



December 5, 2025

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Re: RFQ25005145 Bid Protest

Hello Dan,

My name is Stephanie Phillips, General Counsel for VEIC. I will be representing VEIC in this matter; you can send all future correspondence to me.

Thank you for providing, in response to our notice of challenge, the memorandum from the Office of Energy Resources (hereafter, "OER") and the procurement determination form related to this procurement. VEIC has reviewed the memorandum and wishes to supplement its challenge given the new information this memorandum has provided.

While the documentation provided is arguably responsive to VEIC's request for an explanation of the basis for OER's decision, the explanation provided confirms that the procurement followed neither the legislation that originally prompted the procurement, nor the solicitation itself, nor Rhode Island's procurement requirements.

In establishing this procurement, R.I. Gen. Laws § 39-2-1.2(o) required OER to determine whether "a third party is likely to achieve the most net benefits for electric and gas customers in Rhode Island." Accordingly, the solicitation for Phase 2 of this RFP stated that "if a bidder would be likely to achieve the most net benefits for electric and gas customers in Rhode Island, this recommendation will be filed to the PUC for a docket to rule on the decision." From the memorandum provided, OER itself admits that "the VEIC bid had higher projected net benefits than the one provided by RIE." However, despite clearly meeting the only requirement identified in the statute or the procurement, rather than advance this recommendation to the Public Utilities Commission, OER deviated from the identified evaluation criteria and instead made the decision on the basis of "the added costs and risks (both quantified and unquantified)" that

selecting VEIC's bid would purportedly entail. These additional, unspecified criteria appear nowhere in the solicitation, nor in the legislation that required it. As these criteria were not stated in the solicitation, VEIC was never provided an opportunity to demonstrate its ability to meet them.

Additionally, both the legislation and the solicitation identified that in the event a bidder demonstrated a likelihood of achieving the most net benefits for utility customers in Rhode Island (which OER's own memo confirms that VEIC did), the appropriate body to determine whether this was in the best interest of Rhode Islanders was the Rhode Island Public Utilities Commission. Rhode Island has a robust regulatory process to rule on dockets precisely like this one; the RIPUC was in the best position to properly evaluate transition costs and risks and require both parties to better substantiate these in order to make a determination. In its proposal, VEIC offered to cover \$500,000 of transition costs to help with the transition with recovery through a performance award. This would have reduced the amount of such transition costs, as well as mitigated performance risk by a third party like VEIC. This, however, does not appear to have been considered in OER's evaluation, and they did not allow the RIPUC to follow its own evidentiary process to make this determination in a transparent way for ratepayers.

Unfortunately, in addition to failing to meet the statutory burden, OER's procurement process also contradicted its own stated process, as well as those of Rhode Island's procurement guidelines. The RFP was first issued in December 2023, and stated in its proposed timeline that the very first step after making a determination on the basis of most net benefits, would be that the parties would, in spring of 2024, "participate in a PUC docket to determine if a third-party administrator would be in the best interest of Rhode Island utility customers." Accordingly, Phase 1 of the RFP was due in March of 2024, which was extended into early April. Phase 1 was only a qualification phase; no final selection needed to be made, as OER stated it would merely be determining which bidders had sufficient qualifications to advance to the next phase. However, OER did not advance to Phase 2 of the RFP until January 2025, nearly 10 months after the original Phase 1 submission deadline and well into the period that the selected bidder was originally expected to have already begun implementing the first year of the program. During this delay, OER provided no updates on the status of the procurement, the potential shifting of timelines, or any rationale for the delay, despite VEIC's requests for information. While VEIC understands that procurement timelines are estimates, and that changes frequently happen, this delay was both exceptional in duration and also fundamentally affected the basis upon which the proposals were apparently reviewed.

When Phase 2 was finally issued, OER did not provide any guidance on the budget to be used for the program modeling. VEIC, keenly aware that budget fluctuations can happen, particularly given that nearly a year had passed since its initial modeling and Phase 1 response, asked OER

for a budget to use as a basis for Phase 2 modeling. VEIC submitted this question in the Q&A portion of the Phase 2 procurement, namely: "Can OER provide guidance on which budget value should be used for the budget calculations in the Phase 2 Cost Proposal?" The answer provided by OER was as follows (emphasis added): "As specified in the RFQ Phase 2 documents, bidders are being asked for a budget proposal and expected costs and benefits for the 2027 calendar year. Bidders should use their best judgement, within the constraints set out in the Phase 2 RFQ, in developing their proposals. *In considering expected costs and benefits, net benefits will be a primary consideration, regardless of overall budgets.*" As such, VEIC's response to this phase of the procurement focused on net benefits. VEIC reasonably relied on the information provided by OER, which made no mention that any budget assumptions would be viewed as a firm bid, nor that a lower budget would be seen more favorably or form the basis of a decision. Such an analysis would have been central to the PUC docket that should have resulted from this procurement, which VEIC would have welcomed the opportunity to participate in.

Additionally, as VEIC asserted in its initial notice of challenge to this procurement, the unique nature of the procurement was between an incumbent who is a regulated utility with existing access to OER and an outside bidder. While this is not an uncommon position for an incumbent service provider to the state, the fact that the procurement was conducted without transparency or in compliance with its stated criteria unfairly disadvantaged VEIC, as this same lack of transparency did not apply to Rhode Island Energy, the only other bidder. When VEIC asked for information about RIE's 2024 program so that all bidders had the same information available in completing the Phase 2 cost proposal, OER responded that they were "unable to provide information that is not already publicly available." RIE, however, was fully able to base their proposal off this information, as it was about their own program. OER could have accounted for this inherent difference in position by evaluating the proposals on the criteria set forth in the solicitation and the statute. However, the memo drafted in August 2025 clearly indicates that VEIC was effectively penalized for not having been able to base its proposal off of the same information that Rhode Island Energy already had access to, and without the opportunity to provide any information or responses to such criteria. OER's memo makes it clear that they took into account the transition costs in making the determination to cancel the procurement. It is worth noting that these estimated transition costs were provided by RIE – the only other bidder. These costs were apparently taken at face value by OER, as VEIC was never asked, nor given an opportunity, to respond to these estimates. Again, VEIC would have welcomed the opportunity to respond to these estimates, provide documentation to support its position that these were exorbitant, and that the actual transition costs would be significantly lower, and more than outweighed by the ratepayer savings that would have been delivered under a third party model with VEIC.

Lastly, it is worth noting that while the memo from OER stated that it had “accepted the proposal from... Rhode Island Energy (RIE) to continue serving as the energy efficiency program administrator,” this memo is dated August 26, 2025. For months after this memo’s effective date, the procurement remained “under evaluation,” and was only canceled on November 5, 2025, over two months later. Each time VEIC had inquired as to the status of the procurement during the overall procurement period, it was frequently informed that there was “no update to provide,” and no update or additional information was provided after the date that VEIC is now aware that this memorandum had already been drafted. Nor, it should be mentioned, did VEIC receive any notification that the procurement had been terminated, and only upon VEIC’s inquiry after seeing the status publicly posted on Ocean State Procures did OER confirm that the procurement had been canceled, without any further information on the basis for this decision. Only upon VEIC’s notice of protest was the memorandum provided at all. In addition to stating reasons for the determination that do not appear consistent with the solicitation or the legislation that required it, the delay of time after this memo’s effective date suggests additional, undisclosed factors influenced this procurement’s eventual cancelation. VEIC respectfully requests confirmation, as part of its bid protest, whether this memorandum and the reasoning contained within it formed the sole basis for the determination to cancel the procurement, and if so, how that basis can be reconciled with the procurement’s original and statutorily-required purposes.

We look forward to the Department of Administration’s thorough and thoughtful review of this matter.

Sincerely,

*Stephanie Phillips*

Stephanie Phillips  
General Counsel