HOUSE BILL No. 1154

DIGEST OF INTRODUCED BILL

Citations Affected: IC 5-22-15-20.9; IC 36-1-12.

Synopsis: Local purchasing and public works preferences. Provides that the local Indiana business preference applies to a contract for a purchase made by a political subdivision only if the political subdivision provides in the solicitation that the preference is applicable to the purchase. Provides that the term "affected county" refers only to an Indiana county. Repeals the local Indiana business preference for public works projects.

Effective: July 1, 2012.

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January 9, 2012, read first time and referred to Committee on Government and Regulatory Reform.

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Introduced

Second Regular Session 117th General Assembly (2012)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type.~~

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~*this style type*~~ reconciles conflicts between statutes enacted by the 2011 Regular Session of the General Assembly.

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HOUSE BILL No. 1154

A BILL FOR AN ACT to amend the Indiana Code concerning state and local administration.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 5-22-15-20.9, AS ADDED BY P.L.172-2011, SECTION 22, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 20.9. (a) This section applies only to a contract awarded by a political subdivision **if the political subdivision provides in the solicitation that this section applies to the purchase.**

(b) As used in this section, "affected county" refers to ~~a~~ **an Indiana** county:

(1) in which the political subdivision awarding a contract under this article is located; or

(2) that is adjacent to the county described in subdivision (1).

(c) As used in this section, "local Indiana business" refers to any of the following:

(1) A business whose principal place of business is located in an affected county.

(2) A business that pays a majority of its payroll (in dollar volume) to residents of affected counties.

(3) A business that employs residents of affected counties as a

majority of its employees.

(4) A business that makes significant capital investments in the affected counties as defined in rules adopted by the political subdivision.

(5) A business that has a substantial positive economic impact on the affected counties as defined by criteria in rules adopted by the political subdivision.

(d) There are the following price preferences for supplies purchased from a local Indiana business:

(1) Five percent (5%) for a purchase expected by the purchasing agency to be less than fifty thousand dollars ($50,000).

(2) Three percent (3%) for a purchase expected by the purchasing agency to be at least fifty thousand dollars ($50,000) but less than one hundred thousand dollars ($100,000).

(3) One percent (1%) for a purchase expected by the purchasing agency to be at least one hundred thousand dollars ($100,000).

(e) Notwithstanding subsection (d), a purchasing agency may award a contract to the lowest responsive and responsible offeror, regardless of the preference provided in this section, if the lowest responsive and responsible offeror is a local Indiana business.

(f) A business that wants to claim a preference provided under this section must do all the following:

(1) State in the business's bid that the business claims the preference provided by this section.

(2) Provide the following information to the purchasing agency:

(A) The location of the business's principal place of business. If the business claims the preference as a local Indiana business described in subsection (c)(1), a statement explaining the reasons the business considers the location named as the business's principal place of business.

(B) The amount of the business's total payroll and the amount of the business's payroll paid to residents of affected counties.

(C) The number of the business's employees and the number of the business's employees who are residents of affected counties.

(D) If the business claims the preference as a local Indiana business described in subsection (c)(4), a description of the capital investments made in the affected counties and a statement of the amount of those capital investments.

(E) If the business claims the preference as a local Indiana business described in subsection (c)(5), a description of the substantial positive economic impact the business has on the

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affected counties.

SECTION 2. IC 36-1-12-4, AS AMENDED BY P.L.139-2011, SECTION 6, AND AS AMENDED BY P.L.172-2011, SECTION 139, IS CORRECTED AND AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 4. (a) This section applies whenever the cost of a public work project will be:

~~*(1) at least seventy-five thousand dollars ($75,000) in:*~~

~~*(A) a consolidated city or second class city;*~~

~~*(B) a county containing a consolidated city or second class city; or*~~

~~*(C) a regional water or sewage district established under IC 13-26; or*~~

~~*(2) at least fifty thousand dollars ($50,000) in a political subdivision or an agency not described in subdivision (1).*~~

(1) except as provided in subdivision (2), at least one hundred fifty thousand dollars ($150,000); or

(2) in the case of a board of aviation commissioners or an airport authority board, at least one hundred thousand dollars ($100,000).

(b) The board must comply with the following procedure:

(1) The board shall prepare general plans and specifications describing the kind of public work required, but shall avoid specifications which might unduly limit competition. If the project involves the resurfacing (as defined by IC 8-14-2-1) of a road, street, or bridge, the specifications must show how the weight or volume of the materials will be accurately measured and verified.

(2) The board shall file the plans and specifications in a place reasonably accessible to the public, which shall be specified in the notice required by subdivision (3).

(3) Upon the filing of the plans and specifications, the board shall publish notice in accordance with IC 5-3-1 calling for sealed proposals for the public work needed.

(4) The notice must specify the place where the plans and specifications are on file and the date fixed for receiving bids.

(5) The period of time between the date of the first publication and the date of receiving bids shall be governed by the size of the contemplated project in the discretion of the board. The period of time between the date of the first publication and receiving bids may not be more than:

(A) six (6) weeks if the estimated cost of the public works project is less than twenty-five million dollars ($25,000,000);

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and

(B) ten (10) weeks if the estimated cost of the public works project is at least twenty-five million dollars ($25,000,000).

(6) ~~*If the cost of a project is one hundred thousand dollars ($100,000) or more,*~~ The board shall require the bidder to submit a financial statement, a statement of experience, a proposed plan or plans for performing the public work, and the equipment that the bidder has available for the performance of the public work. The statement shall be submitted on forms prescribed by the state board of accounts.

(7) The board may not require a bidder to submit a bid before the meeting at which bids are to be received. The meeting for receiving bids must be open to the public. All bids received shall be opened publicly and read aloud at the time and place designated and not before. *Notwithstanding any other law, bids may be opened after the time designated if both of the following apply:*

(A) The board makes a written determination that it is in the best interest of the board to delay the opening.

(B) The day, time, and place of the rescheduled opening are announced at the day, time, and place of the originally scheduled opening.

(8) Except as provided in subsection (c), ~~*or (after June 30, 2011) section 22 of this chapter,*~~ the board shall:

(A) award the contract for public work or improvements to the lowest responsible and responsive bidder; or

(B) reject all bids submitted.

(9) If the board awards the contract to a bidder other than the lowest bidder, the board must state in the minutes or memoranda, at the time the award is made, the factors used to determine which bidder is the lowest responsible and responsive bidder and to justify the award. The board shall keep a copy of the minutes or memoranda available for public inspection.

(10) In determining whether a bidder is responsive, the board may consider the following factors:

(A) Whether the bidder has submitted a bid or quote that conforms in all material respects to the specifications.

(B) Whether the bidder has submitted a bid that complies specifically with the invitation to bid and the instructions to bidders.

(C) Whether the bidder has complied with all applicable statutes, ordinances, resolutions, or rules pertaining to the

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award of a public contract.

(11) In determining whether a bidder is a responsible bidder, the board may consider the following factors:

(A) The ability and capacity of the bidder to perform the work.

(B) The integrity, character, and reputation of the bidder.

(C) The competence and experience of the bidder.

(12) The board shall require the bidder to submit an affidavit:

(A) that the bidder has not entered into a combination or agreement:

(i) relative to the price to be bid by a person;

(ii) to prevent a person from bidding; or

(iii) to induce a person to refrain from bidding; and

(B) that the bidder's bid is made without reference to any other bid.

(c) Notwithstanding subsection (b)(8), a county may award sand, gravel, asphalt paving materials, or crushed stone contracts to more than one (1) responsible and responsive bidder if the specifications allow for bids to be based upon service to specific geographic areas and the contracts are awarded by geographic area. The geographic areas do not need to be described in the specifications.

SECTION 3. IC 36-1-12-4.7, AS AMENDED BY P.L.172-2011, SECTION 140, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 4.7. (a) This section applies whenever a public work project is estimated to cost:

(1) except as provided in subdivision (2), at least fifty thousand dollars ($50,000) and less than one hundred fifty thousand dollars ($150,000); or

(2) in the case of a board of aviation commissioners or an airport authority board, at least fifty thousand dollars ($50,000) and less than one hundred thousand dollars ($100,000).

(b) The board must proceed under the following provisions:

(1) The board shall invite quotes from at least three (3) persons known to deal in the class of work proposed to be done by mailing them a notice stating that plans and specifications are on file in a specified office. The notice must be mailed not less than seven (7) days before the time fixed for receiving quotes.

(2) The board may not require a person to submit a quote before the meeting at which quotes are to be received. The meeting for receiving quotes must be open to the public. All quotes received shall be opened publicly and read aloud at the time and place designated and not before.

(3) ~~Except as permitted in section 22 of this chapter after June 30,~~

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~~2011,~~ The board shall award the contract for the public work to the lowest responsible and responsive quoter.

(4) The board may reject all quotes submitted.

SECTION 4. IC 36-1-12-5, AS AMENDED BY P.L.172-2011, SECTION 141, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 5. (a) This section applies whenever a public work project is estimated to cost less than fifty thousand dollars ($50,000). Except as provided in subsection (g) for local boards of aviation commissioners and local airport authorities, if a contract is to be awarded, the board may proceed under section 4 of this chapter or under subsection (b) or (c).

(b) The board must proceed under the following provisions:

(1) The board shall invite quotes from at least three (3) persons known to deal in the class of work proposed to be done by mailing them a notice stating that plans and specifications are on file in a specified office. The notice must be mailed not less than seven (7) days before the time fixed for receiving quotes.

(2) The board may not require a person to submit a quote before the meeting at which quotes are to be received. The meeting for receiving quotes must be open to the public. All quotes received shall be opened publicly and read aloud at the time and place designated and not before.

(3) ~~Except as permitted in section 22 of this chapter,~~ The board shall award the contract for the public work to the lowest responsible and responsive quoter.

(4) The board may reject all quotes submitted.

(5) If the board rejects all quotes under subdivision (4), the board may negotiate and enter into agreements for the work in the open market without inviting or receiving quotes if the board establishes in writing the reasons for rejecting the quotes.

(c) The board may not proceed under subsection (b) for the resurfacing (as defined in IC 8-14-2-1) of a road, street, or bridge, unless:

(1) the weight or volume of the materials in the project is capable of accurate measurement and verification; and

(2) the specifications define the geographic points at which the project begins and ends.

(d) For the purposes of this section, if contiguous sections of a road, street, or bridge are to be resurfaced in a calendar year, all of the work shall be considered to comprise a single public work project.

(e) The board may purchase or lease supplies in the manner provided in IC 5-22 and perform the public work by means of its own

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workforce without awarding a public work contract.

(f) Before the board may perform any work under this section by means of its own workforce, the political subdivision or agency must have a group of employees on its staff who are capable of performing the construction, maintenance, and repair applicable to that work.

(g) This subsection applies to local boards of aviation commissioners operating under IC 8-22-2 and local airport authorities operating under IC 8-22-3. If the contract is to be awarded by a board to which this subsection applies, or to a designee of the board under subsection (h), the board or its designee may proceed under section 4 of this chapter or under the following provisions. The board or its designee may invite quotes from at least three (3) persons known to deal in the class of work proposed to be done by mailing the persons a copy of the plans and specifications for the work not less than seven (7) days before the time fixed for receiving quotes. If the board or its designee receives a satisfactory quote, the board or its designee shall award the contract to the lowest responsible and responsive quoter for the class of work required. ~~except as permitted in section 22 of this chapter.~~ The board or its designee may reject all quotes submitted and, if no valid quotes are received for the class of work, contract for the work without further invitations for quotes.

(h) The board may delegate its authority to award a contract for a public works project that is estimated to cost less than fifty thousand dollars ($50,000) to the airport personnel in charge of airport public works projects.

(i) Quotes for public works projects costing less than twenty-five thousand dollars ($25,000) may be obtained by soliciting at least three (3) quotes by telephone or facsimile transmission. The seven (7) day waiting period required by subsection (b)(1) does not apply to quotes solicited under this subsection.

SECTION 5. IC 36-1-12-22 IS REPEALED [EFFECTIVE JULY 1, 2012]. ~~Sec. 22. (a) The definitions in IC 5-22-15, including the definitions in IC 5-22-15-20.9, apply in this section.~~

~~(b) The procedures described in IC 5-22-15 for determining adjusted offers, price preference percentage, and total adjusted offers apply in this section.~~

~~(c) The price preferences stated in IC 5-22-15-20.9 apply in this section.~~

~~(d) Notwithstanding provisions of this chapter that require the award of a contract to the lowest responsive and responsible bidder or the lowest responsive and responsible quoter, but subject to subsection (e), a contract shall be awarded to the lowest responsive and responsible~~

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~~local Indiana business that claims the preference provided by this section.~~

~~(e) Notwithstanding subsection (d), a contract shall be awarded to the lowest responsive and responsible bidder or quoter, regardless of the preference provided in this section, if the lowest responsive and responsible bidder or quoter is a local Indiana business.~~

~~(f) A bidder or quoter that wants to claim the preference under this section must claim the preference in the same manner that a business claims the preference under IC 5-22-15-20.9(f).~~

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