



## Director's Office

One Capitol Hill | Providence, RI 02908 | (401) 222-2280

Jonathan Womer, Director

April 24, 2025

The Honorable Robert Craven, Sr.  
Chairperson  
House Committee on Judiciary  
Rhode Island State House  
82 Smith Street  
Providence, RI 02903

**Re: House Bill No. 6173 – An Act Relating to Public Property and Works – Rhode Island Bid Rigging Act**

Dear Chairperson Craven:

Thank you for providing the Department of Administration (“Department”) with the opportunity to submit comments in response to House Bill No. 6173. The Department appreciates the intent of this legislation, but has concerns about disproportionate penalties, vague and overbroad language, unnecessary overlapping authority, and the unintended consequences that the foregoing issues would have on the State’s procurement process.

### **Background**

As a threshold matter, the Department fully supports a fair and competitive procurement process and, fortunately, R.I. Gen. Laws § 37-2-36 prohibits collusive bidding. Moreover, under State Procurement Regulation 220-RICR-30-00-5.2(A), competition is required as a fundamental element of effective procurement: “the Chief Purchasing Officer shall assure that all state agency procurement activities foster effective competition, such that economies in expenditure can be obtained.”

Additionally, the State Procurement Regulation Code of Ethics and Professional Behavior (“Procurement Code of Ethics”), 220-RICR-30-00-3.1(D)(1) requires all state employees involved in the procurement process:

- a. To consider, first, the interests of the state in all transactions;
- b. To support and carry out state policies;
- c. To buy without prejudice;
- d. To avoid any conflict of interest with respect to procurement, or the appearance thereof;
- e. To obtain the maximum ultimate value for each dollar of expenditure;
- f. To subscribe to and work for honesty and truth in buying and selling, and to denounce all forms and manifestations of commercial bribery; and
- g. To respect obligation and to require that obligations to the state be respected, consistent with good business practice.

Further, 220-RICR-30-00-3.1(D)(2) requires that a primary responsibility of purchasing personnel is to maintain good relations with suppliers and potential suppliers and that relationships be maintained in a



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manner that assures no conflict of interests. As such, “[a]ll potential suppliers shall be afforded the courtesy of a fair opportunity to present their capabilities and products.” Moreover, a “[r]easonable effort shall be made to provide fair bidding opportunities to all qualified and interested suppliers.” The Procurement Code of Ethics in 220-RICR-30-00-3.1(D)(2)(c) also requires that state employees treat vendor proposals with confidence during an active procurement.<sup>1</sup>

Jointly and separately, statute and the Procurement Code of Ethics referenced above prohibit collusive bidding. In accordance with 220-RICR-30-00-2.5(A), an employee who violates these provisions may be disciplined and even terminated from their position, while a vendor may be suspended or debarred. Suspension or debarment are serious consequences because a vendor is required to report such actions to other jurisdictions when bidding on contracts.

In his FY 2025 budget, Governor McKee proposed codifying the Procurement Code of Ethics referenced above into law. These requirements serve as an effective and measured approach to requiring a fair and competitive bid process.

### Concerns

**Disproportional Penalties Compared to Other Jurisdictions** – The penalties contained in this legislation are more extreme than other states. For example, the proposed legislation is similar to the analogous law in Pennsylvania, but the fines proposed in this legislation are much more extreme than the Pennsylvania statute, (62 Pa.C.S.A. § 4503). The Pennsylvania statute provides a fine of up to \$1,000,000 for entities and up to \$50,000 for individuals. Comparatively, the proposed legislation in Rhode Island provides for a fine of \$1,000,000 or three times the amount of a submitted bid, whichever is greater—regardless of whether an entity or an individual is involved. The penalties in the proposed bill are far more extreme than in other jurisdictions and will assuredly chill competition, as discussed further below.<sup>2</sup>

**Vague Language** – The bill’s definition of “bid rigging” which provides a non-exhaustive list of unlawful acts, fails to define with sufficient particularity the prohibited conduct and is therefore vague and overly broad, especially when considering the extremely significant criminal penalties imposed. Additionally, the substantive prohibition contained in the proposed § 37-27-3 is unclear in numerous ways. For example, although that section appears to apply only to bidders, the use of “person” – a defined term that includes government entities – renders the application of the section unclear. Further, “combine” generally means “to act together for a commercial purpose.” Bidders often form joint ventures to improve their commercial offering, and in most cases such partnerships can benefit the State as purchaser and should be encouraged, not prohibited.

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<sup>1</sup> After the procurement is concluded, in the interests of transparency, proposals are made publicly available. Moreover, the Department publicly posts the evaluation memorandum issued by the review team that explains the scoring and selection rationale. These transparency requirements also thwart collusion.

<sup>2</sup> It should also be noted that, as to state employees, these penalties are in addition to the general penalty any state employee would suffer for the conviction of a felony – the loss of their pension under R.I. Gen. Laws § 36-10.1-3.





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As to the phrase “deliberate influence” as used in the proposed § 37-27-4, it is unclear how this undefined term would be applied in light of the existing purchasing structure, which expressly permits “user agencies” to “make recommendations concerning procurement to the purchasing agent” noted in R.I. Gen. Laws § 37-2-14. Relatedly, the legislation also lacks any requirement of “quid pro quo” or mens rea, meaning that public employees will be exposed to significant penalties merely for expressing their vendor preference. Without further clarity, employees and bidders will fear unfair inquiry and/or prosecution rising to the level of criminal conduct.

Employees should not be placed in a position where they fear acting in the best interests of the State. Further, bidders’ fear of prosecution could be detrimental to competition.

**Chilling Effect on Procurement** – Government procurement is already a highly competitive and often contentious process, marked by frequent disputes and challenges from unsuccessful bidders. Expanding criminal liability to this extent, through a bill that includes numerous instances of vague and overly broad language, will likely chill the procurement process in at least five ways:

1. Employees fearful of being wrongfully accused of “bid rigging” and facing criminal sanctions may refuse to participate in proposal evaluations – slowing down the procurement process and leaving the evaluation committee without the full knowledge of the State’s subject matter experts.
2. Program managers are required to conduct due diligence to ensure that all procurements are in the State’s best interest. They often must educate themselves about the relevant marketplace in advance of a necessary procurement. However, with this bill, they may avoid talking to any vendors or outside experts for fear of unfair collusion allegations down the line. As a result, solicitations will be less accurate – leading to cost increases and failed procurements.
3. State officials may avoid using the most appropriate method of competition. For example, in order to eliminate the possibility of being accused of fixing a bid, State officials could avoid using technical factors that have some level of subjectivity (i.e. experience, capacity, work plan, etc.) to evaluate a proposal and simply use cost as the sole basis of selection. But relying exclusively on cost is not always in the best interests of the State and may result in the State not receiving the best value and/or the most qualified bidder.
4. State officials could also award without competitive procurement to avoid the possibility of being accused of collusion. Pursuant to § 37-2-54 (a), the State is not required to competitively bid certain items (interests in real property, professional, technical or artistic services, etc.), but often does so anyway to get the best deal possible. The vague prohibitions and excessive fines in this legislation would chill voluntary competitive procurement.
5. The proposed legislation may chill important communications between agencies and the Division of Purchases. Section 37-2-14 provides that “[t]he purchasing agent shall maintain a close and cooperative relationship with the using agencies of the state” and that “[a]ny using



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agency may at any time make recommendations concerning procurement to the purchasing agent.” The Division of Purchases serves as an advisor and procurement agent to agencies throughout the procurement process. Guidance often includes how to handle conflicts of interest, disseminating information in a fair manner to vendors, and other ethical considerations. Additionally, an agency may recommend certain bidding requirements to the Division of Purchases to facilitate effective procurement. However, under this legislation, communications between the purchasing agent and user agencies may be avoided because these government entities may fear that this important communication would be misconstrued under this proposed legislation.

**Duplicative & Overlapping Authority** – As summarized above, existing statutes and regulations vest significant authority in the Department to enforce the State’s procurement process and ensure its integrity. The current procurement structure permits the Department to handle bid protests and disputes, seek disciplinary action (including dismissal) against state employees who disregard purchasing requirements, and subject violating bidders to sanctions, including suspension and debarment. In circumstances involving collusion among bidders, the Department will also refer the matter to the Attorney General for further prosecution under the Deceptive Trade Practices Act. The Act does away with this cooperative approach and instead vests broad independent and overlapping authority in the Attorney General, without any guards against future disputes and without any explanation of why the Department’s existing enforcement authority requires such fundamental alteration.

Respectfully, collusion in procurement is already prohibited under existing law, and this legislation is duplicative and vague and may have unintended consequences that would significantly chill the State’s existing procurement process.

Sincerely,

  
Jonathan Womer  
Director, Department of Administration

cc: The Honorable Members of the House Committee on Judiciary  
The Honorable Patricia A. Serpa  
Nicole McCarty, Chief Legal Counsel to the Speaker of the House  
Roberta DiMezza, Committee Clerk