TITLE 25 INDIANA DEPARTMENT OF ADMINISTRATION

Final Rule
LSA Document #13-402(F)

DIGEST

Adds 25 IAC 9 concerning Indiana veteran owned small businesses. Effective 30 days after filing with the Publisher.

25 IAC 9

SECTION 1. 25 IAC 9 IS ADDED TO READ AS FOLLOWS:

ARTICLE 9. INDIANA VETERAN OWNED SMALL BUSINESSES

Rule 1. Policy

25 IAC 9-1-1 Policy statement; procurement and contracting

Authority: IC 4-13; IC 5-22-14-11
Affected: IC 4-13-1; IC 4-13.6

Sec. 1. (a) It is the policy of the state to provide an equal opportunity for Indiana veteran owned small business enterprises (IVBE) to participate in the state's procurement and contracting processes. The commissioner shall be the final authority on all matters pertaining to the maintenance and administration of the program and compliance thereto.

(b) Under IC 4-13-1.3-3, the department may delegate its authority to a state agency.

(Indiana Department of Administration; 25 IAC 9-1-1; filed Feb 28, 2014, 8:05 a.m.: 20140326-IR-025130402FRA)

25 IAC 9-1-2 IVBE procurement goal

Authority: IC 4-13; IC 5-22-14-11
Affected: IC 4-13-1; IC 4-13.6

Sec. 2. (a) Under IC 5-22-14-11, the state's IVBE goal is established.

(b) The IVBE goal shall apply to procurements and contracts, as awarded by the department and its designees, change orders, amendments, and other modifications that affect contract value.

(Indiana Department of Administration; 25 IAC 9-1-2; filed Feb 28, 2014, 8:05 a.m.: 20140326-IR-025130402FRA)

Rule 2. Definitions

25 IAC 9-2-1 Definitions

Authority: IC 4-13; IC 5-22-14-11
Affected: IC 4-13-1-2; IC 4-13.6; IC 5-22-2-13; IC 5-22-14-3.5

Sec. 1. The following definitions apply throughout this article:
(1) "Award" means the written determination made by the department, or its designee, of the lowest responsible and responsive bidder; or the responsible offeror whose proposal is determined in writing to be the most advantageous to the governmental body, as defined by IC 5-22-2-13.
(2) "Bidder" means a person who responds to a solicitation.
(3) "Commissioner" means the commissioner of the department.

(4) "Contract" means any contract awarded by the department, or its designee, for the procurement of goods, supplies, or services, including professional services.
(5) "Contract goal" means a targeted amount of IVBE participation contractually established between the department, or its designee, and the prime.
(6) "Contractor" means a person who contracts with a state agency to provide goods or services.
(7) "Department" means the Indiana department of administration, as created by IC 4-13-1-2.
(8) "IVBE" means an Indiana veteran owned small business enterprise, as described by IC 5-22-14-3.5.
(9) "IVBE credit" means points received during the solicitation evaluation. Each solicitation shall enumerate the IVBE credit to be utilized.
(10) "Prime" means any person who enters into a contract with a governmental body.
(11) "Program" means the IVBE program, as maintained and administered by the department.
(12) "Solicitation" means an invitation to submit an offer to enter into a contract with a governmental body.
(13) "Subcontractor" means any person entering into a contract with a prime.

A reference to a federal statute or regulation is a reference to the statute or regulation in effect January 1, 2013.

(Indiana Department of Administration; 25 IAC 9-2-1; filed Feb 28, 2014, 8:05 a.m.: 20140326-IR-025130402FRA)

Rule 3. Scope of Activities

25 IAC 9-3-1 Activities to achieve participation; education

Authority: IC 4-13; IC 5-22-14-11
Affected: IC 4-13-1; IC 4-13.6

Sec. 1. The department, in cooperation with the Indiana economic development corporation, as well as the commission on military and veterans affairs and all procuring agencies, shall perform activities and provide educational information to afford IVBE the opportunity to participate in the state's procurement and contracting processes. The department shall determine where and when the programs are most valuable to IVBE.

(Indiana Department of Administration; 25 IAC 9-3-1; filed Feb 28, 2014, 8:05 a.m.: 20140326-IR-025130402FRA)

Rule 4. IVBE Participation in Procurement and Subcontracting

25 IAC 9-4-1 Monitoring IVBE participation

Authority: IC 4-13; IC 5-22-14-11
Affected: IC 4-13-1; IC 4-13.6

Sec. 1. (a) The department may conduct preproposal meetings with prime and subcontractors. The department shall determine which projects will require a preproposal meeting. Items of discussion at the meetings may include, but are not limited to, the following:
(1) A review of program requirements.
(2) Subcontractor services.

(b) All change orders, amendments, and other modifications to the contract that affect value must include an explanation of the following:
(1) How IVBE will be utilized.
(2) Any IVBE percentage changes to the original contract amount.

(c) IVBE primes shall receive credit toward the contract goal for the use of its own workforce.

(Indiana Department of Administration; 25 IAC 9-4-1; filed Feb 28, 2014, 8:05 a.m.: 20140326-IR-025130402FRA)

25 IAC 9-4-2 Procedure for solicitation submission

Authority: IC 4-13; IC 5-22-14-11
Affected: IC 4-13-1; IC 4-13.6; IC 5-22-14-3.5

Sec. 2. (a) A prime IVBE bidder must submit the following to the department, or its designee, for solicitation submission:
(1) The name of the IVBE enterprise.
(2) The phone number of the IVBE.
(3) The name of a contact person from the IVBE.
(4) Work the enterprise will perform and the approximate date when the IVBE's work will commence.
(5) The contract amount for services that will be performed.
(6) Proof of principal place of business in Indiana.
(7) A copy of the IVBE's eligibility verification approval letter received from the the *[sic]* **Center of Veterans Enterprise of the United States Department of Veterans Affairs, as provided by IC 5-22-14-3.5(a)(1).**

(b) The prime bidder must submit the following to the department, or its designee, on behalf of its IVBE subcontractors:
(1) The name of the IVBE.
(2) The phone number of the IVBE.
(3) The name of a contact person for the IVBE.
(4) Work the IVBE will perform and the approximate date when the IVBE's work will commence.
(5) The contract amount for services that will be performed.
(6) Proof of principal place of business in Indiana.
(7) The percentage commitment form.
(8) A copy of the IVBE eligibility verification approval letter, as referenced in subsection (a)(7).

(c) The department reserves the right to request additional documentation for purposes of authenticating an IVBE's eligibility and participation.

(d) Purchases from IVBE suppliers are allowed IVBE credit. The maximum allowable credit will be limited to sixty percent (60%) of the total contract goal.

(Indiana Department of Administration; 25 IAC 9-4-2; filed Feb 28, 2014, 8:05 a.m.: 20140326-IR-025130402FRA)

25 IAC 9-4-3 Review by the department of solicitation submissions

Authority: IC 4-13; IC 5-22-14-11
Affected: IC 4-13-1; IC 4-13.6

Sec. 3. (a) Upon receipt of the solicitation documents, the department shall verify the IVBE's status on the Vendor Information Page, the federal database of businesses eligible to participate in the Center of Veterans Enterprise of the United States Department of Veterans Affairs' Veteran-Owned Small Business Program.

(b) IVBE contractors and suppliers must perform a commercially useful function. A commercially useful function is generally deemed to be when an IVBE contractor or supplier is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, an IVBE contractor or supplier must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. An IVBE contractor or supplier does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of IVBE participation.

(Indiana Department of Administration; 25 IAC 9-4-3; filed Feb 28, 2014, 8:05 a.m.: 20140326-IR-025130402FRA)

25 IAC 9-4-4 Rules affecting an enterprise's responsibility after solicitation submission

Authority: IC 4-13; IC 5-22-14-11

Affected: IC 4-13-1; IC 4-13.6

Sec. 4. (a) The prime and subcontractors shall report all IVBE participation in the state's standard subcontractor compliance tool, commonly known as the state pay audit system, on at least a monthly basis.

(b) IVBE must notify the department, in writing, within thirty (30) days of any change affecting its qualifying membership, ownership, or control requirements, and of any other material change to the information provided in the application to the Center of Veterans Enterprise of the United States Department of Veterans Affairs.

(c) On the two (2) year renewal for eligibility, the IVBE must provide the department a copy of the Center of Veterans Enterprise of the United States Department of Veterans Affairs' renewal letter.

(d) The responsibility to acquire and supply the information to the department required in this section remains with the prime.

(e) Failure to comply with the provisions of this section may result in noncompliance or removal from the program.

(Indiana Department of Administration; 25 IAC 9-4-4; filed Feb 28, 2014, 8:05 a.m.: 20140326-IR-025130402FRA)

Rule 5. Compliance

25 IAC 9-5-1 Compliance monitoring

Authority: IC 4-13; IC 5-22-14-11
Affected: IC 4-13-1; IC 4-13.6

Sec. 1. (a) In the management of this program, the department shall exercise its rights to employ all available administrative actions and remedies to ensure that the IVBE procurement goal and intent are successfully met. Therefore, the commissioner shall serve as the final authority for IVBE participation in the program.

(b) Because the attainment of the contract goal has been established through contractual provisions with the prime, the department shall consider the prime to be the sole source of responsibility for contract goal attainment and may be held accountable for the actions (or inaction) of its subcontractors.

(Indiana Department of Administration; 25 IAC 9-5-1; filed Feb 28, 2014, 8:05 a.m.: 20140326-IR-025130402FRA)

25 IAC 9-5-2 Noncompliance

Authority: IC 4-13; IC 5-22-14-11
Affected: IC 4-13-1; IC 4-13.6

Sec. 2. (a) The department shall notify the prime of program noncompliance by either the prime or subcontractor, or both, and will seek corrective action including the imposition of a material breach of contract, if any of the following are determined:
(1) The prime or subcontractor failed to:
(A) timely meet the affirmative obligations of this article;
(B) demonstrate a good faith effort to comply with this article; or
(C) cooperate in providing information necessary to comply with this article.
(2) The prime or subcontractor provided false or misleading information concerning IVBE contracting activity, ownership, or status as a bona fide entity, as required by IC 5-22-14 et seq. and this article.
(3) The prime engaged in discriminatory conduct.
(4) The prime failed to make prompt payment to a subcontractor for services, materials, or labor unless the prime, in good faith, contests the payment or any portion of an invoice or request for

payment from the subcontractor.

(b) If the commissioner determines that a prime or subcontractor fails to comply with any of this article, the department (or state agency) may elect to do one (1) or more of the following:
(1) Withhold payments on the specific contract in which the deficiency is known to exist until such time that satisfactory corrective measures are made.
(2) Adjust payments due or the permanent withholding of retainages of the specific contract in which the deficiency is known to exist.
(3) Suspend or terminate the contract in the event corrective action is not completed within a reasonable time.
(4) Suspend the prime or subcontractor from doing business with the state for a period not to exceed two (2) years.
(5) Suspend the IVBE from the program for a period not to exceed three (3) years.
(6) Any combination of the sanctions described in this subsection.

(c) In the event that the contractor provides false or misleading information, the department may provide the information to the Center of Veterans Enterprise of the United States Department of Veterans Affairs, another state agency, or any local, state, or federal law enforcement agency for investigation and enforcement purposes.

(d) In the event a remedy is required, the remedy is in the sole discretion of the commissioner.

(Indiana Department of Administration; 25 IAC 9-5-2; filed Feb 28, 2014, 8:05 a.m.: 20140326-IR-025130402FRA)

25 IAC 9-5-3 Review process for noncompliance

Authority: IC 4-13; IC 5-22-14-11
Affected: IC 4-13-1; IC 4-13.6

Sec. 3. (a) Upon the notification of the determination of noncompliance, the prime or subcontractor may submit a written letter of protest on the grounds that such findings are:
(1) arbitrary, capricious, or an abuse of discretion;
(2) conducted contrary to a constitutional, statutory, or regulatory provision;
(3) made without observance of a procedure required by law;
(4) in error or based on mistake; or
(5) not objectively formulated, may have been collusive, or may have been submitted in bad faith.

(b) The burden of challenging the findings of the department under section 2 of this rule remains with the petitioner.

(c) The letter of protest must be received by the department not more than ten (10) business days (as defined by the state work calendar) from the notification of findings.

(d) Letters of protest must state, with specificity, all grounds for relief. Protest letters that do not allege a ground for relief as described in subsection (a) may be rejected by written notification from the department. All letters of protest must be submitted to the IVBE protest coordinator via electronic mail or to:
Indiana Department of Administration
Procurement Division
Indiana Government Center South
402 West Washington Street, Room W478
Indianapolis, IN 46204
The department will respond in writing to a letter of protest in a timely manner.

(e) Within five (5) days of receiving the department's written response to a letter of protest, the petitioner may submit a request for appeal to the commissioner's designee. The request for appeal must be in writing and may not state grounds for relief that were not raised in the original letter of protest.

(Indiana Department of Administration; 25 IAC 9-5-3; filed Feb 28, 2014, 8:05 a.m.: 20140326-IR-025130402FRA)

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