



State of Rhode Island and Providence Plantations

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BUREAU OF AUDITS
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April 1, 2014

Mr. Richard A. Licht
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Department of Administration
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Dear Richard:

At the request of the Division of Purchases, the Bureau of Audits completed an audit of state agencies' usage of Master Price Agreement 41 (MPA-41), "Electrical Maintenance and Repairs." The audit was conducted in accordance with Rhode Island General Law (RIGL) §35-7-3 to determine the extent of compliance with the provisions of MPA-41 by both the vendors and state agency users.

The findings and recommendations included herein have been discussed with members of management, and we considered their comments in the preparation of our report. RIGL §35-7-3(b), entitled *Audits performed by bureau of audits*, states that "Within twenty (20) days following the date of issuance of the final audit report, the head of the department, agency or private entity audited shall respond in writing to each recommendation made in the final audit report." Accordingly, management submitted its response to the audit findings and recommendations on March 28, 2014, and such response is included in this report. Pursuant to this statute, the Bureau may follow up regarding recommendations included in this report within one year following the date of issuance.

We would like to express our sincere appreciation to the Division of Purchases and Facilities Management staff for the cooperation and courtesy extended to the members of our team during the course of this audit.

Respectfully yours,

Dorothy Z. Pascale, CPA
Chief, Bureau of Audits

c-Honorable Daniel DaPonte, Chairperson, Senate Committee on Finance
Honorable Raymond Gallison, Chairperson, House Finance Committee
Dennis Hoyle, CPA, Auditor General
Peter Marino, Director, Office of Management and Budget
Ronald Renaud, Executive Director, Department of Administration
Lorraine Hynes, Purchasing Agent, Division of Purchases, Department of Administration
Marco Schiappa, Facilities Management, Department of Administration



AUDIT Executive Summary

Why the Bureau Did This Review

At the request of the State Purchasing Agent, the Bureau conducted an audit of the various state agencies' usage of MPA-41, "Electrical Maintenance and Repairs," as well as vendors' compliance with the provisions of the MPA. This audit was conducted in an effort to determine if the MPA provisions are being properly adhered to and if the MPA provides the state with an efficient and effective method for the procurement of electrical maintenance and repair work.

Background Information

The current version of MPA-41 became effective on January 15, 2012, and expires on June 30, 2014.¹ The MPA outlines the procedures state departments and agencies should follow to procure services for intermittent electrical projects where total project costs will not exceed \$10,000. Projects exceeding \$10,000 require prior approval and written authorization from the Division of Purchases. This MPA dictates how state departments and agencies acquire the services of electrical contractors, who they can engage, and sets limits on the chargeable rates and fees.

The Bureau Recommends:

Revisions to the MPA

- **Allow for both fixed bid and time and materials methods of procurement**
- **Clarify MPA language in regard to compliance with the RI version of the Davis-Bacon Act**

Enhanced Vendor Management

- **Establish procedures to allow for increased vendor competition**
- **Require compliance with existing MPA provisions**
- **Increase competition through addition of qualified vendors**

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Objectives and Scope

The Bureau of Audits (Bureau) conducted a compliance review of the Division of Purchases Master Price Agreement 41 (MPA-41), “Electrical Maintenance and Repairs” provisions for activity recorded during the time period of January 15, 2012, to April 30, 2013. The review had two main objectives; to determine if:

- 1. Provisions of MPA-41 are being followed.**
- 2. Vendor invoices were properly documented and reviewed.**

The Bureau compiled a judgmental sample of 93 invoices totaling \$611,376, out of the total population of 433 totaling \$1,143,547. There were five electrical contractors who performed work covered by MPA-41 during this time period. The judgmental sample was selected to test transactions from as many state departments as possible.

Methodology

We performed the following tasks to meet our objectives:

- Interviewed representatives from the Division of Purchases, Central Business Office, and Facilities Management to obtain an understanding of the process.
- Reviewed the requirements of MPA-41.
- Examined vendor invoices for evidence of structuring transactions to avoid approval thresholds set by the Division of Purchases.
- Examined vendor invoices to ensure appropriate labor rates were charged.
- Requested documentation to support the vendors’ costs for materials used.
- Reviewed transaction workflow to determine segregation of duties.
- Tested data to identify if any electrical maintenance and repair work was performed by non-MPA vendors.

Background

At the request of the Division of Purchases (Division), the Bureau conducted a review of MPA-41. This MPA dictates how state departments and agencies acquire the services of electrical contractors, who they can engage, and sets limits on the chargeable rates and fees. This review was conducted in accordance with §35-7-5.1 of the Rhode Island General Laws.

The current version of MPA-41 became effective on January 15, 2012, and expires on June 30, 2014.¹ The MPA outlines the procedures state departments and agencies should follow to procure services for intermittent electrical projects where total project costs will not exceed \$10,000. Projects exceeding \$10,000 require prior approval and written authorization from the Division of Purchases. The MPA identifies certain unallowable costs, and the MPA:

- Requires departments and agencies seek bids/quotes from three MPA vendors and encourages them to negotiate lower rates prior to awarding work.
- Requires departments and agencies have vendors sign in and out.
- Establishes maximum allowable per-hour labor rates for electrical and data work.
- Establishes daily/weekly/monthly rates for the use of water pumps, bucket trucks, pole setting equipment and generators.
- Requires vendors to pay employees the prevailing wage for projects exceeding \$1,000 and submit certified payroll reports for any month such projects were in progress.
- Requires vendor invoices to be based on time and materials, with materials billed at the vendors' costs, with an additional handling fee based on total material billing.
- Requires vendors to submit quarterly reports describing activity performed.
- Requires the vendors receive prior approval for any special equipment or situations that result in additional costs to the state.

Recommendations for Improved Controls

Restructure MPA to Meet Management Need and Enhance Competition

The requirements of MPA-41 do not meet the needs of the state agency users, and business practices in place at state agencies for the procurement of electrical repair and maintenance services are not complying with MPA-41. The areas where business practices and the MPA requirements are not in sync are discussed in further detail in the "Recommendations and Management Response" section below.

The inflexible rules and limitations to competition established by the MPA should be addressed to allow for multiple types of contracting, including fixed bid and time and materials, and to increase competition through additional qualified vendors listed on MPA-41. Allowing agencies to use multiple methods of procurement will accommodate the current business climate without sacrificing control. Additionally, increasing competition (by adding qualified vendors to the list) will aid agencies to procure the best value, while creating a more business friendly environment for potential vendors.

¹ The MPA lists six vendors; however, only five had activity during our testing period (January 15, 2012, to April 30, 2013).

Engage a Management Methodology to Administer and Award Work Consistent with MPA-41 Requirements

MPA-41 calls for state agency users to solicit labor rates and materials-based bids for proposed projects and then closely monitor the selected contractor; the result should be an invoice based on the actual time it took the vendor to do the job along with the materials used. Due to personnel limitations, in most cases, state agencies do not follow this model, instead, opting for a fixed bid process where the project is awarded to the lowest qualified bidder; then that bidder is paid the amount of the bid without regard to the time or materials that it used to complete the job. Both of these methods, time and materials and fixed bid, are accepted methodologies for the procurement of services.

The fixed bid methodology for procurement relies on enhanced competition among eligible vendors in order to ensure the best price, while a time and materials procurement focuses more on the qualifications of the vendors and close supervision by the purchaser. The MPA process of qualifying vendors serves to limit competition and is not an effective method of procurement given the state agencies' use of the fixed bid method.

Recommendation:

1. The Division should revise the MPA to recognize two types of awards and set separate requirements for each:
 - a. Fixed Bid – This methodology would apply to those projects that have a defined scope of work. These projects would not require strict supervision, since the amount the vendor is to be paid is set in advance.
 - b. Time and Materials – This method is for those projects for which the specifications are uncertain or difficult to determine in advance. These projects would require appropriate supervision by state personnel, including onsite oversight during the performance of the work, as well as third-party confirmation of materials used.

Management's Response:

1. The Division agrees with this recommendation and will consult with Facilities Management to revise the current MPA language to allow for both methods (fixed price and time and materials) for procuring service from qualified vendors listed on the MPA. The revised language will be incorporated when the MPA is renewed and/or posted for solicitation. Additionally, Agency instructions will also be revised to provide guidance and procedures regarding this change.

Improve Vendor Selection Process to include all Qualified Vendors

There were ten respondents to the original MPA-41 solicitation for bids. Six contractors were selected as qualified vendors for MPA-41. One of the contractors was eliminated due to a failure to supply the proper bid documentation, and three contractors were eliminated due to an evaluation of their proposed charges. The evaluation of proposed charges included all line items within MPA-41, including many that are rarely or never used. As stated earlier in this report, state agencies rarely use the time and materials method of procurement and, therefore, the hourly rate bid at the time of the MPA solicitation has little to do with the actual cost of services rendered. Additionally, two of the vendors who were awarded a winning bid for MPA-41 proposed hourly rates that are less than prevailing wage.²

The policy of judgmentally limiting the number of qualified vendors inhibits competition. Competition among multiple vendors for proposed projects is essential in order to ensure the state receives the best value, given that state departments or agencies primarily use the fixed bid methodology for MPA-41 procurement.

Recommendations:

2. Division of Purchases should include all qualified and interested vendors on the listing of qualified MPA-41 vendors.
3. Division of Purchases should establish a procedure for qualified vendors to be added to the qualified vendor list on a continuous basis.
4. A procedure to notify approved, qualified vendors of upcoming bid opportunities and the review and selection of a contractor based on bids received should be established and monitored.

Management's Responses:

2. To encourage competition among the qualified list of vendors for fixed bid work, the Division will work with Facilities Management to establish a mini-bid process using email to notify all qualified vendors of work. Through this mini-bid process, the Division will require agencies to solicit competitive bids for individual projects from the qualified list. The intent of this process is to increase competition and lower costs to the State.
3. The Division will re-solicit MPA-41 on an annual basis to open up the list of qualified vendors more regularly. The Division will coordinate the re-bid with the Department of Labor and Training's release of prevailing wages to make sure that the rates bid by vendors

² Prevailing wage is a rate of pay the vendor is required to pay employees for MPA-41 projects that exceed \$1,000. See finding "Failure to comply with RIGL § 37-13 – filing certified payroll reports."

are consistent with prevailing wage rates. Although an annual bid will add additional burden on the Division compared to a bid every five years, in the interests of increasing competition, the Division is willing to allocate resources. Further, an annual bid is sufficient to achieve intended result of this recommendation compared to a continuous recruitment, which would require ongoing resources.

4. See response to No. 2. Additionally, the Division has already met with Facilities personnel to educate the staff regarding the need and procedure to notify all qualified vendors of upcoming opportunities to provide quotes for services.

Failure to comply with RIGL §37-13 – Filing Certified Payroll Reports

MPA-41 requires that all vendors comply with Title 37, Chapter 13, *Labor in Payment of Debts by Contractors Requirements* (Rhode Island version of the federal Davis-Bacon Act).

RIGL §37-13-13 *Furnishing payroll record to the awarding authority* – states:

(a) Every contractor and subcontractor awarded a contract for public works as defined by this chapter shall furnish a certified copy of his or her payroll records of his or her employees employed on the project to the awarding authority on a monthly basis for all work completed in the preceding month on a uniform form prescribed by the director of labor and training.

...(e) The awarding authority of any public works project shall withhold the next scheduled payment to any contractor or subcontractor who fails to comply with the provisions of subsections (a) or (b) above and shall also notify the director of labor and training. The awarding authority shall withhold any further payments until such time as the contractor or subcontractor has fully complied.

The Deputy Chief of Facilities Management noted that it is not general knowledge or practice to require certified payroll records for routine MPA-41 vendor repairs. After receiving an opinion from the Department of Administration, Division of Legal Services, it is evident that the current understanding about the applicability of filing certified payroll records is incorrect. All MPA-41 projects with a cost exceeding \$1,000 must comply with RIGL §37-13.

MPA-41 vendors are failing to comply with RIGL §37-13 by not filing the required certified payroll reports for services costing in excess of \$1,000. Additionally, state departments or agencies are not requiring the vendors to file the certified payroll reports and continue to issue payments in direct opposition to the law.

Recommendations:

5. The Division should confer with the Department of Labor and Training to establish a procedure where all MPA-41 vendors become compliant with RIGL §37-13-13.
6. The language in the MPA needs be revised and expanded to detail the requirements of RIGL §37-13 and not use the general phrase “all provisions.” The title of the act should be included in the MPA document for clarity.
7. Facility management staff should be retrained regarding the requirements of RIGL §37-13.

Management’s Responses – Division of Purchases:

5. The Division has conferred with DLT prior to the release of this report. Bid documents now contain language more clearly stating RIGL §37-13-13 and further requiring the prospective vendor to sign and submit an affidavit attesting to their compliance with this law. Each agency managing the work and authorizing payment of invoices is responsible for acquiring the certified payroll records as appropriate. Therefore, the Division will provide instructions as part of the MPA regarding collection of certified payroll records by the agencies.
6. See response to No. 5.
7. Prior to the release of this report, the Division had a training session with Facility staff. Additionally, the Division will work with Facilities Management on an ongoing basis.

Management’s Responses – Facilities Management:

The statute should be adjusted to reflect today's costs associated in this category of work. DOA Facilities Management deals with a wide range of electrical repairs to state buildings from relatively small emergency electrical repairs that are completed in one day or less to significant emergency electrical service repairs to buildings and utility infrastructure that can cost upwards of \$500,000.

Due to our limited staffing levels, it is not feasible to collect certified payroll records for the relatively small value and short-duration projects. We will be able to maintain certified payrolls for the larger capital improvement projects.

DOA Facilities staff will be re-trained on the Davis-Bacon Act and its prevailing wage requirements for MPA-41 work over \$1,000 in value.