

---

---

# HOUSE BILL No. 1223

---

## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 4-13.6; IC 5-22-15-7.

**Synopsis:** State public works contracting. Changes the manner by which the department of administration (department) solicits bids for state public works projects by: (1) eliminating mail solicitations to contractors; and (2) requiring notice to be given as other public notices for contracts are given. Eliminates the requirement that a bid for a state public works project be submitted in a sealed envelope that is opened in public and read aloud at a public bid opening. Eliminates a requirement that contractors on state public works projects cannot be required to submit bids earlier than the time specified in the instructions for the opening of bids. Requires bids for state public works projects to be opened so as not to disclose their contents to other bidders and be evaluated based on requirements in the invitation for bids. Requires state public works contracts to be awarded with reasonable promptness by written notice to the lowest responsible and responsive bidder. Provides for an Indiana business price preference in state public works contracting. Repeals a statute that provides a price preference to an Indiana business in state public works contracts if a bidder on the project is from a state that provides preferences unfavorable to Indiana businesses. Repeals a statute that requires the award of state public works contracts within 60 days of bid opening.

**Effective:** July 1, 2012.

---

---

**Dermody**

---

---

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

---

---

C  
o  
p  
y



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.

C  
o  
p  
y

# HOUSE BILL No. 1223



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

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

1 SECTION 1. IC 4-13.6-5-8, AS AMENDED BY P.L.177-2005,  
2 SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 2012]: Sec. 8. (a) This section applies only to public works  
4 contracts bid under section 2 of this chapter.

5 (b) The division shall solicit sealed bids by public notice inserted  
6 once each week for two (2) successive weeks before the final date of  
7 submitting bids in:

- 8 (1) one (1) newspaper of general circulation in Marion County,
- 9 Indiana; and
- 10 (2) if any part of the project is located in an area outside Marion
- 11 County, Indiana, one (1) newspaper of general circulation in that
- 12 area.

13 The commissioner shall designate the newspapers for these  
14 publications. The commissioner may designate different newspapers  
15 according to the nature of the project and may direct that additional  
16 notices be published.

17 (c) The division shall: ~~also solicit sealed bids for public works~~



1 projects by:

- 2 (1) sending notices by mail to prospective contractors known to  
 3 the division; **give notice of the invitation for bids in the manner**  
 4 **required by IC 5-3-1; and**  
 5 (2) posting notices on a public bulletin board in its office; and  
 6 (3) ~~providing~~ **provide** electronic access to ~~notices~~ **the notice**  
 7 through the computer gateway administered by the office of  
 8 technology established by IC 4-13.1-2-1.

9 at least seven ~~(7)~~ days before the final date for submitting bids for the  
 10 public works project.

11 SECTION 2. IC 4-13.6-6-1 IS AMENDED TO READ AS  
 12 FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 1. (a) ~~All bids shall be~~  
 13 ~~sealed in an envelope when submitted to the division.~~

14 (b) ~~An employee of the division shall open bids in public and read~~  
 15 ~~them aloud at the time and place designated in the instructions.~~  
 16 ~~Contractors and all other members of the public are entitled to attend~~  
 17 ~~bid openings. Before contractors and other members of the public are~~  
 18 ~~permitted to inspect and copy bids, the division shall copy the bids as~~  
 19 ~~required by IC 4-13.6-5-9.~~

20 (c) ~~The division may not require any contractor to submit its bid at~~  
 21 ~~any time earlier than the time specified in the instructions for opening~~  
 22 ~~of bids. the presence of one (1) or more other employees of the~~  
 23 ~~division according to the procedure stated in the invitation for bids.~~

24 (b) ~~Individuals other than employees of the division may not be~~  
 25 ~~present at an opening of bids unless the bids are opened publicly.~~

26 SECTION 3. IC 4-13.6-6-1.5 IS ADDED TO THE INDIANA  
 27 CODE AS A NEW SECTION TO READ AS FOLLOWS  
 28 [EFFECTIVE JULY 1, 2012]: Sec. 1.5. **Bids must be:**

- 29 (1) **opened so as to avoid disclosure of their contents to**  
 30 **competing bidders during the process of negotiation; and**  
 31 (2) **evaluated based on the requirements provided in the**  
 32 **invitation for bids.**

33 SECTION 4. IC 4-13.6-6-2, AS AMENDED BY P.L.1-2010,  
 34 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 35 JULY 1, 2012]: Sec. 2. ~~Except as provided in rules adopted under~~  
 36 ~~section 2.5 of this chapter,~~ The division shall award a contract **with**  
 37 **reasonable promptness by written notice** to the lowest responsible  
 38 and responsive contractor.

39 SECTION 5. IC 4-13.6-6-2.3 IS ADDED TO THE INDIANA  
 40 CODE AS A NEW SECTION TO READ AS FOLLOWS  
 41 [EFFECTIVE JULY 1, 2012]: Sec. 2.3. (a) **As used in this section,**  
 42 **"Indiana business" refers to any of the following:**

C  
o  
p  
y



- 1           (1) A business whose principal place of business is located in
- 2           Indiana.
- 3           (2) A business that pays a majority of its payroll (in dollar
- 4           volume) to residents of Indiana.
- 5           (3) A business that employs Indiana residents as a majority of
- 6           its employees.
- 7           (4) A business that makes significant capital investments in
- 8           Indiana.
- 9           (5) A business that has a substantial positive economic impact
- 10          on Indiana as described in 5-22-15-20.5.
- 11          (b) The following price preferences are available for a public
- 12          works contract performed by an Indiana business:
- 13           (1) Five percent (5%) for a contract expected by the division
- 14           to be less than five hundred thousand dollars (\$500,000).
- 15           (2) Three percent (3%) for a contract expected by the division
- 16           to be at least five hundred thousand dollars (\$500,000) but less
- 17           than one million dollars (\$1,000,000).
- 18           (3) One percent (1%) for a contract expected by the division
- 19           to be at least one million dollars (\$1,000,000).
- 20          (c) If an Indiana business offers to provide supplies
- 21          manufactured, assembled, or produced in Indiana, and if two (2)
- 22          or more bids submitted were the same, the following price
- 23          preference is available to the Indiana business, in addition to the
- 24          price preference available under subsection (b):
- 25           (1) Three percent (3%) for a contract expected by the division
- 26           to be less than five hundred thousand dollars (\$500,000).
- 27           (2) Two percent (2%) for a contract expected by the division
- 28           to be at least five hundred thousand dollars (\$500,000) but less
- 29           than one million dollars (\$1,000,000).
- 30           (3) One percent (1%) for a contract expected by the division
- 31           to be at least one million dollars (\$1,000,000).
- 32          The Indiana department of administration shall adopt rules under
- 33          IC 4-22-2 to establish guidelines for determining when supplies are
- 34          manufactured or assembled in Indiana.
- 35          (d) A business that wants to claim a preference provided under
- 36          this section must do all of the following:
- 37           (1) State in the business's bid that the business claims the
- 38           preference provided by this section.
- 39           (2) Provide the following information to the department:
- 40           (A) The location of the business's principal place of
- 41           business. If the business claims the preference as an
- 42           Indiana business described in subsection (a)(1), a statement

C  
o  
p  
y



1 explaining the reasons the business considers the location  
2 named as the business's principal place of business.

3 **(B) The amount of the business's total payroll and the**  
4 **amount of the business's payroll paid to Indiana residents.**

5 **(C) The number of the business's employees and the**  
6 **number of the business's employees who are Indiana**  
7 **residents.**

8 **(D) If the business claims the preference as an Indiana**  
9 **business described in subsection (a)(4), a description of the**  
10 **capital investments made in Indiana and a statement of the**  
11 **amount of those capital investments.**

12 **(E) If the business claims the preference as an Indiana**  
13 **business described in subsection (a)(5), a description of the**  
14 **substantial positive economic impact the business has on**  
15 **Indiana.**

16 SECTION 6. IC 4-13.6-6-2.5 IS REPEALED [EFFECTIVE JULY  
17 1, 2012]. Sec. 2:5: (a) As used in this section, "out-of-state business"  
18 refers to a business that is not an Indiana business:

19 (b) The department may adopt rules under IC 4-22-2 to give a  
20 preference to an Indiana business that submits a bid under this article  
21 if all of the following apply:

22 (1) An out-of-state business submits a bid:

23 (2) The out-of-state business is a business from a state that gives  
24 public works preferences unfavorable to Indiana businesses:

25 (c) Rules adopted under subsection (b) must establish criteria for  
26 determining the following:

27 (1) Whether a bidder qualifies as an Indiana business under the  
28 rules:

29 (2) When another state's preference is unfavorable to Indiana  
30 businesses:

31 (3) The method by which the preference for Indiana businesses is  
32 to be computed:

33 (d) Rules adopted under subsection (b) may not give a preference to  
34 an Indiana business that is more favorable to the Indiana business than  
35 the other state's preference is to the other state's businesses:

36 SECTION 7. IC 4-13.6-6-4 IS REPEALED [EFFECTIVE JULY 1,  
37 2012]. Sec. 4: (a) Within sixty (60) days from the date on which bids  
38 are opened, the division shall award a contract and shall provide the  
39 successful contractor with written notice to proceed:

40 (b) If the division fails to award and execute a contract and to issue  
41 notice to proceed within sixty (60) days that bids for the contract are  
42 opened, the successful contractor may grant one (1) or more extensions

C  
O  
P  
Y



1 of time to the division to award a contract, to execute the contract, and  
 2 to give notice to proceed. The date that an extension of time granted  
 3 under this subsection expires must be a date upon which the division  
 4 and the successful contractor agree.

5 (c) After the sixty (60) day period set by subsection (a) and all  
 6 extension periods set under subsection (b) have expired, a successful  
 7 contractor may elect to withdraw its bid and reject the contract only by  
 8 delivering a written notice to the division that grants the division at  
 9 least fifteen (15) additional days to award a contract to the successful  
 10 contractor.

11 SECTION 8. IC 5-22-15-7, AS AMENDED BY P.L.122-2011,  
 12 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 13 JULY 1, 2012]: Sec. 7. (a) An offeror may claim one (1) of the  
 14 following types of preference for which the offeror is eligible:

15 (1) An Indiana business preference under rules adopted under  
 16 section 20 of this chapter. ~~or IC 4-13-6-6-2.5.~~

17 (2) A preference for supplies as provided by sections 16, 18, 19,  
 18 and 24 of this chapter.

19 (3) An Indiana small business preference as provided by section  
 20 23 of this chapter.

21 (4) An Indiana farm product preference as provided by section  
 22 23.5 of this chapter.

23 (b) An offeror may not claim more than one (1) preference as  
 24 provided by sections 16, 18, 19, and 24 of this chapter for a given  
 25 supply item.

26 (c) This section does not:

27 (1) apply to; or

28 (2) limit;

29 action of the Indiana department of administration under rules adopted  
 30 under section 21 of this chapter.

C  
o  
p  
y

