



State of Rhode Island and Providence Plantations  
Council on Postsecondary Education  
**OFFICE OF THE POSTSECONDARY COMMISSIONER**  
560 Jefferson Boulevard Suite 100  
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Enclosure 8a  
June 22, 2016

**Barbara S. Cottam**  
Chair

TO: Members of the Council on Postsecondary Education  
FROM: Jim Purcell, Ed.D, Commissioner for Postsecondary Education

**Council on Elementary and  
Secondary Education**

DATE: June 14, 2016

**Daniel P. McConaghy**  
Chair

RE: **Approval of the Memorandum of Understanding related to the  
expanded Delegation of Purchasing Authority to the  
Commissioner of Postsecondary Education.**

Amy Beretta, Esq.

Colleen A. Callahan, Ed.D.

On behalf of the Council on Postsecondary Education, I have requested the delegation of purchasing authority from the Director of the Department of Administration in order to achieve an economy of cost and efficiency. To that end, efforts have moved this delegation forward in the form of a Memorandum of Understanding between the Council and the Department of Administration.

Karin Forbes

Jo Eva Gaines

Marta V. Martinez

Lawrence Purtill

Joyce L. Stevos, Ph.D.

A workgroup consisting of representatives from each of the institutions and the Office as well as representatives of the Division of Purchases have met regularly since last winter to determine the terms and conditions of the delegation as well as the practical considerations of the transition.

**Council on Postsecondary  
Education**

**William Foulkes**  
Chair

The attached Memorandum of Understanding has been agreed upon by the workgroup and reviewed by legal counsel for both the system and the Division of Purchases. Upon approval by the Council, this MOU will be submitted to legal counsel at the Department of Administration for final review and signature by the Director of Administration.

Michael Bernstein

Heather Crosby

Timothy J. DelGiudice

Dennis Duffy, Esq.

The Honorable Thomas Izzo

The MOU grants the delegation of this authority to the Commissioner of Postsecondary Education. In turn, it will become the responsibility of the Office to identify the appropriate individual(s) at each institution to act on behalf of the Commissioner authorizing them related to accounts, commodities, and level of expenditures to commit funds.

Rachelle R. Green, Esq.

Dr. Jeffery A. Williams

While the three institutions currently process all of their own procurements when the source of funds is restricted (auxiliary activities and sponsored research), this delegation will now be extended to include procurements using state funds. Each of the institutions is sufficiently staffed to take on these responsibilities and, in fact, this delegation will alleviate a duplication of effort in a significant way.

**All procurements without regard to the source of funds must follow Rhode Island State Procurement Regulations.**

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The Council on Postsecondary Education does not discriminate on the basis of age, sex, sexual orientation, gender identity/expression, race, color, religion, national origin, or disability.

There are many benefits of this delegation for both the Division of Purchases and the system of Postsecondary Education. In addition to a reduction in the duplication of effort between purchasing departments, the delegation will allow the institutions to have more control over the bid schedules, thereby allowing each to react more quickly in the procurement of goods and services.

The MOU also provides for expanded reporting from the institutions to the Division of Purchases in order provide data related state funded procurement activities within the system. While the workgroup was aware of the potential for the centralization of the Internal Audit function into DOA's Office of Management and Budget, language currently in this MOU addresses these terms as this function currently exists. The MOU will be amended to reflect the changes in this function as they are rolled out after the beginning of the upcoming fiscal year.

A subset of the delegation workgroup from the three institutions and the Office has also met to discuss revisions for the Council's Procurement Regulations. The Council's regulations are designed to follow the State Purchases Act as well as State Procurement Regulations while providing direction to the system's specific authority. These regulations will be presented to the Council as its next schedule meeting as a discussion item with a request for approval at the next meeting thereafter.

Therefore, I recommend:

**THAT the Council on Postsecondary Education approves the Memorandum of Understanding related to the expanded Delegation of Purchasing Authority to the Commissioner of Postsecondary Education pending the final review and approval by the Director of Administration and his Legal Counsel.**

As revised  
5/12/2016

1. Whereas Clause Incorporation. The precatory "Whereas" clauses set forth above are incorporated herein and made a part of this MOU.
2. Delegation of Authority. Except as otherwise set-forth in this MOU or by law:
  - a. The Chief Purchasing Officer hereby authorizes the Council, through the Commissioner, to contract on its own behalf rather than through the State's centralized purchasing system managed by the Division of Purchases. The Council is deemed to be a "purchasing agency" as defined by R. I. Gen. Laws §37-2-7(18).
  - b. The Commissioner shall be the individual authorized to enter into and administer contracts and make written determinations and findings with respect to contracts for the Council. The Commissioner shall have the power to create limits of authority to authorize qualified individual employees that work for the Council and the institutions of postsecondary education (URI, RIC and CCRI) to act on behalf of the Commissioner (hereinafter "authorized representatives").

The Commissioner is also deemed to be the Purchasing Agent for the Council and the institutions of postsecondary education as set-forth in R. I. Gen. Laws §37-2-7(19).

The Commissioner shall submit to the Chief Purchasing Officer a list of all authorized representatives, which shall identify each representative's name/title/ institution and related authority, accounts, commodities and level of expenditures to commit funds. Authorized representatives shall have no authority to act on behalf of the Commissioner unless and until they are approved by the Chief Purchasing Officer. A copy of the approved list shall be forwarded to the Office of Accounts and Controls and the Budget Office.

- c. All rights, powers, duties, and authority relating to the procurement of supplies, services, and construction, and the management, control, warehousing, sale and disposal of supplies, services and construction delegated from the Chief Purchasing Officer to the Council, CCRI, RIC, URI and any individual employees working for the aforementioned institutions, prior to the date of this MOU is hereby revoked as it applies to the Council's status as a State agency under §37-2-7(28) and now vested in the Council through the Commissioner.
3. Post Audit Requirement. The Council shall be subject to a semi-annual audit for compliance with this MOU and the State Purchases Act, Procurement Regulations, policies and procedures. These semi-annual audits shall be conducted by the Internal Audit Department of the Office of the Postsecondary Commissioner at each of the three institutions using an audit protocol approved by the Chief Purchasing Officer and the Rhode Island Bureau of Audits.

Audit reports shall be submitted simultaneously and directly to the Council's Finance Committee, the Chief Purchasing Officer, and the Rhode Island Bureau of Audits. Management responses to findings shall also be forwarded to the aforementioned parties with correction plans included.

In the event that the semi-annual audits conducted by the Internal Audit Department of the Office of the Postsecondary Commissioner are not satisfactory to the Chief Purchasing Officer or the Rhode Island Bureau of Audits, an independent organization may be hired by the Chief Purchasing Officer in consultation with the Council to conduct such audits. All costs associated

with an independent organization's audit shall be paid directly by the Council and shall be set forth in any engagement letter with the selected vendor.

The Chief purchasing Officer may revoke the Council's delegated authority, in whole or in part, at any time in the event that the Council violates the State Purchases Act, the Procurement Regulations, policies and procedures, or this MOU.

4. Reports. The Council shall be responsible for preparing any and all reports required by the Act, including but not limited to, R. I. Gen. Laws §37-2-37. All reports required under the Act shall be submitted to the Chief Purchasing Officer within 10 days from the deadline set forth in statute, rule or regulation.

The Council may also be required to provide the State Chief Purchasing Officer any other reports as may be requested from time to time.

5. Master Price Agreements. The Division of Purchases has an extensive program to procure goods and services on a bulk basis to achieve the best value for the State under master price agreements. Unless otherwise approved in writing by the Chief Purchasing Officer, the Council shall utilize and comply with all current and future Master Price Agreements to procure, including but not limited to, any supplies, services and construction. These approvals will follow a case-by-case discussion with Division of Purchases if or when the Council or postsecondary education institutions find that it is not in their best interest to use the MPA, as defined by speed, service, availability, price, locations, etc.

Except for the above, the Council shall comply and adhere to all terms, conditions, policies and procedures set-forth in Master Price Agreements. Provided, however, that any rebates, credits or other payments received by the Department of Administration under the current and future Master Price Agreements which involve the Council and/or the postsecondary education institutions, shall be shared with the Council on behalf of itself or the postsecondary education institutions in an amount that reflects the proportion of Council or postsecondary education institution funds to State funds involved in such procurement.

The three postsecondary education institutions shall make provisions for the reporting of the volume of goods and services purchased utilizing the MPAs.

6. Public Works. In accordance with the definition of "public works" set forth in R. I. Gen. Laws §37-13-1, any and all solicitations for public works projects which are anticipated to exceed \$100,000 in total value which are not financed by restricted, sponsored, or auxiliary monies shall be conducted by the Division of Purchases.

This shall include the pre-qualification of contractors, the pre-qualification of construction management, and the pre-qualification of the construction manager at risk, owner's program manager.

The Council shall have delegated authority to manage solicitations and award contracts for public works projects which are anticipated to not exceed \$100,000 in total value. Total value shall include allowances together with any anticipated or unanticipated change orders.

7. Vehicles. All vehicles purchased by any of the postsecondary education institutions shall be processed through the Division of Purchases.
  
8. State Purchases Act, Procurement Regulations, Policies and Procedures. The Council shall comply with and cause to be complied with the State Purchases Act, Procurement Regulations, and any policies and procedures promulgated by the Chief Purchasing Officer, and the terms of this MOU, as may be amended from time to time.

The postsecondary education institutions shall follow the Council regulations for reporting purchases to the Council through its Office of the Postsecondary Commissioner to the attention of the Associate Commissioner for Postsecondary Education – Finance & Management.

9. Communication Plan. In an effort to have the Council's regulations and procedures applicable to the three postsecondary education institutions remain current with the changes in process, forms, language, best practices, etc. used by the Division of Purchases, representatives from the postsecondary education institutions and the Commissioner's office will be invited to such meetings or educational sessions planned for the staff of the Division of Purchases as deemed appropriate and advisable by the State Purchasing Agent.
  
10. Transition Period and Coordination. The Division of Purchases and the Council shall work together to coordinate a plan to implement the transition of this delegation of authority for all new and existing procurements for the Council and postsecondary education institutions.as follows:
  - i. All requisitions in RIFANS for the Council and the postsecondary education institutions that have not been posted for advertisement and solicitation by September 1, 2016 shall be handled by the Division of Purchases until awarded;
  - ii. All requisitions in RIFANS for the Council and the postsecondary education institutions that have been posted for advertisement and solicitation prior to September 1, 2016 shall be awarded by the Division of Purchases.
  - iii. The Division of Purchases shall process change orders to current awards that were issued by the State prior to the new delegated authority.
  
11. RIVIP System. The Council, in its capacity as a State agency under R. I. Gen. Laws §37-2-7(28) (and as a public agency under R. I. Gen. Laws §37-2-7(16)), is required under the Act to utilize the RIVIP system. The Council shall be granted access to RIVIP to perform any and all functions required by law, including but not limited to, postings, administering, amending, status lookups, vendor Q & A, etc. This requirement, however, does not apply to the research or research related procurement or purchasing activity of CCRI, RIC or URI pursuant to R. I. Gen. Laws §37-2-18.2
  
12. National Institute of Government Procurement. The Council shall use NIGP codes exactly as used by the Division of Purchases.

As revised  
5/12/2016

13. Bid Protests. The Chief Purchasing Officer shall be responsible for resolving all bid protests arising from procurement related activities arising from this delegated authority MOU.
14. Vendor Disqualification, Debarment and Suspension. The Chief Purchasing Officer shall be responsible for matters involving vendor disqualification, debarment and suspension of vendors.
15. Authority to resolve contract and breach of contract controversies. The Chief Purchasing Officer retains the authority pursuant to R. I. Gen. Laws §37-2-46. , subject to any limitations or conditions imposed by statute or regulations to settle, compromise, pay, or otherwise adjust the claim, by or against, or controversy with a vendor arising from a contract entered into by the Council or the postsecondary education institutions including claims or controversies based on contract, mistake, misrepresentation, or other cause for contract modification or rescission, but excluding any claims or controversies involving penalties or forfeitures prescribed by statute or regulation where an official other than the Chief Purchasing Officer is specifically authorized to settle or determine the controversy.
16. Compliance with Other Laws and Requirements. The Council shall comply with the Department of Administration's RP6A procedures and R.I. Gen. Laws §42-149-1 et. seq.
17. Revocation. This MOU may be expanded, revoked, changed, or modified in writing at any time by the Chief Purchasing Officer.
18. Definitions. All words used in this MOU shall be given the meaning as set forth in the State Purchases Act.

DRAFT-FOR DISCUSSION ONLY-MDM 5/18/16

**RHODE ISLAND DEPARTMENT OF  
ADMINISTRATION**

By: \_\_\_\_\_  
Print Name: Michael DiBiase  
Title: Chief Purchasing Officer

**COUNCIL ON POSTSECONDARY  
EDUCATION**

By: \_\_\_\_\_  
Print Name: James E. Purcell, Ed. D.  
Title: Commissioner