

SENATE MOTION

MADAM PRESIDENT:

I move that Senate Bill 35 be amended to read as follows:

- 1 Page 2, after line 42, begin a new paragraph and insert:
2 "SECTION 3. IC 4-13.6-2-4 IS AMENDED TO READ AS
3 FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 4. The division shall
4 comply with this article and the following statutes in the administration
5 of public works contracts:
6 (1) IC 5-16-3.
7 (2) IC 5-16-6.
8 (3) IC 5-16-7, if the estimated cost of the public works project is
9 at least ~~twenty-five~~ **one hundred fifty** thousand dollars (~~\$25,000~~;
10 **\$150,000**).
11 (4) IC 5-16-8.
12 (5) IC 5-16-9.
13 SECTION 4. IC 4-13.6-5-2 IS AMENDED TO READ AS
14 FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 2. (a) Except as
15 provided by this chapter and IC 16-33-4-10, if the estimated cost of a
16 public works project is at least ~~seventy-five~~ **one hundred fifty**
17 thousand dollars (~~\$75,000~~); **(\$150,000)**, the division shall award a
18 contract for the project based on competitive bids.
19 (b) If the estimated cost of a public works project is at least
20 ~~seventy-five~~ **one hundred fifty** thousand dollars (~~\$75,000~~);
21 **(\$150,000)**, the division shall develop contract documents for a public
22 works contract and keep the contract documents on file in its offices so
23 that they may be inspected by contractors and members of the public.
24 (c) The division shall advertise for bids under section 8 of this
25 chapter. The director shall award a contract under IC 4-13.6-6.
26 (d) A contractor shall submit under oath a financial statement as a
27 part of the bid. The director may waive filing of the financial statement.
28 (e) After bids are opened but before a contract is awarded, the
29 director may require a contractor to submit a statement of the
30 contractor's experience, a proposed plan of performing the work, and
31 a listing of the equipment that is available to the contractor for

1 performance of the work.

2 (f) The statements required by this section shall be submitted on
3 forms approved by the state board of accounts. The forms shall be
4 based, so far as applicable, on standard questionnaires and financial
5 statements for contractors used in investigating the qualifications of
6 contractors on public construction work.

7 (g) The division shall reject the bid of a contractor if:

8 (1) the estimated cost of the public works project is one hundred
9 fifty thousand dollars (\$150,000) or more and the contractor is not
10 qualified under chapter 4 of this article;

11 (2) the estimated cost of the public works project is less than one
12 hundred fifty thousand dollars (\$150,000) and the director makes
13 a written determination, based upon information provided under
14 subsections (d) and (e), that the contractor is not qualified to
15 perform the public works contract;

16 (3) the contractor has failed to perform a previous contract with
17 the state satisfactorily and has submitted the bid during a period
18 of suspension imposed by the director (the failure of the
19 contractor to perform a contract satisfactorily must be based upon
20 a written determination by the director);

21 (4) the contractor has not complied with a rule adopted under this
22 article and the rule specifies that failure to comply with it is a
23 ground for rejection of a bid; or

24 (5) the contractor has not complied with any requirement under
25 section 2.5 of this chapter.

26 (h) The division shall keep a record of all bids. The state board of
27 accounts shall approve the form of this record, and the record must
28 include at least the following information:

29 (1) The name of each contractor.

30 (2) The amount bid by each contractor.

31 (3) The name of the contractor making the lowest bid.

32 (4) The name of the contractor to whom the contract was
33 awarded.

34 (5) The reason the contract was awarded to a contractor other than
35 the lowest bidder, if applicable.

36 (6) Purchase order numbers.

37 SECTION 5. IC 4-13.6-5-3 IS AMENDED TO READ AS
38 FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 3. (a) If the estimated
39 cost of a public works project is less than ~~seventy-five one hundred~~
40 **fifty** thousand dollars (~~\$75,000~~), **(\$150,000)**, the division may award
41 a public works contract either under section 2 of this chapter or under
42 this section, at the discretion of the director.

43 (b) If the director awards a contract under this section, the division
44 shall invite quotations from at least three (3) contractors known to the
45 division to deal in the work required to be done. However, if fewer than
46 three (3) contractors are known to the division to be qualified to
47 perform the work, the division shall invite quotations from as many

1 contractors as are known to be qualified to perform the work. Failure
2 to receive three (3) quotations shall not prevent an award from being
3 made.

4 (c) The division may authorize the governmental body for which the
5 public work is to be performed to invite quotations, but award of a
6 contract based upon those quotations is the responsibility of the
7 division.

8 (d) Quotations given by a contractor under this section must be in
9 writing and sealed in an envelope, shall be considered firm, and may
10 be the basis upon which the division awards a public works contract.

11 (e) The division shall award a contract to the lowest responsible and
12 responsive contractor and in accordance with any requirement imposed
13 under section 2.5 of this chapter.

14 SECTION 6. IC 4-13.6-5-4, AS AMENDED BY P.L.34-2005,
15 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
16 JULY 1, 2010]: Sec. 4. (a) If the estimated cost of a public works
17 project is less than ~~seventy-five~~ **one hundred fifty** thousand dollars
18 ~~(\$75,000); (\$150,000)~~, the division may perform the public work
19 without awarding a public works contract under section 2 of this
20 chapter. In performing the public work, the division may authorize use
21 of equipment owned, rented, or leased by the state, may authorize
22 purchase of materials in the manner provided by law, and may
23 authorize performance of the public work using employees of the state.

24 (b) If a public works project involves a structure, improvement, or
25 facility under the control of the department of natural resources, the
26 department of natural resources may purchase materials for the project
27 in the manner provided by law and without a contract being awarded,
28 and may use its employees to perform the labor and supervision, if:

29 (1) the department of natural resources uses equipment owned or
30 leased by it; and

31 (2) the division of engineering of the department of natural
32 resources estimates the cost of the public works project will be
33 less than ~~seventy-five~~ **one hundred fifty** thousand dollars
34 ~~(\$75,000); (\$150,000)~~.

35 (c) If a public works project involves a structure, improvement, or
36 facility under the control of the department of correction, the
37 department of correction may purchase materials for the project in the
38 manner provided by law and use inmates in the custody of the
39 department of correction to perform the labor and use its own
40 employees for supervisory purposes, without awarding a contract, if:

41 (1) the department of correction uses equipment owned or leased
42 by it; and

43 (2) the estimated cost of the public works project using employee
44 or inmate labor is less than the greater of:

45 (A) fifty thousand dollars (\$50,000); or

46 (B) the project cost limitation set by IC 4-13-2-11.1.

47 All public works projects covered by this subsection must comply with

1 the remaining provisions of this article, and all plans and specifications
 2 for the public works project must be approved by a licensed architect
 3 or engineer.

4 SECTION 7. IC 4-13.6-7-2, AS AMENDED BY P.L.160-2006,
 5 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 6 JULY 1, 2010]: Sec. 2. (a) If the estimated cost of a public works
 7 project is ~~one hundred fifty thousand~~ **one million** dollars (~~\$150,000~~)
 8 **(\$1,000,000)** or more, the division shall include as part of the public
 9 works contract provisions for the retainage of portions of payments by
 10 the division to the contractor, by the contractor to subcontractors, and
 11 for the payment of subcontractors and suppliers by the contractor. The
 12 contract must provide that the division may withhold from the
 13 contractor sufficient funds from the contract price to pay subcontractors
 14 and suppliers as provided in section 4 of this chapter.

15 (b) A public works contract and contracts between contractors and
 16 subcontractors, if portions of the public works contract are
 17 subcontracted, may include a provision that at the time any retainage
 18 is withheld, the division or the contractor, as the case may be, may
 19 place the retainage in an escrow account, as mutually agreed, with:

- 20 (1) a bank;
- 21 (2) a savings and loan institution;
- 22 (3) the state of Indiana; or
- 23 (4) an instrumentality of the state of Indiana;

24 as escrow agent. The parties to the contract shall select the escrow
 25 agent by mutual agreement. The parties to the agreement shall enter
 26 into a written agreement with the escrow agent.

27 (c) The escrow agreement must provide the following:

- 28 (1) The escrow agent shall promptly invest all escrowed principal
 29 in the obligations that the escrow agent selects, in its discretion.
- 30 (2) The escrow agent shall hold the escrowed principal and
 31 income until it receives notice from both of the other parties to the
 32 escrow agreement specifying the percentage of the escrowed
 33 principal to be released from the escrow and the persons to whom
 34 this percentage is to be released. When it receives this notice, the
 35 escrow agent shall promptly pay the designated percentage of
 36 escrowed principal and the same percentage of the accumulated
 37 escrowed income to the persons designated in the notice.
- 38 (3) The escrow agent shall be compensated for its services as the
 39 parties may agree. The compensation shall be a commercially
 40 reasonable fee commensurate with fees being charged at the time
 41 the escrow fund is established for the handling of escrow accounts
 42 of like size and duration. The fee must be paid from the escrowed
 43 income of the escrow account.

44 (d) The escrow agreement may include other terms and conditions
 45 that are not inconsistent with subsection (c). Additional provisions may
 46 include provisions authorizing the escrow agent to commingle the
 47 escrowed funds held under other escrow agreements and provisions

1 limiting the liability of the escrow agent."

2 Page 3, between lines 17 and 18, begin a new paragraph and insert:

3 "SECTION 9. IC 4-20.5-7-10.7 IS AMENDED TO READ AS
4 FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 10.7. ~~(a) This section~~
5 ~~does not apply if the value of the state property is more than ten~~
6 ~~thousand dollars (\$10,000):~~

7 ~~(b)~~ **(a)** The department may transfer state property to a person in
8 exchange for property of like value transferred by the person to the
9 state:

10 (1) to:

11 **(A)** settle a dispute relating to either or both of the properties;

12 **or**

13 **(B) improve:**

14 **(i) the state's ability to manage state property; or**

15 **(ii) access to state property; and**

16 (2) without offering to transfer the state property:

17 **(A)** to state agencies, state educational institutions, or a
18 political subdivision under this chapter; or

19 **(B)** after a sale of the property under this chapter.

20 ~~(c)~~ **(b)** The department must establish that properties exchanged
21 under this section are of like value through appraisals or other means
22 approved by the commissioner.

23 SECTION 10. IC 4-20.5-7-11 IS AMENDED TO READ AS
24 FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 11. **(a)** The department
25 may sell the property through ~~either~~ **any** of the following:

26 (1) Competitive bids.

27 (2) By auction.

28 **(3) By request for proposals.**

29 **(b) The department may enter into negotiations with the**
30 **respondent who has the highest offer only if the negotiations are**
31 **documented. Negotiation documentation must include the**
32 **following:**

33 **(1) A log of the date and time of each meeting with a**
34 **respondent. The log must include the identity of the**
35 **respondent.**

36 **(2) A description of the nature of all communications with a**
37 **respondent.**

38 **(3) Subject to subsection (d), a copy of all written**
39 **communications, including electronic communications, with**
40 **each respondent.**

41 **(c) Except as provided in subsection (d), the contents of the**
42 **contract file are subject to public inspection.**

43 **(d) Proprietary information included with a response, including**
44 **trade secrets, manufacturing processes, and financial information**
45 **that was not required to be made available for public inspection by**
46 **the terms of the invitation for bids, live auction, or requests for**
47 **proposals, is not subject to public inspection.**

1 **(e) The negotiation documentation is subject to public inspection**
 2 **only after the transfer of the property."**

3 Page 7, between lines 7 and 8, begin a new paragraph and insert:

4 "SECTION 17. IC 14-21-1-14, AS AMENDED BY P.L.2-2007,
 5 SECTION 171, IS AMENDED TO READ AS FOLLOWS
 6 [EFFECTIVE JULY 1, 2010]: Sec. 14. (a) This section does not apply
 7 to real property that is owned by a state educational institution.

8 (b) The Indiana department of administration shall notify the
 9 division of a proposed transfer of real property owned by the state at
 10 the earliest planning stage and ~~no~~ **not** later than ninety (90) days before
 11 the date of the proposed transfer.

12 (c) The division shall:

13 (1) inspect the property; and

14 (2) notify the Indiana department of administration of the location
 15 of each historic site or historic structure on the property;

16 **not later than thirty (30) days after receiving notice under**
 17 **subsection (b). If the division does not notify the Indiana**
 18 **department of administration within thirty (30) days after**
 19 **receiving notice, the Indiana department of administration may**
 20 **proceed with the proposed transfer.**

21 (d) Real property owned by the state may not be sold or transferred
 22 until the division has stated in writing that the property does not, to the
 23 best of the division's knowledge, contain a historic site or historic
 24 structure.

25 ~~(e)~~ (d) If the Indiana department of administration receives notice
 26 of a historic site or historic structure on the property, the Indiana
 27 department of administration shall reserve control of the appropriate
 28 historic property by means of a covenant or an easement contained in
 29 the transferring instrument.

30 ~~(f)~~ (e) The division of state museums and historic sites department
 31 shall administer property reserved under subsection ~~(e)~~: (d)."

32 Renumber all SECTIONS consecutively.

(Reference is to SB 35 as printed January 20, 2010.)

Senator CHARBONNEAU