be submitted annually or earlier upon expiration and renewal of any of the policies.

All Certificates of Insurance and to the extent possible endorsements shall reference the University procurement number.

The University retains the right to demand a certified copy of any required insurance policy, Certificate of Insurance or endorsement.

The Vendor shall be responsible to obtain and maintain insurance on any real or personal property owned, leased or used by the University that is in the care, custody or control of Vendor. All property insurance of Vendor must include a waiver of subrogation that shall apply in favor of the University.

No warranty is made that the coverages and limits listed herein are adequate to cover and/or protect the interests of the Vendor for the Vendor's operations. These are solely minimums to protect the interest of the University.

The University shall be indemnified and held harmless as required by the Contract and to the full extent of any coverage actually secured by the Vendor in excess of the minimum requirements set forth in Schedules A1-5.

The Vendor shall use at its own risk and insure at its own cost any of its owned, leased or used real or personal property. All such insurance of Vendor must include a waiver of subrogation that shall apply in favor of the University.

The Vendor shall comply with any other insurance requirements including, but not limited to, additional coverages or limits contained in the procurement or solicitation.

Failure to comply with these insurance requirements is a material breach entitling the University to terminate or suspend the Contract immediately.

These insurance requirements shall survive expiration or termination of the Contract.

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Schedule A2 – Professional Services

Definitions

Defined terms used in this Addendum to the General Conditions of Purchase have the same meaning as set forth in Part 12 of the University of Rhode Island Board of Trustees Procurement Regulations unless separately defined herein.

“Professional Services Insurance” means liability insurance designed to protect traditional professionals (e.g., accountants, attorneys) and quasi-professionals (e.g., real estate brokers, consultants) against liability incurred as a result of errors and omissions made in performing their professional services to the University. Although there are a few exceptions (e.g., physicians, architects, and engineers), most professional liability policies only cover economic or financial losses suffered by the University as opposed to bodily injury (BI) and property damage (PD) claims. This is because the latter two types of loss are typically covered under commercial general liability (CGL) policies. The vast majority of professional liability policies are written with claims-made coverage triggers. In addition, professional liability policies contain what are known as “shrinking limits,” meaning that unlike CGL policies (where defense costs are paid in addition to policy limits), the insurer’s payment of defense costs reduces available policy limits. Accordingly, when attempting to determine appropriate policy limits, insureds [the University] must consider the fact that because defense costs are often a high proportion of any claim settlement or judgment, they must usually purchase additional limits. The most common exclusions in professional liability policy forms are for BI, PD, and intentional/dishonest acts.²

Required Insurance

In addition to meeting all requirements in Addendum A and Schedule A1, Vendor shall procure:

1. Professional Liability Insurance.³
 - a. Covering any damages to the University caused by any error, omission, wrongful act, or breach of Contract in performance of Vendor’s professional services to the University.
 - b. Combined single limit per occurrence shall not be less than \$2,000,000 and include an annual aggregate of not less than \$2,000,000.
 - c. Shall include waiver of subrogation in favor of the University to extent coverage to Vendor is not impaired.
 - d. If Vendor is providing services to the University where Vendor has access to paper and/or e-data privacy/confidential information, then refer to Schedule A3.

Environmental/Pollution Liability Insurance, and Working with Children, Elderly or Disabled

² Definition based on one used by International Risk Management Institute: <https://www.irmi.com/term/insurance-definitions/professional-liability>.

³ Medical malpractice insurance whether for an individual practitioner such as MD, OD or DMD, hospital or nurses, is considered a subset of Professional Liability insurance. When medical malpractice insurance may be required consult with University Risk Control and Insurance.

Persons as applicable to the procurement or solicitation:

e. .

2. Environmental/Pollution Liability Insurance when past, present or future hazard is possible. Environmental/Pollution Liability Insurance coverage for bodily injury, property damage and resulting loss of use and environmental damages resulting from sudden accidental (and/or gradual if appropriate) pollution and related cleanup costs arising out of the work or services to be performed under the Contract:

- a. If coverage is on a "claims-first made" basis then 1-any retroactive date will precede the effective date of the Contract, and 2- remain in-force for the later period of five years after Contract has ended and/or work by Vendor has been put to its intended use.
- b. Per occurrence limits of no less than \$1,000,000 per occurrence and \$2,000,000 aggregate. The policy shall include defense including costs, charges and expenses incurred in the investigation, adjustment or defense of claims for such compensatory damages.
- c. Policy to include the University and its Board of Trustees as additional insured for work performed by Vendor for the University to the extent coverage is not subject to an insured versus insured exclusion. Additional insured status for the University to be on a primary and non-contributory basis.
- d. Shall include waiver of subrogation in favor of the University.
- e. Vendor shall submit a copy of any policy endorsement, or blanket endorsement, evidencing the University and its Board of Trustees as additional insureds on a primary and non-contributory basis and a waiver of subrogation in favor of the University. All endorsements shall be subject to review and approval by the authorized University personnel.

For environmental engineering and consultant services, the environmental liability insurance may be included with errors and omissions insurance and coverage if on a claims-made basis and will remain in effect for the period of the Contract with a minimum extended reporting period of five (5) years.

3. Working with Children, Elderly or Disabled Persons-Physical Abuse and Molestation Liability Insurance. Physical Abuse and Molestation Insurance covering damages arising out of actual or threatened physical abuses; mental injury; sexual molestation; negligent hiring, employment, or supervision; negligent investigation or reporting to proper authorities; and retention of any person for whom the Vendor is responsible:
- a. Coverage shall be written in an amount not less than \$1,000,000 per occurrence.
 - b. Coverage can be provided by a separate policy or as an endorsement to the commercial general liability or professional liability policies. The limits shall be exclusive to this required coverage.
 - c. When policy uses any form of "claims-first made trigger:"
 - i. Remain in-force for a period of five (5) years after the Contract has ended;
 - ii. Provide coverage with a retroactive date on or before the Effective Date of the Contract or at the beginning of Contract work; and,
 - iii. If coverage is cancelled or not renewed, and not replaced with another claims-made policy with a retroactive date prior to the Contract date, the Vendor must purchase extended reporting coverage for a minimum of five (5) years after completion of work.
 - d. Shall include waiver of subrogation in favor of the University.
 - e. Policy to include the University and its Board of Trustees as additional insured for work performed by Vendor for the University to the extent that coverage is not subject

to an insured versus insured exclusion. Additional insured status for the University to be on a primary and non-contributory basis.

- f. The Vendor shall submit a copy of any policy endorsement, or blanket endorsement, evidencing the University and its Board of Trustees as additional insureds on a primary and non- contributory basis and a waiver of subrogation. All endorsements shall be subject to review and approval by the authorized University personnel.

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Schedule A3 – Information Technology

Definitions

Defined terms used in this Addendum to the General Conditions of Purchase have the same meaning as set forth in Part 12 of the University of Rhode Island Board of Trustees Procurement Regulations unless separately defined herein.

“Information Technology Insurance” means insurance designed to cover providers of technology services or products. For example, data storage companies and website designers provide technology services, while computer software and computer manufacturers offer technology products.⁴

“Technology E&O Insurance” mean insurance policies which cover both liability and property loss exposures due to errors and omissions by providers of technology products and services. Major liability insuring agreements include losses resulting from: (1) technology services, (2) technology products, (3) media content, and (4) network security breaches. Key property insuring agreements provide coverage for extortion threats, crisis management expense, and business interruption. Technology E&O Insurance is often confused with Cyber/Privacy Insurance. In contrast to Technology E&O Insurance, cyber and privacy insurance is intended to protect *consumers* of technology products and services. Nevertheless, Cyber/Privacy Insurance policies do offer a number of the same insuring agreements as Technology E&O Insurance.

“Cyber/Privacy Insurance” means insurance designed to cover consumers of technology services or products. More specifically, the policies are intended to cover a variety of both liability and property losses that may result when a business engages in various electronic activities, such as selling on the Internet or collecting data within its internal electronic network.⁵ Note this coverage is not only for an electronic breach, but also for paper data breaches. Most notably, but not exclusively, Cyber/Privacy Insurance policies cover liability for a data breach in third party personal information, such as Social Security numbers, credit card numbers, Protected Health Information as defined in HIPAA and its implementing regulations, Personal Information as defined in HIPAA and its implementing regulations and Personal Information as defined in R.I. Gen. Laws § 11-49.3-1, *et seq.*, as amended, or as otherwise defined in the Contract (“Confidential Information”) is exposed or stolen by a hacker or other criminal who has gained access to Vendor’s electronic network. The policies cover a variety of expenses associated with both electronic and paper data breaches including notification costs, credit monitoring, costs to defend claims by state regulators, fines and penalties, and loss resulting from identity theft. In addition, the policies cover liability arising from website media content, as well as property exposures from: (a) business interruption, (b) data loss/destruction, (c) computer fraud, (d) funds transfer loss, and (e) cyber extortion. Cyber/Privacy Insurance is often confused with Technology E&O Insurance. In contrast to Cyber/Privacy Insurance, Technology E&O Insurance is intended to protect providers of technology products and services, such as computer software and hardware manufacturers, website designers, and firms that store data on an off-site basis. Nevertheless, Technology E&O Insurance policies do contain a number of the same insuring agreements as cyber and privacy policies.

⁴ <https://www.irmi.com/term/insurance-definitions/technology-errors-and-omissions-insurance>.

⁵ <https://www.irmi.com/term/insurance-definitions/cyber-and-privacy-insurance>.

Required Insurance

In addition to meeting the requirements in Addendum A and Schedule A1, Vendor shall procure required insurance as set forth herein:

Information Technology, Technology E&O or Cyber Privacy Insurance. The University will determine the type and amount of coverage required for each solicitation based on the work to be performed and an assessment of risk. Coverages that may be required include:

1. Technology E&O Insurance covering any damages caused by any error, omission, wrongful act or breach of Contract by Vendor in performance of contracted professional services, including, but not limited to, product failure, security failure, professional liability, intellectual property infringement and personal injury if limited or uninsured under commercial general liability insurance. Factors that will be considered include:

- a) if Vendor provides key back office services
- b) if Vendor has access to Protected Health Information as defined in HIPAA and its implementing regulations, Personal Information as defined in R.I. Gen. Laws § 11-49.3-1, *et seq.*, or as otherwise defined in the Contract (together Confidential Information”), or
- c) if Vendor provides or has access to mission critical services, network architecture and/or the totality of confidential data.

2. Information Technology coverage for loss resulting from:

- a) technology services,
- b) technology products,
- c) media content,
- d) network security breaches and breach expenses incurred by the University.

3. Cyber/Privacy Insurance to include:

- i. Regulatory liability;
- ii. Information security and privacy, regardless of the media involved;
- iii. Network interruption and/or business interruption;
- iv. Digital asset loss of the University;
- v. Event breach costs including but not limited to crisis management (such as forensic investigation, legal fees), public relations, notification costs, call center operation costs, credit file monitoring and identity theft insurance;
- vi. Placing and lifting of security freezes;
- vii. Cyber extortion;
- viii. Online media liability (i.e., including but not limited to website content);
- ix. Costs to defend, including but limited attorney fees and settle; and,
- x. Fines and penalties when insurable under appropriate state or federal law.

Schedule A4 – Public Works

Defined terms used in this Addendum to the General Conditions of Purchase have the same meaning as set forth in Part 12 of the University of Rhode Island Board of Trustees Procurement Regulations unless separately defined herein.

As contained in the AIA documents and as required below. If the AIA documents' insurance provisions and the following insurance requirements conflict, the AIA documents' insurance requirements control.

In addition to meeting the requirements of Addendum A and Schedule A1, Vendor shall procure required insurance as defined herein:

Builder's Risk Insurance. The University will determine the type and amount of coverage required for each project based on the work to be performed and an assessment of risk. Coverage may include insurance for loss or damage to property such as materials, supplies, and equipment, as well as other costs or expenses caused by delay.

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Schedule A5 –Road and Transportation Projects

Defined terms used in this Addendum to the General Conditions of Purchase have the same meaning as set forth in Part 12 of the University of Rhode Island Board of Trustees Procurement Regulations unless separately defined herein.

The University will refer to the section contained in the State of Rhode Island Department of Transportation's Standard Specifications for Road and Bridge Design document commonly referenced as the Rhode Island Department of Transportation's "Blue Book" located at www.dot.ri.gov/business/bluebook.php. If the Blue Book's insurance requirements and the following insurance requirements conflict, the Blue Books' insurance requirements control.

Required Insurance:

Vendor shall procure required insurance as defined in Addendum A and Schedule A1.

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APPENDIX 1 – PROCUREMENT THRESHOLDS

This appendix contains the thresholds that determine which Procurement method may be used when the purchase is a Small Purchase funded by any source of funds or when the purchase is not a Small Purchase but is funded by Restricted, Sponsored, or Auxiliary Funds.

Purchases made with Federal funds must also conform to the Code of Federal Regulations Chapter 2, Part 200.

If a combination of funds including unrestricted, Restricted, Auxiliary and/or Sponsored Funds are to be used for any Procurement transaction which exceeds \$50,000 for construction or \$10,000 for any other purchase, those fund sources must be determined in advance of the purchase and no transfer of funds can occur retroactively which might alter the determination of the Procurement methodology employed. When a combination of fund sources is used, the most restrictive applicable statutes and regulations apply. If the amount of the purchase exceeds \$50,000 for construction or \$10,000 for any other purchase, then if any unrestricted funds are being used, the purchase is subject to State procurement regulations:

<https://ridop.ri.gov/about-us/procurement-statutes-and-regulations>

University of Rhode Island Procurement Thresholds						
Purchase Category	Description	Small Purchases - No quotes required	Informal (3 quotes)	Public Sealed Bid	Construction Small Purchase No quotes required	Construction (Public Bid)
A	State Funds	</= \$10,000	N/A	>\$10,000	</= \$50,000	>\$50,000
B	URI - Restricted	</= \$10,000	N/A	>\$10,000	</= \$50,000	>\$50,000
C	URI - Auxiliary	</= \$10,000	N/A	>\$10,000	</= \$50,000	>\$50,000
D	URI - Research/Sponsored*	</= \$10,000	\$10,000 - \$50,000	>\$50,000	Consult Research Accounting	Consult Research Accounting
E	URI - A&E or Consultant	</= \$10,000	\$10,000 - \$20,000	>\$20,000	N/A	N/A

**Must conform to OMB Uniform Guidance where applicable*