



Rhode Island Bar Journal

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**An Attorney's Guide to State Contracting
in Rhode Island**

**A Case Study of an Appraisal:
Protecting the Homeowner from Mayhem**

**The Rhode Island Data Transparency and
Privacy Protection Act**

An Attorney's Guide to State Contracting in Rhode Island

This article is a special project by a participant of the 2023–2024 Leadership Academy, developed with feedback and edits from their mentor. It reflects the dedication and growth fostered within our program. We are proud to showcase the hard work and insights of our future leaders.



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“A key provision is the requirement that only the State’s representative listed in the agreement may give consent on behalf of the State.”

The process of entering into a contract with the State of Rhode Island (“State”) for goods and services may be a daunting task for the uninitiated. Even just knowing what terms may apply to engagement with the State is an enigma. Knowing whether it is possible and how to negotiate these terms on behalf of your client, moreover, is also a mystery. This article is intended to provide guidance for attorneys to: 1) identify the general terms and conditions that may apply to an agreement with the State; 2) explain the State’s updated contracting process; and 3) provide some guidance on how to address contractual matters with the State.

This article is NOT an attempt to explain the State’s complex procurement process, which would require another longer article or even a treatise. Rather, this article will focus on the contracting process and the resulting agreement that is entered into between the State and its vendor. With that said, the type of procurement method (i.e., source selection) being used by the State is important and may influence the resulting contract and the ability of a vendor to negotiate terms.

For example, if the engagement with the State is being procured through a sole source procurement (i.e., without competition), there may be more room for negotiation and the vendor may have more leverage. Alternatively, if the State procurement is conducting a competitive bid process (i.e., competitive sealed bidding or a Request for Proposals), there may be less of an opportunity to negotiate terms and much less leverage. However, even when a contract is competitively procured by the State, a vendor has an opportunity to raise issues and negotiate contractual terms; the key is knowing when and how that should be done within the State’s procurement process.

First, this article will discuss the State’s relatively new contracting process, which was significantly changed in 2019. Second, this article will provide a comprehensive overview of the terms that apply to an agreement between the State of Rhode Island and a vendor.²

I. The State’s Contracting Process

In understanding the State’s contracting process, it may be helpful to include some historical perspective that led to a paradigm shift in 2019. Prior to 2019, the State had a bare-bones set of

general conditions (adopted through regulation) that would apply only to a contract procured through competitive procurement (competitive sealed bidding or a Request for Proposals). As will be discussed in Section II, the State’s General Conditions were comprehensively updated effective January 1, 2019. Along with that update of the General Conditions, the State changed its contracting practice.

Prior to 2019, after a tedious procurement and evaluation phase (which often would take two (2) to three (3) months), the State would issue a tentative selection letter to the vendor. At that time, the vendor and the State agency seeking the services would be authorized to enter into contract negotiations prior to the issuance of a Purchase Order. This contracting period would often take several months and occasionally would even lead to a withdrawal of tentative selection if the vendor and the State could not reach an agreement.

The contracting process prior to 2019 led to several issues: 1) unfavorable terms for the State; 2) extremely inconsistent terms across departments; 3) unfairness to unsuccessful bidders who did not have the same opportunity to negotiate; and 4) significant delay in the process.

By allowing a negotiation after the fact of the procurement, the vendor was given a second bite at the apple. Sometimes, the negotiated terms differed from those proposed in response to the solicitation and were more favorable to the vendor. This process raised issues of fairness for the unsuccessful bidders. If the unsuccessful bidder had known they could limit liability, for example, would they have priced their proposal lower?

Another issue prior to 2019 was that the State’s General Conditions were not regularly applied to sole-source engagements. Oftentimes, in the case of a sole source, an agency of the State would simply sign the vendor’s form agreement “as is.” While this practice may have streamlined the contracting process for sole-source procurements, agreeing to the vendor’s one-sided terms was not in the best

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interests of the State and did not protect the public fisc.

Because of these issues, the Department of Administration undertook a project to comprehensively update its General Conditions and change its process with respect to contract negotiation starting in 2018. Effective January 1, 2019, the Department of Administration adopted a comprehensive set of General Conditions as a regulation through the State's Administrative Procedures Act. As a result, after a public rulemaking process, the General Conditions have the force and effect of law. Additionally, around this time, the Division of Purchases updated its Bidder Certification form, implemented several contract addenda, and customized a set of approved AIA agreements for Public Works projects to be incorporated into the General Conditions (discussed below).

Corresponding with the new set of General Conditions (effective January 1, 2019), the State also changed its process to eliminate any negotiation of the legal terms after the fact. Rather, bidders are now required to either agree to the General Conditions "as is" or propose alternate or qualified terms and conditions *at the time of proposal submission, not after the fact.*

Importantly, vendors and the attorneys should be aware that even before the bid or proposal is submitted, there is an opportunity to change the resulting contract terms if necessary. The main difference is that now it happens during the procurement process and not after the fact. Here is what you need to know:

A. The Pre-Bid Process

All competitive procurements are posted on the Division of Purchases website at: <https://ridop.ri.gov> through Ocean State Procures™ ("OSP"), the State's eProcurement system for vendor registration,³ solicitation, and awards. In competitive procurements through competitive sealed bidding (either a Request for Quotes or Request for Proposals), there is a period of about a month after notice of the procurement is posted. During that time, there is generally a question-and-answer period through email and a pre-bid conference (especially for public works projects). Regardless of the delivery method, contractors and architects should always attend any pre-bid conference held by the State, whether or not mandatory, and monitor the Division of Purchases website for addenda and supplemental information. Ideally, at this time, a vendor should raise any questions and concerns regarding the contract terms and, if necessary or appropriate, suggest alternative or qualified terms or conditions. This exchange will allow the State to consider the request and potentially apply the terms to all of the vendors through an addendum to the solicitation.

For example, if the vendor is extremely concerned about the extent of liability in a particular engagement or has some concerns about the required insurance, they may raise the issue during the pre-bid period (during the Q&A or at the pre-bid conference), and then the State can consider the request and very easily amend the procurement to include those alternative terms. This approach will allow all vendors to bid on the same terms equally. By waiting, the vendor faces the risk of competing against other vendors who are willing to agree to the State's terms "as is."

B. The Bid Submission Process

Assuming the vendor does not raise the issue during the pre-bid period, or the State does not amend the terms, the vendor may submit a proposal with an alternate or qualified offer. Of

course, the State would prefer the vendor to agree to its General Conditions as is, and the vendor faces the risk of being left behind if it submits a qualified offer. However, that does not mean the vendor should not submit a qualified or alternate offer if a contractual term(s) presents a real issue to the vendor.

This process to submit a conditional or qualified offer is reflected in the General Conditions at 220-RICR-30-00-13.3(C) (3), which provides:

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.*

Additionally, the standard language provided by the Division of Purchases with respect to qualified or conditional offers is as follows:

In the Vendor Certification Questionnaire, question "Certifications 11.", bidders shall certify agreement to the State's contract terms.

However, in accordance with Section 220-RICR-30-0013.3(C) (3) of the General Conditions, the Vendor may submit in their bid or proposal, "[q]ualified 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."

However, qualified or conditional offers may be, at the sole discretion of the State Purchasing Agent: 1. Rejected as being non-responsive; or, 2. Set aside in favor of the requirements set forth in the solicitation (with the consent of the Vendor); or, 3. Accepted, if the State Purchasing Agent determines in writing that such acceptance is in the best interest of the State."

By submitting a conditional or qualified offer, the Vendor bears the risk of their bid or proposal being considered non-responsive. In the event the State receives a conditional or qualified offer, the State reserves the right to conduct a best and final offer process offering the same terms to all vendors and/or reject a qualified/conditional proposal as being non-responsive at any time during the review process. The Vendor should not assume that any further negotiation will occur upon selection.

Upon submission, the Division of Purchases and the reviewing agency, if any, will take into consideration any conditional or qualified terms submitted by bidders. In the event that there are multiple proposals and only one bidder is requesting modified terms or conditions, the Division of Purchases will inform the bidder of this situation and request that the bidder either withdraw its request for conditional/qualified terms or withdraw



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Founded in 1958, the Rhode Island Bar Foundation is the non-profit philanthropic arm of the state's legal profession. Its mission is to foster and maintain the honor and integrity of the legal profession and to study, improve, and facilitate the administration of justice. The Foundation receives support from members of the Bar, other foundations, and honorary and memorial contributions.

Today, more than ever, the Foundation faces great challenges in funding its good works, particularly those that help low-income and disadvantaged people achieve justice. Given this, the Foundation needs your support and invites you to complete and mail this form with your contribution to the Rhode Island Bar Foundation.

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Attorney **Suzannah Skolnik**, a member of the Volunteer Lawyer Program (VLP), enthusiastically supports the program. *“At its core, being a lawyer is about helping your client find a solution to a problem. The clients I’ve assisted through the Volunteer Lawyer Program have faced big problems, often with far-reaching implications in their lives. But more often than not, the solutions have been simple ones. It’s satisfying to put my skills and knowledge to work in such a concrete and impactful way.”*

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from consideration. Thus, if the State has six (6) vendors willing to agree to the terms as is and one (1) vendor who is proposing conditional/qualified terms, the State has the leverage to reject the vendor’s request.

In the event that there is limited competition or multiple bidders request qualified terms (such as limited liability), if the Division of Purchases deems the request to be reasonable, the Division of Purchases may accept the term(s) or it also may issue a best and final offer (BAFO) process and give all of the bidders the opportunity to resubmit pricing based on modified terms. Importantly, the terms are negotiated at the same time the proposals are being evaluated (when the State has leverage and multiple vendors in the mix) and not after selection has already occurred when a vendor knows they have already been tentatively selected for the contract.

In all cases, the vendor should be selective in what contractual provisions the vendor chooses to negotiate. The General Conditions and its addenda take a shotgun approach and are intended to cover multiple types of contracts. They include many provisions that may not apply to a specific engagement between the State and a vendor. The General Conditions, in several instances, manage applicability by including language like “unless otherwise provided in the solicitation.” Additionally, there are provisions related to the delivery of goods that would clearly not apply to a service contract. If one of the provisions clearly does not apply to the engagement, it is probably not worth negotiating the issue!

Wholesale redlines of the General Conditions will not be considered kindly by the State. If a vendor is considering submitting a qualified or conditional offer, the vendor should prioritize areas of negotiation that create a significant business risk or would lead to a substantial cost. The common areas of contractual tension raised by vendors in the past are with warranties, insurance requirements, indemnification, and ownership of intellectual property/work product, though certainly any term is fair game if it causes a substantial business risk or cost to the vendor.

C. Post Selection

By incorporating contract negotiation earlier in the procurement process, at the time of submission and proposal review, the result is the elimination of a long, drawn-out process of contract negotiations after the fact. In a perfect situation, once the vendor is tentatively selected, they will simply need to submit insurance certificates, bonds if applicable, and MBE/WBE requirements, and the Division of Purchases can simply issue the Purchase Order. Basically, this method of procurement equates to a “sign on the dotted line” type of process. There is no longer a period of contract negotiations after the procurement and no longer a delay for a subsequent negotiation.

Of course, there may be some exceptions. If there is a complex project being procured and the State and vendor need to iron out a scope of work, deliverables, milestones, payment terms, and other key terms and conditions, some exchange and even negotiation may need to occur, but all the legal terms should generally be all set.

D. Sole Source

As discussed, the General Conditions still would serve as the default for a contract procured through a sole source, including, without limitation, the obligation of good faith and fair dealing.



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Because of the nature of a sole source procurement (only one vendor), however, the vendor may have more leverage to raise issues and negotiate terms. The vendor should, nevertheless, be reasonable in negotiating such terms. In fact, if the vendor has another agreement with the State that was competitively bid, the State would expect the vendor to agree to the same terms.

II. What are the Contract Terms with the State of Rhode Island?

While the above sections describe the State's updated process for negotiating and contracting, it is important for vendors and their lawyers to have a fundamental understanding of the terms of a contract with the State. This is not always a simple task: While there is now a standard set of comprehensive General Conditions that form the base agreement in all cases, there are additional terms that may apply depending on the type of engagement and may be added as an addendum.

A. General Conditions of Purchase

Chapter 2, Title 37 (R.I. Gen. Laws §§ 37-2-1 *et seq.*) governs State purchases and provides the framework for the State contracting process. The General Conditions of Purchase, 220-RICR-30-00-13 *et seq.*,⁴ "serve as the base agreement between the State of Rhode Island ("State") and a Vendor." 220-RICR-30-00-13.1 (Purpose). The General Conditions apply to all vendor contracts regardless of procurement method. *Id.* The General Conditions' thirty-five (35) sections include the basic provisions typically covered in any standard contract, including provisions such as indemnification, intellectual property/ownership, warranties, insurance, vendor obligations, and confidentiality provisions. Pursuant to R.I. Gen. Laws § 37-2-13(5), the provisions of the state purchasing regulations are incorporated by operation of law in all state contracts. In particular, every state contract imposes the obligation of "good faith" upon both the State and the vendor in their performance of the contract, where "good faith" means "honesty in the conduct or transaction concerned and the observance of reasonable commercial standards of fair dealing." R.I. Gen. Laws § 37-2-3(b). These are the State's standard terms, and all entities doing business with the State should be familiar with them.

Incorporated with the General Conditions are applicable addenda (discussed below), state and federal laws and regulations, the solicitation requirements, the vendor's bid or proposal (if applicable), and the vendor's bidder certification form. *See* 220-RICR-30-00-13.4(A). Further, if there are any conflicts among those incorporated items, the General Conditions prescribe an order of precedence. *See* 220-RICR-30-00-13.4(B). Between the General Conditions and these incorporated items, the majority of the time, the State is generally comfortable with issuing a purchase order to a vendor without any additional contract documents. Easy peasy, right?

Unfortunately, not so easy! Because there are so many variations in the types of agreements with the State, including contracts for various goods, services, software, hosting solutions, construction and public works, there is no one size fits all solution. The General Conditions were designed, however, to include addenda ("GC Addenda"), which may apply and may be incorporated into the agreement if applicable. For example, if the contract involves a public works project (construction), an appropriate AIA agreement will be attached as an addendum to the General Conditions.

Continued on page 28

Annual Meeting Workshop Proposals Due November 8!

Do you have a great idea for a workshop or a speaker suggestion for the 2025 Annual Meeting? The Annual Meeting Planning Committee is eager to hear from you!

The 2025 Annual Meeting will be held in person at the Rhode Island Convention Center on Thursday, June 12th and Friday, June 13th. Each year, the Committee strives to design two days of engaging legal education to meet the diverse needs of Rhode Island practitioners, covering various levels of experience and areas of practice.

We encourage you to submit one or more workshop proposals to help us create a program that will serve our Bar community. Initial proposals, consisting of a brief description of your suggested workshop, are due by **November 8, 2024**.

To access the 2025 Annual Meeting workshop proposal form, [click here](#), or visit the Bar's website at ribar.com and click on the Continuing Legal Education dropdown menu and select the 2025 Annual Meeting. Please contact CLE Director Madeline Benner at 401-421-5740 or mbenner@ribar.com if you have any questions.



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Guide to State Contracting

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The GC Addenda is described in Section 13.34 of the General Conditions. The GC Addenda is considered to be contract terms and not regulations. See 220-RICR-30-00-13.34(A & B). The GC Addenda are as follows:

GC Addendum A – General Insurance Requirements⁵ – Applies to all procurements and includes several insurance schedules which may apply depending on the service being provided.

GC Addendum B – Information Technology Requirements – Applies to computer hardware, software and hosting related procurements. The State is working on an updated template which should be available soon and posted on Ocean State Procures (“OSP”), the State of Rhode Island’s eProcurement system for vendor registration, solicitations, and awards.

GC Addendum C – Public Works Project Requirements (AIA Agreements)⁶ – Applies to Public Works Projects (discussed in detail below).

GC Addendum D – Agency Specific Federal Funding Requirements – Provides any requirements imposed by federal partners. – Applies to all procurements involving federal funds where the federal government imposes additional terms and conditions. This addendum may vary depending on the department and the requirements of its federal partner.

GC Addendum E – Standard Business Associates Agreement Requirements – Applies to procurements involving HIPPA. Each agency has its own form of BAA, which would be utilized and incorporated.

GC Addendum F – Special Requirements – Requirements not otherwise addressed in the General Conditions or GC Addenda above – This Addendum is the catchall. In the event that there are terms or conditions that are not included in the General Conditions or in any of the other addenda, any special conditions can be included here. Additionally, this addendum may also be used to incorporate a detailed scope of work with the vendor, including, but not limited to, deliverables, milestones, and special payment terms.

The General Conditions (base terms), applicable GC Addenda (added terms), and other incorporated items (the solicitation and the proposal/bid) constitute the entire agreement between the State and the vendor for the purchase of goods or services other than public works construction.

B. Insurance Requirements

Because GC Addendum A, Insurance, is incorporated in every contract and is often a sticking point with vendors, this section will elaborate on this requirement. GC Addendum A includes the following schedules:

- A1: General Requirements Schedule
- A2: Professional Services Schedule
- A3: Information Technology Schedule
- A4: Public Works Schedule
- A5: Department of Transportation Projects

If the contract is being procured through a competitive procurement, the solicitation will generally state which schedule(s) and which specific policies may apply. If a vendor is unsure of the specific insurance requirements, however, they should follow the instructions in the solicitation and email the Division of Purchases for clarification.

The insurance requirements are one of the most common areas for delay in the contracting process. Vendors often ignore

these requirements until they receive a tentative selection letter from the Division of Purchases requesting insurance certificates. Then this requirement sinks in. Issues can be avoided and possibly even negotiated (discussed below) if areas of concern are raised at the front end of the process.

In some cases, a vendor may be unable to obtain the required insurance. If that is the case, the vendor should directly address the issue as follows: 1) in the form of a vendor question during the vendor Q&A during the procurement; and/or 2) at a pre-bid conference if there is one; and 3) in the vendor's bid or proposal as an alternative or qualified term (discussed below). Addressing insurance issues after-the-fact leads to delay and may also lead to a withdrawal of tentative selection by the State.

C. Public Works Projects

The State of Rhode Island engages in a significant number of public works projects at any one time, including construction of new buildings as well as maintenance, repair, and renovation of existing buildings. The Department of Administration Division of Purchases manages the procurement of most state and agency public works projects in the State of Rhode Island, pursuant to R.I. Gen. Laws §§ 37-2-1 *et seq.* and the regulations at 220-RICR-30-00 promulgated pursuant to R.I. Gen. Laws § 13.7. Contracts for these projects are typically awarded through the competitive bidding process based on several different project delivery methods common in the construction industry.

Project Delivery Methods

“Design-bid-build” is the traditional and still most commonly utilized method in construction procurement. This method is linear and consists of three distinct phases completed primarily sequentially: 1) the design phase; 2) the bid phase; and 3) the build phase. Construction commences only upon completion of the design process and acceptance of the bid. Until fairly recently, the State used this method almost exclusively. In this type of procurement, the State procures the services of an architect or engineer to design a project (a “design agent”), then the design agent provides a comprehensive set of construction drawings and specifications that the State uses to solicit bids. General contractors then submit proposals with their best price (after consultation with subcontractors for various aspects of the project) for materials and labor and their built-in fee, and the State awards the project to the lowest responsive bid price. R.I. Gen. Laws § 37-2-18(h). There can be wide variations in the bid proposals from contractors with this method. Typically, the State also retains the services of the design agent to administer and oversee the construction services of the contractor. One key component of this method is that the State enters into a direct contractual relationship with the design agent who, is accountable exclusively to the State.

The “design-build” method, ideally, compresses the process and streamlines communication, collaboration, and coordination. In this project delivery method, the State solicits and awards one contract—rather than two (one for the design agent and one for the contractor)—to design and construct the project. In this scenario, the design agent and the contractor will work collaboratively, the State has one point of contact for questions and input for the project, and the contractor can begin construction on certain phases of the project once the design agent has completed its design for each of those phases. Since this method integrates the design and construction services, the contract provides the State with single source responsibility.

Thanks to Our CLE Speakers

The Rhode Island Bar Association's Continuing Legal Education (CLE) programming success relies on dedicated Bar members who volunteer hundreds of hours to prepare and present seminars every year. Their generous efforts and willingness to share their experience and expertise help to make CLE programming relevant and practical for our Bar members. We recognize the professionalism and dedication of all CLE speakers and thank them for their contributions.



Below is a list of the Rhode Island Bar members who have participated in CLE seminars during September and October.

Hon. Frank J. Bailey (ret.)

US Bankruptcy Judge for the District of MA

David N. Bazar, Esq.

Bazar & Associates, P.C.
Chief Judge, East Greenwich Municipal Court

Hon. Keith A. Cardoza

Workers' Compensation Court

Hamza Chaudary, Esq.

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Angelyne E. Cooper, Esq.

RI Department of Labor and Training
Associate Judge, Cranston Municipal Court

Hon. Melissa E. Darigan

Rhode Island Superior Court

Hon. Kas R. DeCarvalho

Rhode Island District Court

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Law Offices of Thomas M. Dickinson
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Member Benefit Spotlight

vLex Fastcase Rollout: Upgraded Legal Research for RIBA Members

As mentioned in the last issue of the *Journal*, Fastcase has merged with vLex, a global legal intelligence company. By the end of the year, the Rhode Island Bar Association will launch an upgraded member benefit program that continues to offer the same free core services with several notable improvements.

The enhanced vLex Fastcase platform will provide free access to primary law collections, including Rhode Island caselaw, statutes, the Constitution, Attorney General Opinions, Administrative Code, and court rules. Members can search by citation, keyword, or natural language query to retrieve relevant legal authorities.

Additionally, members will have access to treatises, practice guides, legal forms, and secondary sources. Rhode Island-specific guides cover civil procedure, foreclosure law, legal malpractice, title standards, and trust and estate practice, alongside national materials on bankruptcy, employment law, and intellectual property. Rhode Island Bar Journal articles will also remain accessible.

A key upgrade includes **Vincent AI**, vLex's research assistant, which provides automated headnotes, case summaries, and links to related materials. Advanced features, such as answering legal questions and conducting 50-state surveys, **will be available**

through a subscription add-on. The new **Cert citator** will also flag negative case treatments, with broader coverage and expert editorial review.

The transition will happen in three stages: Starting November 6, 2024, members will have access to the vLex Fastcase platform. Initially, members will land on Fastcase but can switch to the new platform. After 30 days, vLex Fastcase will become the default, with an option to revert to Fastcase 7 in user settings. A new landing page is set to launch in December.

To support this transition, a free, non-credit webinar will be held on **November 21, 2024, from 12–1 PM via Zoom**, covering the platform's new features, including Vincent AI and Cert. We encourage members to attend. [Click here](#) to register.

This premium service, valued at \$1,140 annually, remains free for Rhode Island Bar Association members. Stay tuned for further updates as we approach the full rollout.



The “construction manager at risk” (“CMAR”) project delivery method has been available to the State for public works projects only since 2011. R.I. Gen. Laws § 37-2-27.1. In this method, for qualified projects in excess of \$5 million, the State solicits the services of a construction manager to oversee the entire project, from preconstruction to design, bidding, and construction, and will only select a CMAR after a comprehensive evaluation of the contractor’s previous experience. The CMAR contract will include a guaranteed maximum price, and the construction manager will be “at risk,” or responsible, for any excess costs and may also be able to share in any savings if the project is completed for less than that price. In order to solicit bids for a construction manager at risk, the State must determine in a written memorandum that the traditional method of contracting is not practicable and will not result in the best value for the state. R.I. Gen. Laws § 37-2-27.1(a). The CMAR contract will require the CMAR to provide a number of essential services even during the design phase of a public works project, such as constructability reviews, cost estimates, value engineering, and scheduling. The CMAR will serve as general contractor during the construction phase and bid out all the materials, equipment, and subcontracts necessary to deliver the project on time and on budget.

AIA Documents

The American Institute of Architects (“AIA”) has developed almost 200 comprehensive contracts and other documents that define the relationships and terms and conditions involved in design and construction projects and are recognized as the in-

dustry standard by architects, contractors, owners, consultants, and attorneys. These contract documents are organized into two categories: 1) by “families” based on the type of project or project delivery method; and 2) by “series” based on the use of the document.

The State of Rhode Island has customized the standard AIA documents and requires the execution of the applicable contract for every public works project that it solicits. The documents define the relationships among the State, design agents, contractors, and consultants who would like to provide services for design and construction for public works projects in this State and include the terms and conditions that will govern the provision of those services. One advantage of these documents is that they are very common in the construction industry and integrate well with construction documents most architects and contractors are already using. AIA documents for particular types of projects or delivery methods are coordinated and consistent in their treatment of the several functional and legal relationships. Another advantage is that architects and contractors can review them before they submit a bid so they will understand what their rights and responsibilities will be if their bid is accepted.

The adoption and use of the customized standard AIA contracts creates certainty and fairness for all parties, ensures compliance with Rhode Island law, protects the State’s interest, and eliminates the time and cost of negotiation. They are also less complicated to complete as they limit the number of blanks and fill points. This article will review the main AIA contracts used by the State.⁸ Once fully executed by the parties, none of them

is binding until the issuance of a purchase order by the State.

State of Rhode Island Version of AIA Document A101® – 2017 Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum

The Rhode Island version of AIA Document A101® – 2017 is appropriate for large or complex projects where the price paid the contractor is fixed in advance and is the mainstay of most public works projects in Rhode Island. It incorporates, by reference, Rhode Island AIA Document A201® – 2017, General Conditions of the Contract for Construction.

The agreement's key basic provisions cover the parties, the work to be performed, the start and completion dates, retainage required by the State, any liquidated damages, payment schedule, the contact information for the State's and contractor's representatives for the project, insurance and bonding requirements, the list of the several documents that comprise the "contract" with the State, the contractor's representations, and dispute resolution procedures.

The Rhode Island version includes a few local twists, such as the provision that: 1) the use and identity of subcontractors must be approved by the State; 2) the State may deduct from any payments due under the contract the amount of any obligations the contractor owes the State, such as unpaid taxes; 3) mechanics liens are not permissible on public works projects with the State; 4) certain remedies are limited against the State; and 5) final payment is contingent upon, among other requirements, the submission to the State of all close-out documents such as warranties, manuals, and "as-built" plans. A key provision is the requirement that only the State's representative listed in the agreement may give consent on behalf of the State. In addition to termination for convenience without cause, this agreement, like all contracts with the State for public works projects, may be terminated: 1) in the event of the unavailability of appropriated funds; or (ii) in the absence of a determination of continued need. Dispute resolution procedures are also explicitly detailed, beginning with an initial review of any claim by the State Purchasing Agent rather than the design agent, then mediation, followed, if necessary, by an action under the "Public Works Arbitration Act," R.I. Gen. Laws §§ 37-16-1 *et seq.* The contractor also makes certain representations and warranties that survive the final completion of the project.

State of Rhode Island Version of AIA Document A104® – 2017 Standard Abbreviated Form of Agreement Between Owner and Contractor

The Rhode Island version of AIA Document A104® – 2017 is appropriate for projects of limited scope and complexity, where payment is based on either a stipulated sum or the cost of the work plus a fee, with or without a guaranteed maximum price. This agreement is a standalone agreement and does not incorporate Rhode Island AIA Document A201® – 2017, General Conditions of the Contract for Construction. This Because the agreement does not incorporate Rhode Island AIA Document A201® – 2017, General Conditions of the Contract for Construction, this agreement covers not only the basic terms of the AIA Document A101® – 2017 Standard Form of Agreement between Owner and Contractor, but also some additional "conditions" such as: 1) indemnification by the contractor; 2) change orders; and 3) correction of the work.

State of Rhode Island Version of AIA Document B101® – 2017 Standard Form of Agreement Between Owner and Architect — Owner and Design Agent Edition

The Rhode Island version of AIA Document B101® – 2017 is



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the standard form of agreement between the State and Design Agent for building design services and construction contract administration by an architect or engineer. The agreement delineates three types of services: basic, supplemental, and additional. Basic services cover five phases: schematic design, design development, construction documents, procurement, and construction. Supplemental services may be identified prior to execution of the agreement as the design agent's responsibility that are not included as Basic Services. Additional services are services that may arise during the progress of the project. This agreement is suitable for use with a variety of compensation methods and is intended to be used in conjunction with Rhode Island AIA Document A201® – 2017, General Conditions of the Contract for Construction.

In addition to the actual design of the project, the design agent's services include: 1) review of bids from contractors; 2) review shop drawings; 3) perform site inspections; 4) review the contractor's requests for payment; and 5) review requests for change orders. The design agent also determines when the project has reached substantial completion and then final completion.

The Rhode Island customized version of this agreement also includes a few local twists, such as the provision that the design agent must: 1) perform its services consistent with the best interests of the State and the user agency; 2) seek the State's approval

for certain decisions typically reserved for the design agent, such as prior authorization for payment; 3) be responsible to reject nonconforming work; 4) indemnify the State for any professional liability; and 5) attend two meetings post-final completion. In addition to termination for convenience without cause, this agreement, like all contracts with the State for public works projects, may be terminated: 1) in the event of the unavailability of appropriated funds; or (ii) in the absence of a determination of continued need. Dispute resolution procedures are also explicitly detailed, beginning with an initial review of any claim by the State Purchasing Agent, then mediation, followed, if necessary, by an action under the "Public Works Arbitration Act," R.I. Gen. Laws §§ 37-16-1 *et seq.*

State of Rhode Island Version of AIA Document B102® – 2017 Standard Form of Agreement Between Owner and Architect without a Predefined Scope of Architect's Services — Owner and Design Agent Edition

The Rhode Island version of AIA Document B102® – 2017 is a standard form of agreement between the State and a design agent that contains many of the same terms and conditions as the Rhode Island version of AIA Document B101® – 2017 and compensation details but no scope of services. The agreement permits the scope of services to be inserted into Article 1 or attached as an exhibit and, therefore, provides a significant amount of freedom to tailor the specific services sought by the

State. It is suitable for a variety of compensation methods.

State of Rhode Island Version of AIA Document B104® – 2017 Standard Form of Agreement Between Owner and Architect

The Rhode Island version of AIA Document B104® – 2017 is an abbreviated version of B101® – 2017 and is intended for use on construction projects of limited scope and complexity. The agreement contains a compressed form of basic services with three phases: design, construction documents, and construction and may be used with a variety of compensation methods. This version is intended to be used in conjunction with the Rhode Island version of A104™ – 2017, Standard Abbreviated Form of Agreement Between Owner and Contractor, which it incorporates by reference.

State of Rhode Island Version of AIA Document A201® – 2017 General Conditions of the Contract for Construction

The Rhode Island customized version of this document pairs with the Rhode Island version of the AIA Document A101® – 2017 for the standard design-bid-build project delivery method and is used with a number of other AIA contract documents. An integral component of the contract for construction for a large project, this document delineates the rights, responsibilities, and relationships of each of the State, the architect, and the contractor during the construction phase of the project. The “General Conditions” bridge the gap between the separate contracts the State enters into with the architect and the contractor and provide a roadmap for project management and effective communication among the key participants. Though not a party to the contract for construction between the State and the contractor, the design agent participates in the preparation of the contract documents and performs construction phase duties and responsibilities described in detail in the General Conditions of the Contract for Construction. This document also has a number of local key provisions, such as: 1) retention of three (3) percent of the contract sum until 30 days after final completion if the contractor has no regular place of business in Rhode Island; 2) the warranty that materials and equipment will be of first quality, prime manufacture, and new, and the work will be free from defects; 3) a cap on overhead and profit; 4) the requirement for the State’s written consent of any change order or construction change directive; and 5) the contractor has certain obligations after final completion.

Now that you have a better understanding of what the terms and conditions are for State contracts, the next step is understanding the contracting process and how to potentially negotiate any terms and conditions that may be a concern.

III. Conclusion

Being familiar with the General Conditions and the GC Addenda (especially GC Addendum A (Insurance) and GC Addenda C (Public Works (AIA)), is important in order to appreciate the contractual requirements of doing business with the State. Vendors who intend to raise issues and concerns regarding these terms should do so as soon as possible in the procurement process, preferably during the pre-bid period (during Q&As and/or a pre-bid conference). Also, if possible, the vendor should prioritize and limit areas of main concern where there is significant business risk or cost involved. Understanding the contractual terms with the State and knowing how and when to negotiate these terms is essential to protecting your client’s interest. Good luck!

ENDNOTES

- 1 This article was co-authored by Daniel W. Majcher and Susan Leach DeBlasio, both of whom bring extensive experience and unique perspectives to the topic. Daniel, who has served the State of Rhode Island for nearly 20 years, would like to extend a special thank you to his colleague, Mary-Rose Pellegrino, Esq., for her thoughtful feedback on this piece. Susan, a distinguished attorney at Adler Pollock & Sheehan P.C. and past President of the Rhode Island Bar Association, also shares her deep expertise in corporate and health care law. Their combined insights reflect the spirit of professional collaboration and mentorship that our Leadership Academy program seeks to foster.
- 2 In addition to this article, attorneys will find helpful guides and checklists on the Rhode Island Department of Administration, Division of Purchases’ website at: <https://ridop.ri.gov>.
- 3 Vendors should be registered in OSP in advance so that applicable commodity/service codes can be identified for the vendor, so that the vendor receives automatic notification when a suitable procurement is posted. See <https://ridop.ri.gov/ocean-state-procures-osp/osp-vendor-registration> for more information about registering.
- 4 Available at: <https://rules.sos.ri.gov/Regulations/Part/220-30-00-13>
- 5 GC Addendum A (Insurance Requirements) is available at <https://ridop.ri.gov/about-us/procurement-statutes-and-regulations>.
- 6 The State’s custom AIA agreements (GC Addendum C) are available here: <https://ridop.ri.gov/vendors/public-works-aia-custom-state-rhode-island-documents>.
- 7 In addition, the Rhode Island Department of Transportation (RIDOT) maintains its own substantial set of standard bid requirements and technical specifications available at <https://www.dot.ri.gov/business/bluebook/index.php>, colloquially known as the “Blue Book,” last amended in February 2024.
- 8 A list of custom Rhode Island AIA documents is available at: <https://ridop.ri.gov/vendors/public-works-aia-custom-state-rhode-island-documents>. ◊

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