220-RICR-30-00-13

TITLE 220 – DEPARTMENT OF ADMINISTRATION

CHAPTER 30 – PURCHASES

SUBCHAPTER 00 – N/A

PART 13 – 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 State of Rhode Island ("State") and a Vendor. These General Conditions, along with items specified in § 13.4 of this Part herein, shall serve as the Contract with the State regardless of the method of procurement.

13.2 Definitions

A. For the purposes of this Part, the following definitions shall apply:

1. "Contract" means a Purchase Order, Purchase Agreement, and/or Letter of Authorization issued by the Division, along with any and all contractual documents incorporated by reference by the Division.

2. "Purchase agreement" means a written document formally issued by the Division to a Vendor that binds the parties to general terms, but does not represent a specific order for goods or services. A Purchase Agreement may include:

   a. A "Statewide purchase agreement" or "Master price agreement" or "MPA," which serves as an agreement for more than one agency, but does not include a specific quantity until a Purchase Order is issued; or

   b. An "Agency purchasing agreement," or "Agency pricing agreement," or "APA," which serves as an agreement for one agency, but does not include a specific quantity until a Purchase Order is issued;

3. "Vendor" means any individual, firm, corporation, partnership or other entity submitting a proposal to the Division indicating a desire to enter into contracts with the State of Rhode Island, or with whom a Contract is executed by the State Purchasing Agent.

B. All other terms contained in the State Purchases Act and State Procurement Regulations and used herein shall have the same meanings.

13.3 Procurement Process

A. Pricing

All pricing offered or extended to the State 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 State, shall be the Vendor's sole responsibility. The State 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 State Purchasing Agent.

2. The State 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 goods 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 State may reject Vendor's bid or proposal at the State's sole discretion. Nothing in the foregoing shall mean or imply that it is obligatory upon the State 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 State may be, at the sole discretion of the State 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 State Purchasing Agent determines in writing that such acceptance is in the best interest of the State.

   d. Acceptance or rejection of alternates or counter-offers by the State Purchasing Agent shall not constitute a precedent and shall not be considered to 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 State 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 State Purchasing Agent reserves the right to determine whether a Vendor's bid or proposal is Responsive to a solicitation and whether a Vendor is Responsible.

7. The State 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 give consideration to a Vendor's past performance where, in the State Purchasing Agent's judgment, the best interest of the State will be served, to require additional competitive negotiations and/or to issue a request for best and final offers.

8. The State 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, in the event that all other things are equal. Contracts funded entirely by State funds, when all factors are equal, a Vendor or service 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 service provider whose headquarters or primary place of business is within the State, shall receive preference.

b. MINORITY BUSINESS ENTERPRISES - Pursuant to the provisions of R.I. Gen. Laws Chapter 37-14.1 reserves the right to apply additional consideration to offers, and to direct awards to bidders other than the responsive bid representing the lowest price where:

(1) The offer is fully responsive to the terms and conditions of the Request;

(2) 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;

(3) The firm making the offer has been certified by the R.I. Department of Administration, Office of Diversity Equity and Opportunity to be a small business concern meeting the criteria established to be considered a Minority Business Enterprise. A minimum of ten percent [10%] of the dollar value of the work performed against contracts shall be performed by certified Minority Business Enterprises where it has been determined that subcontract and/or supply opportunities exist, and where certified Minority Business Enterprises are available. A vendor may count 60% of its expenditures for materials and supplies required under a contract and obtained from an MBE certified as a regular dealer or supplier, and 100% of such expenditures when obtained from an MBE certified as a manufacturer, towards the MBE participation requirement under R.I. Gen. Laws § 37-14.1-6. For materials or supplies obtained from firms certified as a broker or manufacturer's rep, vendors may receive MBE participation credit only for the fees and commissions charged for the procurement of the goods and materials, but not the cost of the materials themselves. Awards of this type shall be subject to approval, by the Director of Administration, of a Subcontracting Plan submitted by the bidder receiving the award.

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

11. Any Contract issued by the Division is subject to the resolution of any timely bid protest.

12. Any objections to specifications or requirements in a solicitation must be received by the Chief Purchasing Officer in accordance with State Procurement Regulation (§ 1.6 of this Subchapter).

D. Public Records

Vendors are advised that all records submitted to the Division may be subject to disclosure in accordance with the Rhode Island Access to Public Records Act, R.I. Gen. Laws § 38-2-1, *et seq*. 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 R.I. Gen. Laws § 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 R.I. Gen. Laws § 38-2-2. In the event the Vendor makes a reasonable assertion of confidentiality or privilege, the Division and/or agency and/or public institution of higher education will use reasonable efforts to honor the Vendor's request.

E. Product Evaluation

In all solicitations, the words "or equal" shall be understood to apply to each article when a manufacturer's name or catalog are referenced unless the solicitation specifically states "no substitutions." When submitting a bid or proposal which includes items other than those specified in the solicitation, the Vendor must, in every instance, give the trade designation of the article, manufacturer's name and detailed specifications of the item the Vendor proposes to furnish; otherwise, the bid or proposal shall be construed as being submitted for the identical commodity described in the solicitation. The State Purchasing Agent reserves the right to determine whether or not the substitute item(s) offered by the Vendor is an approved equal to the item(s) specified in the solicitation.

1. All standards are minimum standards except as otherwise provided for in the solicitation.

2. Samples must be submitted to the Division of Purchases 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 State 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 State for the purpose of obtaining any contract or award issued by the State. 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 State, except as shall have been expressly communicated to the State Purchasing Agent in writing prior to acceptance of the contract or award in question. Subsequent discovery by the State of non-compliance with these provisions shall constitute sufficient cause for immediate termination of all outstanding contracts and suspension or debarment of the bidder(s) or contractor(s) involved.

13.4 Entire Agreement

A. Incorporation

The Purchase Order, Purchase Agreement or Letter of Authorization issued by the Division, together with associated documents referenced therein, shall constitute the entire and exclusive agreement between the State and any Vendor receiving an award. As noted in § 13.1 of this Part, the resulting Contract shall incorporate by reference:

1. The "State Purchases Act," R.I. Gen. Laws § 37-2-1, *et seq*.;

2. The Procurement Regulations adopted pursuant thereto;

3. The Vendor Certification Cover 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 addenda as referenced in § 13.34 of this Part herein; and

7. The offer/proposal submitted by Vendor and accepted by the State.

B. Order of Precedence

Unless otherwise approved by the State 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 or 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. State Procurement Regulations (Parts 1 through 13 of this Subchapter), General Conditions of Purchase and contract Addenda in addition to the General Conditions ("GC Addenda") (§ 13.34 of this Part);

4. The Purchase Order or Purchase Agreement issued by the Division;

5. The offer, proposal or bid submitted by the Vendor and to the extent accepted by the Division;

6. Solicitation documents issued by the Division; and

7. To the extent allowed by law, for an individual procurement, the State Purchasing Agent may agree to an alternate order of precedence to serve the best interest of the State and/or to protect the health, safety and welfare of the State and its citizens.

C. Contract Contingencies

1. All Contracts are subject to the following:

   a. All material communication between the State 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 Division 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 State. The Purchase Order, Purchase Agreement or Letter of Authorization shall bind the Vendor on its part to furnish and deliver goods 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 bid protest.

   c. No alterations or variations of the terms of the Contract shall be valid or binding upon an agency, the State, or the Division unless

submitted in writing and accepted by the State Purchasing Agent thorough issuance of an approved Purchase Order or Change Order. All Contracts and changes must be approved by and emanate from the Division. Oral agreements or arrangements made by a Vendor with anyone, including an agency or agency employee, shall not be binding upon an agency, the State or the Division unless and until reduced to writing and approved by the State Purchasing Agent through the issuance of an approved Purchase Order, Purchase Agreement or Change Order.

d. 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 State and thereafter until all terms and conditions have been met, unless:

(1) Terminated prior to expiration date by satisfactory delivery against orders of entire quantities, or

(2) Extended upon written authorization of the State Purchasing Agent to permit ordering of the unordered balances or additional quantities at the Contract price and in accordance with the Contract terms, or

(3) Canceled by the State in accordance with other provisions stated herein.

e. 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 goods 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 State. Nothing herein shall be construed as creating any contractual relationship or obligation between the State and any sub-bidder, subcontractor, supplier of the Vendor, and/or employee of the Vendor. With that said, the State may consider Vendor non-payment of subcontractors or suppliers in determining whether an award to the Vendor is in the best interest of the State. 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 goods or services, or for a specified level of funding. Provided, however, that:

1. If stated in the solicitation, the State reserves the right to modify the quantity, scope of service, or funding of any Contract, with no penalty or charge, by written notice to the Vendor; and,

2. The State shall not accept quantities in excess of the specified quantity except where the item is normally sold by weight (where sold by weight, the State 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 State Purchasing Agent provided; however, that any such increase or extension shall be documented through issuance of a Change Order issued by the Division.

13.7 Term and Renewal

Where offers have been requested or Contracts awarded for terms exceeding periods of twelve (12) months, it is mutually understood and agreed that the State's commitment is subject to the appropriation of funding and is limited to a base term not to exceed twelve (12) months, subject to renewal annually at the State's sole option for successive one-year terms, except where expressly specified to the contrary. Purchase Orders, Purchase Agreements, and/or Change Orders appearing to commit the State to obligations of funding or terms of performance in excess of twelve (12) months may be executed for administrative convenience, but are otherwise subject to this provision. In such cases the State's renewal shall be deemed to be automatic, conditional on the continued availability of appropriated funds for the purpose, except as written notice of the State's intent not to renew is served.

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 goods are in stock and that shipment will be made within seven (7) calendar days after issuance of the Purchase Order. The decision of the State 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 State 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 R.I. Gen. Laws § 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 R.I. Gen. Laws § 7-1.2-1401.

13.10 Product Acceptance

A. Quality

All goods 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 goods 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 State.

B. Rejection of Nonconforming Goods

The State reserves the right to reject all nonconforming goods, and to cause their return for credit or replacement, at the State's option. Contract deliverables specified for procurement of services shall be construed to be work product, and subject to the provisions of this Section.

1. Failure by the State to discover latent defect(s) or concealed damage or non- conformance shall not foreclose the State's right to subsequently reject the goods in question.

2. Formal or informal acceptance by the State of non-conforming goods shall not constitute a precedent for successive ordering, receipt, acceptance, or procurement of non-conforming goods.

3. If the Vendor fails to promptly cure the defect or replace the goods, the State reserves the right to cancel the Purchase Order. The State may then contract with a different Vendor and invoice the original Vendor for any differential in price over the original Contract price.

4. When materials, equipment or supplies are rejected, the same must be removed by the Vendor from State property within forty-eight (48) hours of notification, unless otherwise specified by the State. Rejected items left longer than forty-eight (48) hours or another time set by the State, shall be regarded as abandoned and the State shall have the right to dispose of those items at the Vendor's expense.

13.11Ownership

Unless otherwise specifically provided for in the solicitation, General Conditions, or General Conditions Addenda, all data, material and documentation prepared for the State shall be considered work for hire and belong exclusively to the State.

13.12Product Warranties

A. All product or service warranties normally offered by the Vendor shall accrue to the State'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 State 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 State 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 State 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 State. The rights and remedies of the State 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 § 13.3(C)(3) of this Part.

13.13Payment

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 State until goods 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 State. Payment then shall be made promptly in accordance with R.I. Gen. Laws § 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 State Purchasing Agent.

4. In the event a cash discount or rebate is stipulated, the withholding of payments, as herein described, will not deprive the State from taking such discount or rebate.

5. If not rejected, payments for used portion of inferior or defective goods shall be made by the State 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 agency involved for approval.

13.14Set-Off Against Payments

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

13.15Claims

A. Setoff

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

B. Damages for Claims

The 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 State, 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 § 1.6 of this Subchapter.

13.16Unused 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 State's sole option.

13.17Confidentiality

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 State’s infrastructure, operations, security, or personnel unless otherwise identified by the State in writing as non-confidential at the time of disclosure; or

   c. Any other information which the State has identified to the Vendor in writing as confidential at the time of disclosure or within thirty (30) days after disclosure; or

d. State Data which includes User Data and the State'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 State 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 State employees and/or State 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 State employees and/or State personnel or any other material or information supplied by or on behalf of the State, State Data or that is disclosed to or becomes known by Vendor as a result of its dealings with the State. Confidential Information may be in tangible or intangible form. The State'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 Addenda, the term "Confidential information," shall not be construed to include information that:

(1) 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

(2) Can be documented to have been known by Vendor prior to its release to the Vendor by the State without an obligation of confidentiality, or

(3) 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 State. 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 State and Vendor.

D. Vendor's Agents

Vendor acknowledges and also shall require its employees, officers, independent contractors, and subcontractors, agents and any other entities acting on its behalf (collectively "Affiliates") 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 State; 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 its Affiliates who require knowledge of the same for the purpose described in the Contract; provided such Affiliates 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 Affiliates a copy of the terms of the Contract and any other Non-Disclosure Agreement the State may provide for said Affiliates 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 Affiliates 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 State's prior written authorization.

2. Confidential Information will remain the exclusive property of the State unless as otherwise provided for in any agreement and/or the Contract between the State and Vendor; upon completion of the project and/or services, or whenever requested by the State, Vendor will promptly destroy or return to the State, in a form acceptable to the State, any and all Confidential Information and all copies thereof, including summaries, reports or notes based thereon, unless otherwise expressly authorized otherwise by the State in writing.

3. Vendor agrees that the breach of these terms would cause irreparable damage to the State. Therefore, Vendor agrees that should it breach its obligations hereunder, Vendor shall defend, indemnify, release, and hold the State 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 State has the right to seek an order to restrain the Vendor and its agents, Affiliates, etc. from breaching these terms or otherwise commence any action in law or in equity.

13.18Taxes

A. The State and its agencies are exempt from payment of any tax imposed directly on the purchaser of goods and services under federal, state or local law with the sole exception of the Rhode Island Motor Fuel Tax, R.I. Gen. Laws § 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 a State agency may purchase materials specifically allocated for the performance of said Contract from their suppliers 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.

13.19Insurance/Bonds/Other Security

A. Insurance

Prior to issuance of a Contract, Vendor shall submit to the Division 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 State. 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 State 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 State Purchasing Agent. Failure to comply shall result in a determination that the Vendor is not "responsible." The State Purchasing Agent may change the insurance requirements contained in General Condition Addenda as necessary to protect the State'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 State 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 State Purchasing Agent, shall be sufficient cause for the cancellation, rescission or termination of a Contract, the cancellation of all existing State 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 State 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 goods 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 State Purchasing

Agent, or failure of a Vendor to make replacement of rejected articles, when so requested, immediately or as directed by the State Purchasing Agent, may cause the State Purchasing Agent to purchase in the open market to replace those goods or services rejected or not delivered. The State 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 State 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 service may be considered to be in default of Contract. The State 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.

Any and all payments by the State are expressly contingent upon and subject to the appropriation, allocation and availability of funds by the General Assembly and/or the Federal Government. If any Contract is funded in whole or in part by federal funds, the State's performance and payment shall be subject to and contingent upon the continuing availability of said federal funds. If the term of extends into fiscal years subsequent, continuation of the Contract is expressly contingent upon the appropriation, allocation, and availability of funds. If funds to effect payment are not available, the State will provide written notification to Vendor. If the Contract is terminated under this paragraph, Vendor agrees to take back any affected goods not yet delivered, terminate any services supplied to the State, and relieve the State of any further obligation thereof. State shall remit payment for goods and services accepted prior to the date of termination in the notice.

D. Convenience

1. For subscription services the State may terminate for convenience.

2. For all other Contracts, the State Purchasing Agent shall have the right to terminate the Contract for convenience if the State Purchasing Agent determines in writing that termination is in the State's best interest. The Vendor shall be paid for work completed and accepted, but Vendor shall not be entitled to recover lost profits.

E. Stop Work

In the interests of health, safety and welfare, economic or otherwise, the State 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 State Purchasing Agent. In the event that the Vendor

bears responsibility for the conditions requiring a stop work order, the State shall not be responsible for any delays.

13.21Indemnification

A. General

Vendor shall defend, indemnify, release and hold harmless the State 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 State 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 service or its use infringes the intellectual property rights of another person or entity.

13.22Vendor Obligations

A. In addition to the specific requirements imposed by the State in the Contract, a Vendor engaged in providing goods or services to the State 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 State, and at its own risk.

5. To perform all work so as to cause the least disruption and inconvenience to the State, 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 State 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 State.

9. EQUAL OPPORTUNITY COMPLIANCE, HANDICAPPED ACCESS AND AFFIRMATIVE ACTION - Contractors of the State are required to demonstrate the same commitment to equal opportunity as prevails under federal contracts controlled by Federal Executive Orders 11246, 11625, 11375 and 11830, and R.I. Gen. Laws Chapter 28-5.1. Affirmative action plans shall be submitted by the contractor for review by the State Equal Opportunity Office. A contractor's failure to abide by the rules, regulations, contract terms and compliance reporting provisions as established shall be grounds for forfeiture and penalties as shall be established, including but not limited to suspension.

10. DRUG-FREE WORKPLACE REQUIREMENT – Vendors who do business with the State and their employees shall abide by the State'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 State 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 State, the State 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 State 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 R.I. Gen. Laws § 37-2-34 (Right to inspect facilities – Right to Audit) as necessary.

13.23Force Majeure

Neither the State, 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 State 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 State 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 State 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 goods, 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.

13.24Compliance with Law

During the term of the Contract with the State, 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 goods 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 Division. Vendors shall pay for all required permits, licenses and fees required for the delivery of goods or services to the State 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 State 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 State and the sub-contractor. If a Vendor uses a sub-contractor to fulfill its responsibilities, then the Vendor shall be responsible for the sub-contractor's performance, compliance with the applicable terms of the Contract and all applicable statutes, rules, regulations, and these General Conditions of Purchase. Provided, however, for Rhode Island Department of Transportation ("RIDOT") road, bridge and heavy construction projects, approval of subcontractors shall be in accordance with "Bluebook" specifications issued by RIDOT. Upon request, contractors must submit to the Division 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 State 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 State 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 Division. The State 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 State 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 State 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 State 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 State 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 State Purchasing Agent.

G. Prompt Payment of Subcontractors

In accordance with R.I. Gen. Laws § 42-11.1-3(b) Vendors shall make prompt payment for satisfactory subcontract work for which the State has made partial or full payment. The State 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 State Bidders List.

13.26Advertising

Vendors shall not reference a State Contract for the purposes of advertising or promotion without written authorization from the State Purchasing Agent and any agency owner of the referenced Contract.

13.27Non-Exclusive Rights

The State reserves the right to issue multiple solicitations for goods or services similar or identical to the goods or services described in a solicitation for which a Purchase Order or Purchase Agreement has been issued to a Vendor.

13.28Election of Remedies

All rights exercisable by and remedies of the State shall be cumulative. The exercise or beginning of the exercise by the State of any of its rights and remedies will not preclude the State 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 Department of Administration, by and through its Division of Purchases, arising under the "State Purchases Act", R.I. Gen. Laws § 37-2-1, *et seq*. 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 Department of Administration, by and through its Division of Purchases, arising under the "State Purchases Act", R.I. Gen. Laws § 37-2-1, *et seq*. shall be brought solely in the Providence Superior Court, Providence, Rhode Island. 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

The General Conditions 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 Division. Any work performed by the Vendor prior to issuance of a Purchase Order or approved Change Order shall not be subject to payment by the State.

13.33 Amendments to General Conditions

The State Purchasing Agent reserves the right to agree to alternate terms and conditions for a specific purchase in order to serve the best interests of the State and/or protect the health, safety or welfare, economic or otherwise, of the State and its citizens.

13.34 Contract Addendums in Addition to the General Conditions of Purchase

A. In addition to the General Conditions of Purchase, the additional contract Addenda ("GC Addenda") listed below shall apply to specific types/categories of Contracts with the State at the direction of the Division. The Division shall indicate any applicable GC Addenda in the solicitation or other procurement. These GC Addenda shall be considered as additional Contract terms and conditions with the State.

B. The GC Addenda may be amended from time to time without Administrative Procedures Act promulgation and at the discretion of the Division. The GC Addenda shall be considered contract terms and not regulations.

C. The Division may post the current GC Addenda on the Division's website for reference purposes and/or may include with the solicitation. The GC Addenda includes the following:

1. GC Addendum A – General Insurance Requirements

2. GC Addendum B – Information Technology Requirements

3. GC Addendum C – Public Works Project Requirements (AIA Agreements)

4. GC Addendum D – Agency Specific Federal Funding Requirements – Provides any requirements imposed by federal partners.

5. GC Addendum E – Standard Business Associates Agreement Requirements

6. GC Addendum F – Special Requirements – Requirements not otherwise addressed in the General Conditions or GC Addenda above.

D. The Division reserves the right to add GC Addenda as necessary without further promulgation of regulation. Again, any additional GC Addenda would be considered a Contract term.

E. In lieu or in addition to any GC Addenda, the Division reserves the right to include any contract terms in a specific solicitation or procurement as necessary.

13.35Severability

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.

220-RICR-30-00-13

TITLE 220 - DEPARTMENT OF ADMINISTRATION

CHAPTER 30 - PURCHASES

SUBCHAPTER 00 - N/A

PART 13 - GENERAL CONDITIONS OF PURCHASE (220-RICR-30-00-13)

Type of Filing: Refile Capabilities

Department of State

01/04/2022	12/12/2018
Regulation Effective Date	Original Signing Date
E-SIGNED by Department of State on 2021-12-20 10:57:52 EST	December 20, 2021
Department of State Initials	Department of State Date