STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ADMINISTRATION

Richard A. Licht, Director
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TO: Agency Directors and Chief Financial Officers

FROM: Richard A. Licht, Director and Chief Purchasing Officer
Rhode Island Department of Administration

DATE: December 14, 2011

SUBJECT: Procurement of Goods and/or Services without a Purchase or Change Order

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I am writing to reiterate that agency/department personnel may not permit any vendor work to proceed prior to issuance of a purchase order or change order by the Division of Purchases ("Division"), except as otherwise described herein. Properly issued purchase/change orders are a prerequisite to vendor work in order to protect the State's financial interests, especially now, when the State is challenged with a difficult budget, and multiple agencies/departments are faced with deficits midway through the fiscal year.

By letter dated June 1, 2010 (copy attached), former Director Gallogly advised all State vendors, agency/department directors, and agency chief financial officers that "all procurements must have an approved purchase order **before supplying** any goods and/or services to the state." That directive stands. The only exceptions are emergency procurements as discussed in Director Gallogly's March 30, 2010 memo (attached), and the Department of Transportation's limited delegated authority for FHWA funded road, bridge and heavy construction transportation projects.

In accordance with R. I. Gen. Laws § 37-2-54(c), "[n]o purchase or contract shall be binding on the state or any agency thereof unless approved by the Department [of Administration] or made under general regulations which the Chief Purchasing Officer may prescribe." Moreover, the State Procurement Regulations provide:

> *8.7.1 All agreements and changes to scope of work, price, or other terms shall be incorporated into purchase orders via "change order" documents incorporating contract amendments.*
>
> *8.7.2 Change Orders issued by the Office of Purchases shall be the only binding documents which may create a change in a purchase order.*
>
> *8.7.3 Personnel shall not commit the state to technical/contractual changes to purchase orders without first securing all necessary approvals.*

In the absence of express delegated authority, no State employee or State agency can authorize work on behalf of the State without first having a signed purchase/change order that outlines and approves the scope of work to be performed by a vendor. All authorized work must strictly adhere to the scope provided in the purchase/change order. Failure to follow this directive may result in 1) rescission of an agency's delegated authority; 2) personnel action against any employee permitting unauthorized vendor work to proceed; and/or 3) holding the agency/department accountable out of its existing budget for the cost of additional work, together with any costs, damages, or attorneys fees associated therewith; non-payment of vendor invoices arising from unauthorized goods, services, or work.

Thank you for your cooperation.

Attachments (2)

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ADMINISTRATION

Rosemary Booth Gallogly, Director
One Capitol Hill
Providence, RI 02908-5890

Office: (401) 222-2280
Fax: (401) 222-6436
TDD: (800) 745-5333

June 1, 2010

SUBJECT: Procurement of Goods and/or Services with the State of Rhode Island

Dear Vendor:

As you are aware, the State of Rhode Island has centralized the vendor payment process into the Office of Accounts and Controls within the Department of Administration. As part of the centralization, all state agencies must ensure that all procurements for goods and/or services are placed on a purchase order issued by the Division of Purchasing to ensure that payments are made in a timely fashion.

Over the last year, the Governor's Office of Economic Recovery and Reinvestment has been monitoring purchasing activity as part of its compliance program under the American Recovery and Reinvestment Act of 2009. There have been instances where the protocol for centralized purchasing has not been adhered to as required by the Department of Administration. As a result, vendor payments have been delayed.

This letter is a reminder to all vendors doing business with any state agency that all procurements must have an approved purchase order **before supplying** any goods and/or services to the state. The only exceptions are emergency procurements as discussed in the April 10, 2010 memo and the Department of Transportation's engineering delegated authority. This will help to ensure timely payment upon completion of the order.

I would like to reconfirm that no state employee is allowed to commit the state financially without the issuance of a purchase order through central purchasing. This requirement also applies to Requests for Legal Counsel (RLC's). In accordance with R.I. Gen. Laws § 37-2-54(c) "No purchase or contract shall be binding on the state or any agency thereof unless approved by the Department [of Administration] or made under general regulations which the Chief Purchasing Officer may prescribe." Under State Purchasing Regulation 8.2.1.1.2, "Any alleged oral agreement or arrangements made by a bidder or contractor with any agency or an employee of the Office of Purchases may be disregarded and shall not be binding on the state."

The state's goal when it chose to implement centralized processing was to ensure compliance with all state purchasing guidelines and proper tracking of payments, resulting in timely payments. We are asking for your help in complying with the purchase order requirements by ensuring that you are provided with an approved purchase order prior to providing any goods or services to any state agency.

Thank you for your assistance. We look forward to working with you in the future.

Sincerely,

Rosemary Booth Gallogly

Rosemary Booth Gallogly, Director
Department of Administration

cc: Agency and Department Directors
Agency and Department Chief Financial Officers
Division of Purchasing Staff
Division of Accounts and Control Staff
Jamia McDonald, Governor's Office

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ADMINISTRATION
DIRECTOR'S OFFICE

INTER-OFFICE MEMORANDUM

TO: Directors
Key Personnel
Chief Financial Officers

FROM: Rosemary Booth Gallogly
Acting Director/Chief Purchasing Officer
Department of Administration

DATE: March 30, 2010

SUBJECT: Emergency Procurements

We have been working on formalizing the "Emergency Procurement" procedures, however, due to the current circumstances I am providing this information to guide your agency in procuring necessary goods and/or services. Please be reminded of the applicable laws and regulations related to emergency purchases. The Division of Purchases is available to assist with any such "emergency" purchases and with any issues related to those purchases.

RIGL§ 37-2-21(b) Noncompetitive procurement provides as follows:

(b) Emergency. Notwithstanding any other provision of this chapter, the purchasing agent may make or authorize others to make emergency procurements when there exists a threat to public health, welfare, or safety under emergency conditions as defined in the regulations; provided, that the emergency procurement 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 particular contractor, shall be included in the contract file.

In addition, please be aware of Purchasing Rules 9.6 which deals with emergency purchasing. (copy attached hereto)

The above cited law and regulations must be strictly adhered to as purchases are made on an emergency basis. Please make sure that the laws and regulations have been reviewed by the appropriate individual/individual(s) in your agency to assure that all emergency procurements are made in accordance with these laws and regulations.

Whenever possible agencies should utilize vendors on the Master Price Agreements (MPA) and Agency Price Agreements (APA). Purchasing is available to assist in making your procurement and guiding your Division to make the necessary purchases in the most efficient and cost effective manner consistent with state laws and regulations.

In all cases, the agencies must document the methodology used in making each emergency purchase. Consistent with the applicable laws and Purchasing Rules and Regulations, there must be a complete and accurate accounting of all noncompetitive procurements and approval by the Division of Purchases. (If an emergency occurs outside the normal business hours for the Office of Purchases, the user agency shall be authorized to proceed in accordance with the principles and policies of sound procurement practices.) The user agency must appoint a designated person/officer that will be responsible for consulting with the Division of Purchases before committing to a particular vendor. The Division of Purchases will maintain a log of all oral and written confirmations of authorization to proceed.

For questions relating to emergency procurement, please contact Lorraine Hynes at 574-8123 or lhynes@purchasing.state.ri.us.

(f) works of art for museum or public display;

(g) specialized services for which there is only one documented accepted source, such as transactions involving unique professional services and/or educational institutions, e.g., visiting speakers or professors, and performing artists; repair/maintenance agreements with manufacturers;

(h) advertisements, public notices in magazines, trade journals, newspapers, television;

NOTE: Purchase of advertising and public relations campaign services must be established through a competitive selection process.

9.5.3 This provision excepting sole source procurements from competitive bidding shall not be interpreted to reduce the responsibility of the Office of Purchases and/or user agencies to evaluate the market continuously to research product alternatives and develop additional sources (distributors).

9.5.4 In attempting to achieve the goal of maximizing competition to the greatest extent possible, alternative distributors and manufacturers shall be pursued to sole source items by using compatible replacement parts as long as warranties are not affected by substitution.

9.5.5 Because certain manufacturers may not be either a sole source for obtaining an item nor offer the most competitive price, agencies shall submit requisitions for sole source purchases in excess of $250 unless specifically delegated such authority by regulation or by the Purchasing Agency.

9.5.6 Maintenance contracts based upon sole source determination shall be subject to the following:

9.5.6.1 Annual maintenance contracts in excess of $1000 shall require approval by the Office of Purchases.

9.5.6.2 All multi-year contracts shall require approval by the Office of Purchases.

9.5.6.3 To achieve better pricing, when the total amount for all contracts with the same supplier exceed one thousand dollars ($1000), the agency shall submit a single purchase requisition consolidating all requirements.

9.5.7 The Chief Purchasing Officer or his designee may, at his initiation or upon the review of a justified request and/or recommendation from the chief executive officer of an agency, make a determination that a category of nonprofit providers constitutes sole source suppliers for certain types of service.

9.6 EMERGENCIES [37-2-21(b)] Notwithstanding any other provision of Chapter 37-2, the Purchasing Agent may make or authorize others to make emergency procurements

when there exists a threat to public health, welfare or safety under emergency conditions as defined in regulations; provided, that such emergency procurements shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the contractor shall be included in the contract file.

9.6.1 In accordance with procedures established by the Purchasing Agent, authorized officials in user agencies shall be permitted to react quickly to critical situations when the cost for a remedy or repair is in excess of $250 and there is not sufficient time to undertake a public, formal, or informal bidding process.

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

9.6.3 Inadequate anticipation of need shall not be considered justification for "emergency" purchases.

9.6.4 Commitments which extend beyond the immediate response to the dysfunctional emergency shall be prohibited, i.e. prevention of future problems by corrective measures other than the immediate restoration of function must be pursued through the Office of Purchases competitive purchasing process.

9.6.5 The Office of Purchases shall establish, through competitive bidding, a list of emergency response vendors and shall make such list available to user agencies.

9.6.5.1 When possible, agencies shall obtain services from a list of vendors selected by competitive process to provide specialized trade in emergencies.

5.5.5.2 If an emergency cannot be addressed by a designated vendor, the Office of Purchases shall assist in obtaining names and telephone numbers of responsible vendors.

9.6.6 Under determination of the existence of an emergency, the user agency's designated emergency response officer shall consult with the Office of Purchases before committing to a particular vendor. Office of Purchases officials shall maintain logs of all oral confirmations of authorization to proceed.

9.6.7 If the emergency occurs outside of business hours for the Office of Purchases, the user agency shall be authorized to proceed in accordance with the principles and policies of sound procurement practices outlined herein.

9.6.8 All emergency purchases shall be documented in accordance with procedures established by the Purchasing Agent. The user agency shall submit documentation for the emergency situation and response action in writing to the Purchasing Agent with the voucher for payment. All emergency documentation forms shall be signed by either the agency director or the designated emergency response official.

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

9.7 STANDARD OR ESTABLISHED CATALOGUE ITEMS may be identified by the Chief Purchasing Officer as exceptions to competitive bidding. Agencies officials may submit requests and justification for Delegated Purchase Authority for the acquisition of such items to the Purchasing Agent, who shall recommend an appropriate course of action to the Chief Purchasing Officer.

9.8 SPOT PURCHASES of certain items (e.g., food, heating oil) sold on the basis of posted market prices may be exempted from competition by the Purchasing Agent when market analysis indicates that such procurements are in the best interest of the state. Opportunities to take advantage of seasonal and supply/demand influences shall be taken into account when determining whether to pursue formal competitive procedures.