



Director's Office

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

Jonathan Womer, Director

June 18, 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 A – 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 Substitute A (“Sub A”). The Department appreciates the Sub A’s intent of clarifying the prohibited conduct. However, we remain concerned by remaining vague and overbroad language throughout the legislation and as well as disproportionate penalties.

Disproportional Penalties Compared to Other Jurisdictions – The Department acknowledges and appreciates the Sub A’s removal of the civil jurisdiction provisions and the provision that makes it a misdemeanor to violate the State Purchases Act. While these changes alleviate some of our concerns regarding overlapping authority, the penalties that remain in this legislation are still more extreme than other states. For example, the proposed legislation is similar to the analogous law in Pennsylvania, which is already an outlier in the severity of its penalties, but the fines proposed in this legislation are even 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.¹

Vague Language – The addition of the words “intentional,” “improperly,” and “deliberately and improperly” throughout the legislation are a welcome attempt to clarify the prohibited conduct, but do not provide the necessary level of specificity. As such, the Department maintains the view that the bill’s definition of “bid rigging” 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

¹ 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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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.

As to the phrase "deliberate influence" as used in the proposed § 37-27-4, the Substitute A adds the term "improperly." While this is better than the original version, this term is still vague and undefined. In light of the severe criminal penalties attached to this legislation, the term "improperly" should be clearly defined. Moreover, this provision in the legislation still lacks any requirement of "quid pro quo," meaning that public employees will be exposed to significant penalties merely for expressing their vendor preference "improper" or not. Without further clarity, employees and bidders will fear unfair inquiry and/or prosecution rising to the level of criminal conduct for simply attempting to act in the best interests of the State and without a personal benefit to the person.

Employees should not be placed in a position where they fear expressing their opinions and 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



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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 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.

Respectfully, collusion in procurement is already prohibited under existing law, and this legislation remains 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