

## New Rhode Island Legislation Proposes to Alter Retention Process for A/E Firms on Public Projects

By Brian C. Newberry, Esq.

**T**HE RHODE ISLAND GENERAL ASSEMBLY is poised to enact legislation that would change the manner in which architectural and engineering firms could be retained on public projects. House Bill 8103 sponsored by Representative Walsh (D. Charlestown) modifies the existing statute § 37-2-59.1 relating to the selection of professionals based on place of business located in Rhode Island.

Current language states:

“The state of Rhode Island and Providence Plantations has a large number of architectural, engineering, and consulting firms well qualified in their fields of endeavor. In instances where contracts are entirely supported by state funds, it is in the best interest of the state pursuant to the provisions of sections 37-2-59 – 37-2-69 that all other things being equal, the services of these qualified and capable professionals with offices in Rhode Island, or secondly those professionals who propose a joint venture with a Rhode Island firm, be utilized.”

The bill would change this section to read:

“The state of Rhode Island and Providence Plantations has a large number of architectural, engineering, and

consulting firms well qualified in their fields of endeavor. Except where expressly forbidden by federal purchasing policy in instances where contracts are whole or partially supported by state funds, pursuant to the provisions of sections 37-2-59 – 37-2-69, the services of these qualified and capable resident professionals with offices in Rhode Island, possessing experience with comparable site and scope projects built in Rhode Island or secondly those non-resident professionals who propose a partnering with a Rhode Island firm, wherein the Rhode Island firm is lead/prime, shall be selected, contingent upon the consideration of resident professionals’ qualifications and performance data pursuant to section 37-2-62, and fair and reasonable prices pursuant to section 37-2-59.

For the purposes of this section, a “non-resident professional” shall mean a business that is not a resident of

the State of Rhode Island, that submits a bid in response to an invitation to bid by a state agency; "resident professional" shall mean a business that submits a bid in response to an invitation to bid by a state agency and whose main office is located in this state that has paid unemployment and income taxes in this state during the twelve (12) calendar months immediately preceding submission of such a bid that has a business address in this state, and that has affirmatively claimed such status in the bid submission."

As this article goes to press, the legislation has been heard before the House Small Business committee of which I am a member. A substitute bill that will revise the statute

in order to make it clear that it is not designed to restrict state business only to those firms that are headquartered in Rhode Island but rather will provide state business to those firms with a physical presence in Rhode Island is under consideration. The key terminology will revolve around the definition of "non-resident professional" as, under the current version of the proposed legislation, the definition includes only those professionals whose "main office" is located in-state. Obviously this will have a potential major impact on certain professional firms. All design professionals who either conduct business in Rhode Island and/or are interested in pursuing such business should pay close attention to how this process moves forward. ■