

COMMITTEE REPORT

MADAM PRESIDENT:

The Senate Committee on Public Policy, to which was referred Senate Bill No. 107, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

- 1 Page 1, between the enacting clause and line one, begin a new
2 paragraph and insert:
3 "SECTION 1. IC 4-13.6-2-4 IS AMENDED TO READ AS
4 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 4. The division shall
5 comply with this article and the following statutes in the administration
6 of public works contracts:
7 (1) IC 5-16-3.
8 (2) IC 5-16-6.
9 (3) IC 5-16-7, if the estimated cost of the public works project is
10 at least ~~twenty-five thousand dollars (\$25,000)~~; **one hundred fifty**
11 **thousand dollars (\$150,000)**.
12 (4) IC 5-16-8.
13 (5) IC 5-16-9.
14 SECTION 2. IC 4-13.6-5-2 IS AMENDED TO READ AS
15 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 2. (a) Except as
16 provided by this chapter and IC 16-33-4-10, if the estimated cost of a
17 public works project is at least ~~seventy-five thousand dollars (\$75,000)~~;
18 **one hundred fifty thousand dollars (\$150,000)**, the division shall
19 award a contract for the project based on competitive bids.
20 (b) If the estimated cost of a public works project is at least
21 ~~seventy-five thousand dollars (\$75,000)~~; **one hundred fifty thousand**

1 **dollars (\$150,000)**, the division shall develop contract documents for
2 a public works contract and keep the contract documents on file in its
3 offices so that they may be inspected by contractors and members of
4 the public.

5 (c) The division shall advertise for bids under section 8 of this
6 chapter. The director shall award a contract under IC 4-13.6-6.

7 (d) A contractor shall submit under oath a financial statement as a
8 part of the bid. The director may waive filing of the financial statement.

9 (e) After bids are opened but before a contract is awarded, the
10 director may require a contractor to submit a statement of the
11 contractor's experience, a proposed plan of performing the work, and
12 a listing of the equipment that is available to the contractor for
13 performance of the work.

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

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

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

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

28 (3) the contractor has failed to perform a previous contract with
29 the state satisfactorily and has submitted the bid during a period
30 of suspension imposed by the director (the failure of the
31 contractor to perform a contract satisfactorily must be based upon
32 a written determination by the director);

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

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

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

41 (1) The name of each contractor.

42 (2) The amount bid by each contractor.

- 1 (3) The name of the contractor making the lowest bid.
- 2 (4) The name of the contractor to whom the contract was
- 3 awarded.
- 4 (5) The reason the contract was awarded to a contractor other than
- 5 the lowest bidder, if applicable.
- 6 (6) Purchase order numbers.

7 SECTION 3. IC 4-13.6-5-3 IS AMENDED TO READ AS

8 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 3. (a) If the estimated

9 cost of a public works project is less than ~~seventy-five thousand dollars~~

10 ~~(\$75,000);~~ **one hundred fifty thousand dollars (\$150,000)**, the

11 division may award a public works contract either under section 2 of

12 this chapter or under this section, at the discretion of the director.

13 (b) If the director awards a contract under this section, the division

14 shall invite quotations from at least three (3) contractors known to the

15 division to deal in the work required to be done. However, if fewer than

16 three (3) contractors are known to the division to be qualified to

17 perform the work, the division shall invite quotations from as many

18 contractors as are known to be qualified to perform the work. Failure

19 to receive three (3) quotations shall not prevent an award from being

20 made.

21 (c) The division may authorize the governmental body for which the

22 public work is to be performed to invite quotations, but award of a

23 contract based upon those quotations is the responsibility of the

24 division.

25 (d) Quotations given by a contractor under this section must be in

26 writing and sealed in an envelope, shall be considered firm, and may

27 be the basis upon which the division awards a public works contract.

28 (e) The division shall award a contract to the lowest responsible and

29 responsive contractor and in accordance with any requirement imposed

30 under section 2.5 of this chapter.

31 SECTION 4. IC 4-13.6-5-4, AS AMENDED BY P.L.34-2005,

32 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

33 JULY 1, 2011]: Sec. 4. (a) If the estimated cost of a public works

34 project is less than ~~seventy-five thousand dollars (\$75,000);~~ **one**

35 **hundred fifty thousand dollars (\$150,000)**, the division may perform

36 the public work without awarding a public works contract under

37 section 2 of this chapter. In performing the public work, the division

38 may authorize use of equipment owned, rented, or leased by the state,

39 may authorize purchase of materials in the manner provided by law,

40 and may authorize performance of the public work using employees of

41 the state.

42 (b) If a public works project involves a structure, improvement, or

1 facility under the control of the department of natural resources, the
 2 department of natural resources may purchase materials for the project
 3 in the manner provided by law and without a contract being awarded,
 4 and may use its employees to perform the labor and supervision, if:

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

7 (2) the division of engineering of the department of natural
 8 resources estimates the cost of the public works project will be
 9 less than ~~seventy-five thousand dollars (\$75,000)~~: **one hundred**
 10 **fifty thousand dollars (\$150,000)**.

11 (c) If a public works project involves a structure, improvement, or
 12 facility under the control of the department of correction, the
 13 department of correction may purchase materials for the project in the
 14 manner provided by law and use inmates in the custody of the
 15 department of correction to perform the labor and use its own
 16 employees for supervisory purposes, without awarding a contract, if:

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

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

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

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

23 All public works projects covered by this subsection must comply with
 24 the remaining provisions of this article, and all plans and specifications
 25 for the public works project must be approved by a licensed architect
 26 or engineer.

27 SECTION 5. IC 4-13.6-7-2, AS AMENDED BY P.L.160-2006,
 28 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 29 JULY 1, 2011]: Sec. 2. (a) If the estimated cost of a public works
 30 project is ~~one hundred fifty thousand dollars (\$150,000)~~ **one million**
 31 **dollars (\$1,000,000)** or more, the division shall include as part of the
 32 public works contract provisions for the retainage of portions of
 33 payments by the division to the contractor, by the contractor to
 34 subcontractors, and for the payment of subcontractors and suppliers by
 35 the contractor. The contract must provide that the division may
 36 withhold from the contractor sufficient funds from the contract price to
 37 pay subcontractors and suppliers as provided in section 4 of this
 38 chapter.

39 (b) A public works contract and contracts between contractors and
 40 subcontractors, if portions of the public works contract are
 41 subcontracted, may include a provision that at the time any retainage
 42 is withheld, the division or the contractor, as the case may be, may

- 1 place the retainage in an escrow account, as mutually agreed, with:
- 2 (1) a bank;
- 3 (2) a savings and loan institution;
- 4 (3) the state of Indiana; or
- 5 (4) an instrumentality of the state of Indiana;
- 6 as escrow agent. The parties to the contract shall select the escrow
- 7 agent by mutual agreement. The parties to the agreement shall enter
- 8 into a written agreement with the escrow agent.
- 9 (c) The escrow agreement must provide the following:
- 10 (1) The escrow agent shall promptly invest all escrowed principal
- 11 in the obligations that the escrow agent selects, in its discretion.
- 12 (2) The escrow agent shall hold the escrowed principal and
- 13 income until it receives notice from both of the other parties to the
- 14 escrow agreement specifying the percentage of the escrowed
- 15 principal to be released from the escrow and the persons to whom
- 16 this percentage is to be released. When it receives this notice, the
- 17 escrow agent shall promptly pay the designated percentage of
- 18 escrowed principal and the same percentage of the accumulated
- 19 escrowed income to the persons designated in the notice.
- 20 (3) The escrow agent shall be compensated for its services as the
- 21 parties may agree. The compensation shall be a commercially
- 22 reasonable fee commensurate with fees being charged at the time
- 23 the escrow fund is established for the handling of escrow accounts
- 24 of like size and duration. The fee must be paid from the escrowed
- 25 income of the escrow account.
- 26 (d) The escrow agreement may include other terms and conditions
- 27 that are not inconsistent with subsection (c). Additional provisions may
- 28 include provisions authorizing the escrow agent to commingle the
- 29 escrowed funds held under other escrow agreements and provisions
- 30 limiting the liability of the escrow agent."
- 31 Renumber all SECTIONS consecutively.
- (Reference is to SB 107 as introduced.)

and when so amended that said bill do pass .

Committee Vote: Yeas 8, Nays 0.

Senator Alting, Chairperson