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James E. Thorsen, CFA, Director

MEMORANDUM

To:	The Honorable Jason Knight Chairman, House Oversight Subcommittee on Administrative Efficiency
From:	James E. Thorsen Director, CFA, Department of Administration
Date:	May 13, 2022
Subject:	Follow-up from Hearing on March 3, 2022

Thank you for the opportunity to appear before and offer testimony to the House Oversight Subcommittee on Administrative Efficiency on Thursday, March 3. This memo addresses follow-up questions that were raised during the hearing. If you have further questions, please reach out to my office.

What are the data on how many contracts are held by MBE/WBE?

The Office of Diversity, Equity and Opportunity (ODEO) maintains a database of all certified MBEs along with contract participation.

However, a subcontractor disparity analysis could not be performed on the state's construction-related contracts due to state systems limitations in tracking subcontract data. A tracking and monitoring compliance system is needed to capture all subcontractors, suppliers, and truckers.

Are there any other reporting requirements besides simply filling out the forms that we saw in the PowerPoint?

Yes, the requirements are:

1. Each MBE coordinator periodically conducts on-site inspections to determine if registered vendors are in compliance with the provisions of the MBE regulations. The MBE coordinator is designated by a state agency at the time that an RFP is issued and is responsible for compliance oversight, tracking, and recordkeeping of all data and information that is required to be reported by each state agency.
2. The Division of Purchases, the Director, or the MBE coordinator can require a prime contractor to furnish supporting documentation, such as copies of purchase orders, subcontracts,

cancelled checks, and other records, to indicate the number of MBE subcontractors utilized, along with their names and the dollar value. The Office of Diversity, Equity and Opportunity (ODEO) maintains a database of all certified MBEs along with contract participation of the work completed by each.

3. Based on the Disparity Study, ODEO's budget includes a request for an additional full-time equivalent to provide compliance verification resolution services and direct investigations stemming from complaints by state agencies, prime contractors, or subcontractors.

What are the compliance measures to ensure that these goals are achieved?

Once ODEO has approved an MBE utilization plan, vendors cannot make any changes or substitutions without ODEO's prior written approval. Additionally, vendors are required to provide ODEO with periodic MBE submissions, including, but not limited to: MBE utilization reports, copies of all subcontracts and purchase orders issued to MBE subcontractors and suppliers, copies of all MBE invoices, and copies of cancelled checks for payment. Failure to have an approved MBE utilization plan and/or failure to fulfill the requirements of an approved plan may result in a finding that the vendor is in non-compliance with RIGL § 37-14.1.

Per RIGL § 37-14.1-8, the Director of Administration may impose sanctions upon vendors not in compliance with RIGL § 37-14.1, which may include, but are not limited to:

- Suspension of payments.
- Termination of the contract.
- Recovery by the State of 10% of the contract award price as liquidated damages.
- Denial of the right to participate in future projects for up to three years.

What is the average time to process a procurement request?

Actual processing time is dependent upon the type of procurement and the completeness, accuracy, and quality of the requisition submitted to the Division. For instance, the Division often can, if needed, turn purchase orders around within the same business day, provided that:

- a request is submitted to memorialize a properly procured contract agreement or for the purchase of goods or services;
- the submission is complete with respect to required backup documentation;
- the requisition is accurately submitted;
- all agency-level approvals have been issued; and
- the requisition reaches the Division of Purchases for processing via RIFANS.

In contrast, the timeline of a competitively bid centralized procurement posted through the Division (i.e., agency request for a competitive solicitation such as a Request for Proposals or Request for Quotes) is impacted by solicitation posting times, the quality of vendor submissions, and the agency review processes, which may take up to several weeks or, in some instances, months, to finalize.

Are there any special rules for consultant contracts?

The State Purchases Act defines “consultant” as “any person with whom the state and/or a public agency has a contract, which contract provides for the person to give direction or information as regards to a particular area of knowledge in which a person is a specialist and/or has expertise.” See R.I. Gen Laws § 37-2-7(26). “Consultant services” are considered “Professional services,” as demonstrated by R.I. Gen Laws § 37-2-59, entitled “**Professional services** — Architectural, engineering, and **consultant services** — Committee.”

R.I. Gen. Laws §§ 37-2-54, 37-2-59, 37-2-60, 37-2-65, 37-2-66, and 37-2-69 set forth requirements and specific procurement procedures for obtaining professional services (including consultants) with a project value of over \$20,000. As expressly stated in § 37-2-54(a)(7), competitive bids are not required for “professional services.” 220-RICR-30-00-9.2(A) further provides:

In accordance with R.I. Gen. Laws § 37-2-54, the following exceptions to competitive bidding are permitted by statute; however, the Chief Purchasing Officer may require competitive bidding in any circumstance where he deems that competition may enhance the state's ability to attain cost savings:

7. Professional, technical, or artistic services; (Contracts exempted by this provision shall be referred to the Governor for review and approval.)

Thus, the Chief Purchasing Officer may require competitive bidding for professional services but is not required to do so.

“Except for architectural, engineering and consultant services which can be solicited and awarded in accordance with the requirements for competitive sealed offers set forth in §§ 37-2-18 — 37-2-19 of this chapter,” selection of consultants is otherwise governed by §§ 37-2-59 to 63, along with State Procurement Regulation 220-RICR-30-00-7.4 to 7.8. Said another way, if the State agency is not competitively bidding consultant services through its regular bid process, the selection of consultants is subject to the laws and regulations referenced above.

In the event the State does not go out to bid, which also requires a public announcement, for such contracts over \$20,000, the State is obligated to publicly announce requirements for services and to “negotiate contracts for such professional services on the basis of demonstrated competence and qualifications and at fair and reasonable prices.” Such services that are sought to be procured in a method other than a competitive sealed offer are further subject to review and approval by a selection committee consisting of the purchasing agent, or his or her designee, as chairman; a representative of the user agency; and a public member.

R.I. Gen. Laws § 37-2-59(a) requires consultant contracts to be vetted based on “demonstrated competence and qualifications and at fair and reasonable prices.” Additionally, R.I. Gen. Laws § 37-2-62 sets forth specific criteria by which a selection committee would be required to evaluate such proposals (including statements of qualifications and performance data). For contracts that

are subject to this process, final written approval is required by the Chief Purchasing Officer in conjunction with agency directors, if/as required.

This statutory process is further enumerated in State Procurement Regulation, 220-RICR-30-00-7, which is attached hereto as (*Appendix A*).

Is there any kind of needs analysis done before approving a consultant contract?

The Division of Purchases has prepared a needs assessment tool that may be utilized by requesting agencies that is available at <https://ridop.ri.gov/agency-resources/agency-procurement-tools> (entitled “Procurement Needs Assessment Worksheet”).

Furthermore, any program-specific needs analysis would be completed by the requesting agency, with the information gathered also being available to serve as the agency’s justification for the procurement in question. As is the case with all requisitions, consultant contracts undergo a review and approval process at the agency level prior to being submitted to the Division via RIFANS. This review includes and requires agency finance approval to ensure that budgetary requirements have been satisfied.

What agency/departments are NOT bound by DOA’s procurement rules or the procurement law?

The General Assembly enacted the State Purchases Act under R.I.G.L. 37-2-1 *et seq* and enabled DOA under R.I.G.L. 37-2-13 to promulgate regulations. All “public agencies” and “state agencies” are subject to the State Purchases Act, defined in R.I.G.L. 37-2-7. With respect to the Division’s regulations, only state agencies, which term generally references Executive Branch departments, under R.I.G.L. 37-2-12, are subject to Purchases’ regulations. R.I.G.L. 37-2-12 excludes public agencies.

In accordance with § 37-2-54(a) and 220-RICR-30-00-2.2(C), the Chief Purchasing Officer may delegate procurement authority to individual State agencies on a case-by-case basis. In the event of a delegation, State agencies may procure specific goods and services in a limited fashion as expressly specified in the delegation and are subject to the purchasing laws and rules and regulations outlined throughout this memo.

Does DOA offer services for contract development and/or management to non-executive agencies?

The Division of Purchases has published extensive guidance on its public website at <https://ridop.ri.gov/agency-resources/agency-procurement-tools> (relevant documents are entitled “Active Contract Management” and “Preparing for Active Contract Management”) and is always willing to provide support and guidance upon request with respect to any agency need.