

Final Rule

LSA Document #16-210(F)

DIGEST

Adds [80 IAC 7](#) concerning definitions. Adds [80 IAC 8](#) concerning procurement of services and supplies. Adds [80 IAC 9](#) concerning commission works. Adds [80 IAC 10](#) concerning disposal of property. Adds [80 IAC 11](#) concerning general operations. Adds [80 IAC 12](#) concerning code of ethics. Repeals [80 IAC 1-1-1](#), [80 IAC 1-1-2](#), [80 IAC 1-1-3](#), [80 IAC 1-1-4](#), [80 IAC 1-1-5](#), [80 IAC 1-1-6](#), [80 IAC 1-1-7](#), [80 IAC 1-1-8](#), [80 IAC 1-1-9](#), [80 IAC 1-1-10](#), [80 IAC 1-1-11](#), [80 IAC 1-1-13](#), [80 IAC 1-1-14](#), [80 IAC 1-1-15](#), [80 IAC 1-1-16](#), [80 IAC 1-1-17](#), [80 IAC 1-1-18](#), [80 IAC 1-1-19](#), [80 IAC 1-1-20](#), [80 IAC 1-1-21](#), [80 IAC 1-1-21.5](#), [80 IAC 1-1-22](#), [80 IAC 1-1-23](#), [80 IAC 1-1-24](#), [80 IAC 1-1-25](#), [80 IAC 1-2-1](#), [80 IAC 1-2-2](#), [80 IAC 1-2-3](#), [80 IAC 1-2-4](#), [80 IAC 1-2-5](#), [80 IAC 1-2-6](#), [80 IAC 1-2-7](#), [80 IAC 1-3-2](#), [80 IAC 1-4-2](#), [80 IAC 1-4-3](#), [80 IAC 1-4-4](#), [80 IAC 1-4-5](#), [80 IAC 1-4-6](#), [80 IAC 1-5-1](#), [80 IAC 1-5-2](#), [80 IAC 1-5-3](#), [80 IAC 1-5-4](#), [80 IAC 1-5-5](#), [80 IAC 1-5-7](#), [80 IAC 1-5-8](#), [80 IAC 1-5-9](#), [80 IAC 1-5-10](#), [80 IAC 1-5-11](#), [80 IAC 1-5-11.5](#), [80 IAC 1-5-12](#), [80 IAC 1-5-13](#), [80 IAC 1-5-14](#), [80 IAC 1-6](#), [80 IAC 1-7-1](#), [80 IAC 1-7-2](#), [80 IAC 1-7-3](#), [80 IAC 1-7-5](#), [80 IAC 1-8-1.1](#), [80 IAC 1-8-2](#), [80 IAC 1-8-3](#), [80 IAC 1-8-4](#), [80 IAC 1-9](#), [80 IAC 2-1](#), [80 IAC 2-2](#), [80 IAC 2-3](#), [80 IAC 2-4](#), [80 IAC 2-5-1](#), [80 IAC 2-5-2](#), [80 IAC 2-5-3](#), [80 IAC 2-5-4](#), [80 IAC 2-5-5](#), [80 IAC 2-5-6](#), [80 IAC 2-5-7](#), [80 IAC 2-5-8](#), [80 IAC 2-5-9](#), [80 IAC 2-5-10](#), [80 IAC 2-6](#), [80 IAC 2-7](#), [80 IAC 2-8](#), [80 IAC 3](#), [80 IAC 4](#), and [80 IAC 5.1](#). Effective 30 days after filing with the Publisher.

[80 IAC 1-1-1](#); [80 IAC 1-1-2](#); [80 IAC 1-1-3](#); [80 IAC 1-1-4](#); [80 IAC 1-1-5](#); [80 IAC 1-1-6](#); [80 IAC 1-1-7](#); [80 IAC 1-1-8](#); [80 IAC 1-1-9](#); [80 IAC 1-1-10](#); [80 IAC 1-1-11](#); [80 IAC 1-1-13](#); [80 IAC 1-1-14](#); [80 IAC 1-1-15](#); [80 IAC 1-1-16](#); [80 IAC 1-1-17](#); [80 IAC 1-1-18](#); [80 IAC 1-1-19](#); [80 IAC 1-1-20](#); [80 IAC 1-1-21](#); [80 IAC 1-1-21.5](#); [80 IAC 1-1-22](#); [80 IAC 1-1-23](#); [80 IAC 1-1-24](#); [80 IAC 1-1-25](#); [80 IAC 1-2-1](#); [80 IAC 1-2-2](#); [80 IAC 1-2-3](#); [80 IAC 1-2-4](#); [80 IAC 1-2-5](#); [80 IAC 1-2-6](#); [80 IAC 1-2-7](#); [80 IAC 1-3-2](#); [80 IAC 1-4-2](#); [80 IAC 1-4-3](#); [80 IAC 1-4-4](#); [80 IAC 1-4-5](#); [80 IAC 1-4-6](#); [80 IAC 1-5-1](#); [80 IAC 1-5-2](#); [80 IAC 1-5-3](#); [80 IAC 1-5-4](#); [80 IAC 1-5-5](#); [80 IAC 1-5-7](#); [80 IAC 1-5-8](#); [80 IAC 1-5-9](#); [80 IAC 1-5-10](#); [80 IAC 1-5-11](#); [80 IAC 1-5-11.5](#); [80 IAC 1-5-12](#); [80 IAC 1-5-13](#); [80 IAC 1-5-14](#); [80 IAC 1-6](#); [80 IAC 1-7-1](#); [80 IAC 1-7-2](#); [80 IAC 1-7-3](#); [80 IAC 1-7-5](#); [80 IAC 1-8-1.1](#); [80 IAC 1-8-2](#); [80 IAC 1-8-3](#); [80 IAC 1-8-4](#); [80 IAC 1-9](#); [80 IAC 2-1](#); [80 IAC 2-2](#); [80 IAC 2-3](#); [80 IAC 2-4](#); [80 IAC 2-5-1](#); [80 IAC 2-5-2](#); [80 IAC 2-5-3](#); [80 IAC 2-5-4](#); [80 IAC 2-5-5](#); [80 IAC 2-5-6](#); [80 IAC 2-5-7](#); [80 IAC 2-5-8](#); [80 IAC 2-5-9](#); [80 IAC 2-5-10](#); [80 IAC 2-6](#); [80 IAC 2-7](#); [80 IAC 2-8](#); [80 IAC 3](#); [80 IAC 4](#); [80 IAC 5.1](#); [80 IAC 7](#); [80 IAC 8](#); [80 IAC 9](#); [80 IAC 10](#); [80 IAC 11](#); [80 IAC 12](#)

SECTION 1. [80 IAC 7](#) IS ADDED TO READ AS FOLLOWS:

ARTICLE 7. DEFINITIONS**Rule 1. Definitions****[80 IAC 7-1-1](#) Applicability**

Authority: [IC 15-13-2-9](#)

Affected: [IC 15-13-2](#)

Sec. 1. The definitions in this rule apply throughout this title.

(State Fair Commission; [80 IAC 7-1-1](#); filed Nov 7, 2016, 3:46 p.m.: [20161207-IR-080160210FRA](#))

[80 IAC 7-1-2](#) "Business" defined

Authority: [IC 15-13-2-9](#); [IC 15-13-3-8](#)

Affected: [IC 15-13-2](#)

Sec. 2. "Business" means any corporation, partnership, limited liability company, individual, sole proprietorship, joint stock company, joint venture, or other private legal entity.

(State Fair Commission; [80 IAC 7-1-2](#); filed Nov 7, 2016, 3:46 p.m.: [20161207-IR-080160210FRA](#))

[80 IAC 7-1-3](#) "Change order" defined

Authority: [IC 15-13-2-9](#)

Affected: [IC 15-13-2](#)

Sec. 3. "Change order" means a written order that:

- (1) is signed by the executive director or his or her designated representative; and
- (2) directs the contractor to make changes to the specifications outlined in the original contract.

(State Fair Commission; [80 IAC 7-1-3](#); filed Nov 7, 2016, 3:46 p.m.: [20161207-IR-080160210FRA](#))

[80 IAC 7-1-4](#) "Commission" defined

Authority: [IC 15-13-2-9](#)

Affected: [IC 15-13-2](#)

Sec. 4. "Commission" means the state fair commission.

(State Fair Commission; [80 IAC 7-1-4](#); filed Nov 7, 2016, 3:46 p.m.: [20161207-IR-080160210FRA](#))

[80 IAC 7-1-5](#) "Commission works" defined

Authority: [IC 15-13-2-9](#)

Affected: [IC 15-13-2](#)

Sec. 5. "Commission works" means the process of building, altering, repairing, improving, or demolishing any structure or building, or other improvement of any kind to any real property owned by or leased in the name of the commission.

(State Fair Commission; [80 IAC 7-1-5](#); filed Nov 7, 2016, 3:46 p.m.: [20161207-IR-080160210FRA](#))

[80 IAC 7-1-6](#) "Commission works contract" defined

Authority: [IC 15-13-2-9](#)

Affected: [IC 15-13-2](#)

Sec. 6. "Commission works contract" means a contract between the commission and a person for the performance of some work or service related to the completion of a commission works project for the commission. However, the term does not include contracts for professional services that are related to the performance of the commission works, unless specifically provided to the contrary.

(State Fair Commission; [80 IAC 7-1-6](#); filed Nov 7, 2016, 3:46 p.m.: [20161207-IR-080160210FRA](#))

[80 IAC 7-1-7](#) "Construction", "commission works", and "improvement" defined

Authority: [IC 15-13-2-9](#)

Affected: [IC 15-13-2](#)

Sec. 7. "Construction", "commission works", and "improvement" mean the process of building, altering, repairing, improving, or demolishing any structure, building, or other improvement of any kind to any real property owned by or leased in the name of the commission, including the preparation of drawings, plans, and specifications thereof, and the routine operation, routine repair, or routine maintenance of existing structures, buildings, or real property.

(State Fair Commission; [80 IAC 7-1-7](#); filed Nov 7, 2016, 3:46 p.m.: [20161207-IR-080160210FRA](#))

[80 IAC 7-1-8](#) "Consulting engineer or architect" defined

Authority: [IC 15-13-2-9](#)

Affected: [IC 15-13-2](#)

Sec. 8. "Consulting engineer or architect" means a professionally qualified engineer or architect in private practice, maintaining an engineering or architecture office, either alone or in association with other engineers or architects, employing staff to provide consultancy services.

(State Fair Commission; [80 IAC 7-1-8](#); filed Nov 7, 2016, 3:46 p.m.: [20161207-IR-080160210FRA](#))

[80 IAC 7-1-9](#) "Contract" defined

Authority: [IC 15-13-2-9](#); [IC 15-13-3-8](#)

Affected: [IC 15-13-2](#)

Sec. 9. "Contract" means all types of agreements, regardless of what they may be called, for the procurement of services, insurance, or supplies.

(State Fair Commission; [80 IAC 7-1-9](#); filed Nov 7, 2016, 3:46 p.m.: [20161207-IR-080160210FRA](#))

[80 IAC 7-1-10](#) "Contract amendment or modification" defined

Authority: [IC 15-13-2-9](#)

Affected: [IC 15-13-2](#)

Sec. 10. "Contract amendment or modification" means any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provision of any contract, which alteration is accomplished by mutual action of the parties to the contract.

(State Fair Commission; [80 IAC 7-1-10](#); filed Nov 7, 2016, 3:46 p.m.: [20161207-IR-080160210FRA](#))

[80 IAC 7-1-11](#) "Contractor" defined

Authority: [IC 15-13-2-9](#)

Affected: [IC 15-13-2](#)

Sec. 11. "Contractor" means any person who has entered into or seeks to enter into a contract with the commission.

(State Fair Commission; [80 IAC 7-1-11](#); filed Nov 7, 2016, 3:46 p.m.: [20161207-IR-080160210FRA](#))

[80 IAC 7-1-12](#) "Contracts department" defined

Authority: [IC 15-13-2-9](#)

Affected: [IC 15-13-2](#)

Sec. 12. "Contracts department" means the department of the commission that maintains contracts entered into by the commission.

(State Fair Commission; [80 IAC 7-1-12](#); filed Nov 7, 2016, 3:46 p.m.: [20161207-IR-080160210FRA](#))

[80 IAC 7-1-13](#) "Cost reimbursement contract" defined

Authority: [IC 15-13-2-9](#)

Affected: [IC 15-13-2](#)

Sec. 13. "Cost reimbursement contract" means a contract under which a contractor is entitled to receive reimbursement for costs that are allowable and allocable in accordance with the contract terms and the provisions of this article and a fee, if any.

(State Fair Commission; [80 IAC 7-1-13](#); filed Nov 7, 2016, 3:46 p.m.: [20161207-IR-080160210FRA](#))

[80 IAC 7-1-14](#) "Data" defined

Authority: [IC 15-13-2-9](#)

Affected: [IC 15-13-2](#)

Sec. 14. "Data" means any recorded information, regardless of its form or characteristics.

(State Fair Commission; [80 IAC 7-1-14](#); filed Nov 7, 2016, 3:46 p.m.: [20161207-IR-080160210FRA](#))

[80 IAC 7-1-15](#) "Data processing" defined

Authority: [IC 15-13-2-9](#); [IC 15-13-3-8](#)

Affected: [IC 15-13-2](#)

Sec. 15. "Data processing" means resources and technologies associated with the fields of information processing, office automation, and telecommunications facilities and networks.

(State Fair Commission; [80 IAC 7-1-15](#); filed Nov 7, 2016, 3:46 p.m.: [20161207-IR-080160210FRA](#))

[80 IAC 7-1-16](#) "Deadly weapon" defined

Authority: [IC 15-13-2-9](#)

Affected: [IC 15-13-2](#); [IC 35-47-1-5](#); [IC 35-47-8-1](#); [IC 35-47-8-3](#)

Sec. 16. (a) "Deadly weapon" means any of the following:

(1) A loaded or unloaded firearm (as defined in [IC 35-47-1-5](#)).

(2) A destructive device, weapon, device, taser (as defined in [IC 35-47-8-3](#)) or electronic stun weapon (as defined in [IC 35-47-8-1](#)), or equipment, including knives, chemical substances, or other material, that, in the manner it is used, or could ordinarily be used, or is intended to be used, is readily capable of causing serious bodily injury.

(3) A biological disease, virus, or organism that is capable of causing serious bodily injury.

(b) The term does not include:

(1) a taser (as defined in [IC 35-47-8-3](#));

(2) an electronic stun weapon (as defined in [IC 35-47-8-1](#));

(3) a chemical designed to temporarily incapacitate a person; or

(4) another device designed to temporarily incapacitate a person;

if the device described in subdivisions (1) through (4) is used by a law enforcement officer who has been trained in the use of the device and who uses the device in accordance with the law enforcement officer's training and while lawfully engaged in the execution of official duties.

(c) The term does not include equipment or implements necessary and appropriate for use by commission personnel, contractors, authorized representatives, concessionaires, and exhibitors in the conduct of business on the fairgrounds.

(State Fair Commission; [80 IAC 7-1-16](#); filed Nov 7, 2016, 3:46 p.m.: [20161207-IR-080160210FRA](#))

[80 IAC 7-1-17](#) "Distribution" defined

Authority: [IC 15-13-2-9](#)

Affected: [IC 15-13-2](#)

Sec. 17. "Distribution" means the transmitting of literature, products, or other forms of written communications or commodities either for sale or at no cost to the recipient.

(State Fair Commission; [80 IAC 7-1-17](#); filed Nov 7, 2016, 3:46 p.m.: [20161207-IR-080160210FRA](#))

[80 IAC 7-1-18](#) "Escrowed income" defined

Authority: [IC 15-13-2-9](#)

Affected: [IC 15-13-2](#)

Sec. 18. "Escrowed income" means the value of all property held in an escrow account over the escrowed principal in the account.

(State Fair Commission; [80 IAC 7-1-18](#); filed Nov 7, 2016, 3:46 p.m.: [20161207-IR-080160210FRA](#))

[80 IAC 7-1-19](#) "Escrowed principal" defined

Authority: [IC 15-13-2-9](#)

Affected: [IC 15-13-2](#)

Sec. 19. "Escrowed principal" means the value of all cash, securities, or other property placed in an escrow account by the commission or a contractor as a retainage on a commission works contract.

(State Fair Commission; [80 IAC 7-1-19](#); filed Nov 7, 2016, 3:46 p.m.: [20161207-IR-080160210FRA](#))

[80 IAC 7-1-20](#) "Established catalog price" defined

Authority: [IC 15-13-2-9](#); [IC 15-13-3-8](#)

Affected: [IC 15-13-2](#)

Sec. 20. "Established catalog price" means the following:

- (1) The price included in a catalog, price list, schedule, or the form that is regularly maintained by the manufacturer or contractor.**
- (2) The price either published or otherwise available for inspection by customers.**
- (3) The price at which sales are currently or were last made to a significant number of any category of buyers, or buyers constituting the general buying public, for the supplies involved.**

(State Fair Commission; [80 IAC 7-1-20](#); filed Nov 7, 2016, 3:46 p.m.: [20161207-IR-080160210FRA](#))

[80 IAC 7-1-21](#) "Executive director" defined

Authority: [IC 15-13-2-9](#)

Affected: [IC 15-13-2](#)

Sec. 21. "Executive director" means the chief administrative officer of the commission.

(State Fair Commission; [80 IAC 7-1-21](#); filed Nov 7, 2016, 3:46 p.m.: [20161207-IR-080160210FRA](#))

[80 IAC 7-1-22](#) "Fairgrounds" defined

Authority: [IC 15-13-2-9](#)

Affected: [IC 15-13-2](#)

Sec. 22. "Fairgrounds" means the Indiana state fairgrounds and other property owned by the commission.

(State Fair Commission; [80 IAC 7-1-22](#); filed Nov 7, 2016, 3:46 p.m.: [20161207-IR-080160210FRA](#))

[80 IAC 7-1-23](#) "Invitation for bids" defined

Authority: [IC 15-13-2-9](#)

Affected: [IC 15-13-2](#)

Sec. 23. "Invitation for bids" means all documents, whether attached or incorporated by reference, used for the purpose of soliciting bids.

(State Fair Commission; [80 IAC 7-1-23](#); filed Nov 7, 2016, 3:46 p.m.: [20161207-IR-080160210FRA](#))

[80 IAC 7-1-24](#) "Person" defined

Authority: [IC 15-13-2-9](#)

Affected: [IC 15-13-2](#)

Sec. 24. "Person" means any business, individual, committee, or other organization or group of individuals.

(State Fair Commission; [80 IAC 7-1-24](#); filed Nov 7, 2016, 3:46 p.m.: [20161207-IR-080160210FRA](#))

[80 IAC 7-1-25](#) "Possession" defined

Authority: [IC 15-13-2-9](#)

Affected: [IC 15-13-2](#)

Sec. 25. "Possession" means on or about a person's body or clothing, or in any purse, backpack, cooler, sack, carrier, or other container carried by the person or under that person's direct and immediate control.

(State Fair Commission; [80 IAC 7-1-25](#); filed Nov 7, 2016, 3:46 p.m.: [20161207-IR-080160210FRA](#))

[80 IAC 7-1-26](#) "Procurement" defined

Authority: [IC 15-13-2-9](#); [IC 15-13-3-8](#)

Affected: [IC 15-13-2](#)

Sec. 26. "Procurement" means buying, purchasing, renting, leasing, or otherwise acquiring any services, insurance, or supplies and includes functions that pertain to the obtaining of any services, insurance, or supplies, including the following:

- (1) Description of requirements.
- (2) Selection or solicitation of sources.
- (3) Preparation and award of contract.

(State Fair Commission; [80 IAC 7-1-26](#); filed Nov 7, 2016, 3:46 p.m.: [20161207-IR-080160210FRA](#))

[80 IAC 7-1-27](#) "Procurement officer" defined

Authority: [IC 15-13-2-9](#)

Affected: [IC 15-13-2](#)

Sec. 27. "Procurement officer" means any person duly authorized to enter into and administer contracts and make written determinations with respect to those contracts.

(State Fair Commission; [80 IAC 7-1-27](#); filed Nov 7, 2016, 3:46 p.m.: [20161207-IR-080160210FRA](#))

[80 IAC 7-1-28](#) "Property" and "worthless property" defined

Authority: [IC 15-13-2-9](#)

Affected: [IC 15-13-1-16](#); [IC 35-31.5-2-253](#)

Sec. 28. (a) "Property" includes both real and personal property and has the meaning set forth in [IC 35-31.5-2-253](#).

(b) "Worthless property" means property with no market value if the value of the property is less than the estimated cost of the sale and transportation of the property.

(State Fair Commission; [80 IAC 7-1-28](#); filed Nov 7, 2016, 3:46 p.m.: [20161207-IR-080160210FRA](#))

[80 IAC 7-1-29](#) "Public funds" defined

Authority: [IC 15-13-2-9](#)

Affected: [IC 15-13-2](#)

Sec. 29. "Public funds" means funds created by the commission's accounting system and includes funds administered by the commission and subject to audit by the state board of accounts.

(State Fair Commission; [80 IAC 7-1-29](#); filed Nov 7, 2016, 3:46 p.m.: [20161207-IR-080160210FRA](#))

[80 IAC 7-1-30](#) "Purchase description" defined

Authority: [IC 15-13-2-9](#)

Affected: [IC 15-13-2](#)

Sec. 30. "Purchase description" means the words used in a solicitation to describe the services, insurance, or supplies to be purchased and includes specifications attached to, or made a part of, the solicitations.

(State Fair Commission; [80 IAC 7-1-30](#); filed Nov 7, 2016, 3:46 p.m.: [20161207-IR-080160210FRA](#))

[80 IAC 7-1-31](#) "Purchasing department" defined

Authority: [IC 15-13-2-9](#)

Affected: [IC 15-13-2](#)

Sec. 31. "Purchasing department" means the department of the commission that is responsible for initiating and documenting purchases for the commission.

(State Fair Commission; [80 IAC 7-1-31](#); filed Nov 7, 2016, 3:46 p.m.: [20161207-IR-080160210FRA](#))

[80 IAC 7-1-32](#) "Request for information" or "RFI" defined

Authority: [IC 15-13-2-9](#)

Affected: [IC 15-13-2](#)

Sec. 32. "Request for information" or "RFI" means a process that may be used to solicit information and ideas prior to issuing a request for proposals.

(State Fair Commission; [80 IAC 7-1-32](#); filed Nov 7, 2016, 3:46 p.m.: [20161207-IR-080160210FRA](#))

[80 IAC 7-1-33](#) "Request for proposals" or "RFP" defined

Authority: [IC 15-13-2-9](#)

Affected: [IC 15-13-2](#)

Sec. 33. "Request for proposals" or "RFP" means all documents, whether attached or incorporated by reference, used for soliciting proposals.

(State Fair Commission; [80 IAC 7-1-33](#); filed Nov 7, 2016, 3:46 p.m.: [20161207-IR-080160210FRA](#))

[80 IAC 7-1-34](#) "Responsible bidder" defined

Authority: [IC 15-13-2-9](#); [IC 15-13-3-8](#)

Affected: [IC 15-13-2](#)

Sec. 34. "Responsible bidder" means a person who has the:
(1) capability to perform fully the contract requirements; and
(2) integrity and reliability that will ensure good faith performance.

(State Fair Commission; [80 IAC 7-1-34](#); filed Nov 7, 2016, 3:46 p.m.: [20161207-IR-080160210FRA](#))

[80 IAC 7-1-35](#) "Responsible contractor" defined

Authority: [IC 15-13-2-9](#)

Affected: [IC 15-13-2](#)

Sec. 35. "Responsible contractor" means a contractor who:

- (1) is capable of performing a commission works contract fully;**
- (2) has the integrity and reliability that will ensure good faith performance; and**
- (3) is certified by the commission as qualified, if applicable.**

(State Fair Commission; [80 IAC 7-1-35](#); filed Nov 7, 2016, 3:46 p.m.: [20161207-IR-080160210FRA](#))

[80 IAC 7-1-36](#) "Responsive bidder" defined

Authority: [IC 15-13-2-9](#)

Affected: [IC 15-13-2](#)

Sec. 36. "Responsive bidder" means a person who has submitted a bid that conforms in all material respects to the invitation for bids.

(State Fair Commission; [80 IAC 7-1-36](#); filed Nov 7, 2016, 3:46 p.m.: [20161207-IR-080160210FRA](#))

[80 IAC 7-1-37](#) "Responsive contractor" defined

Authority: [IC 15-13-2-9](#)

Affected: [IC 15-13-2](#)

Sec. 37. "Responsive contractor" means a contractor that has submitted a bid or a quotation in conformity with instructions, contract documents, terms, and other conditions for a contract.

(State Fair Commission; [80 IAC 7-1-37](#); filed Nov 7, 2016, 3:46 p.m.: [20161207-IR-080160210FRA](#))

[80 IAC 7-1-38](#) "Retainage" defined

Authority: [IC 15-13-2-9](#)

Affected: [IC 15-13-2](#)

Sec. 38. "Retainage" means any amount to be withheld from a payment to a contractor or subcontractor under the terms of a commission works contract until the occurrence of a specified event.

(State Fair Commission; [80 IAC 7-1-38](#); filed Nov 7, 2016, 3:46 p.m.: [20161207-IR-080160210FRA](#))

[80 IAC 7-1-39](#) "Sampling" defined

Authority: [IC 15-13-2-9](#)

Affected: [IC 15-13-2](#)

Sec. 39. "Sampling" means the distribution of literature, product samples, or other forms of items that is intended to solicit, urge, or entice the purchase or support of a product, goods or services, or ideological or political activity from the general public.

(State Fair Commission; [80 IAC 7-1-39](#); filed Nov 7, 2016, 3:46 p.m.: [20161207-IR-080160210FRA](#))

[80 IAC 7-1-40](#) "Services" defined

Authority: [IC 15-13-2-9](#); [IC 15-13-3-8](#)

Affected: [IC 15-13-2](#); [IC 25-4](#); [IC 25-31](#)

Sec. 40. "Services" means the furnishing of labor, time, or effort by a contractor, not involving the delivery of a specific end product other than printed documents or other items that are merely incidental to the required performance, and includes the following terms used throughout this article:

- (1) "Personal services" means the services of a person who does not meet the requirements of subdivision (2), but who has technical expertise to accomplish a specific study, project, task, or other**

work on matters not related to a commission works project.

(2) "Professional services" means one (1) of the following:

(A) The services of a person registered, certified, or licensed under Indiana statute or by the Indiana supreme court.

(B) For the purposes of commission works projects:

(i) the services of a person registered or certified under [IC 25-4](#);

(ii) the services of a person licensed under [IC 25-31](#); or

(iii) the services of a person who performs services or studies that relate to the design or the feasibility of a building, structure, or improvement and recognized in the industry as professional in nature.

(3) "Purchased services" means services that are provided by vendors for routine, necessary, and continuing functions of the commission, mostly related to physical activities.

(State Fair Commission; [80 IAC 7-1-40](#); filed Nov 7, 2016, 3:46 p.m.: [20161207-IR-080160210FRA](#))

[80 IAC 7-1-41](#) "Solicitation" defined

Authority: [IC 15-13-2-9](#)

Affected: [IC 15-13-2](#)

Sec. 41. "Solicitation" means:

(1) rallies, demonstrations, or protests, or all, in support for; or

(2) the act of soliciting, urging, enticing, or otherwise seeking to obtain through offers, suggestions, or incentives in support of;

products, services, items for purchase, or support for an ideological or political methodology being offered to the general public.

(State Fair Commission; [80 IAC 7-1-41](#); filed Nov 7, 2016, 3:46 p.m.: [20161207-IR-080160210FRA](#))

[80 IAC 7-1-42](#) "Specifications" defined

Authority: [IC 15-13-2-9](#); [IC 15-13-3-8](#)

Affected: [IC 15-13-2](#)

Sec. 42. "Specifications" means any description of the physical or functional characteristics of a supply or the nature of a supply and may include a description of any requirements for inspecting, testing, or preparing a supply or construction item for delivery.

(State Fair Commission; [80 IAC 7-1-42](#); filed Nov 7, 2016, 3:46 p.m.: [20161207-IR-080160210FRA](#))

[80 IAC 7-1-43](#) "Subcontractor" defined

Authority: [IC 15-13-2-9](#)

Affected: [IC 5-16-5](#); [IC 5-16-5.5](#); [IC 15-13-2](#)

Sec. 43. "Subcontractor" means any person entering into a contract with a contractor to furnish labor, labor and materials, or materialmen as their respective interest may appear under [IC 5-16-5](#) or [IC 5-16-5.5](#) used in the actual construction of a commission works project.

(State Fair Commission; [80 IAC 7-1-43](#); filed Nov 7, 2016, 3:46 p.m.: [20161207-IR-080160210FRA](#))

[80 IAC 7-1-44](#) "Substantial completion" defined

Authority: [IC 15-13-2-9](#)

Affected: [IC 15-13-2](#)

Sec. 44. "Substantial completion" means the condition of a commission work when it is sufficiently completed, in accordance with the contract documents as modified by any completed change orders agreed to by the parties, so that the commission can occupy or take possession of the commission work and use it as it is intended to be used.

(State Fair Commission; [80 IAC 7-1-44](#); filed Nov 7, 2016, 3:46 p.m.: [20161207-IR-080160210FRA](#))

[80 IAC 7-1-45](#) "Supplies" defined

Authority: [IC 15-13-2-9](#)

Affected: [IC 15-13-2](#)

Sec. 45. "Supplies" means all property, including, but not limited to, equipment, materials, and goods but excluding real property.

(State Fair Commission; [80 IAC 7-1-45](#); filed Nov 7, 2016, 3:46 p.m.: [20161207-IR-080160210FRA](#))

[80 IAC 7-1-46](#) "Term" defined

Authority: [IC 15-13-2-9](#)

Affected: [IC 15-13-2](#)

Sec. 46. "Term" means the original fixed duration of a contract including any renewals or extensions by contract amendment or modification to the contract.

(State Fair Commission; [80 IAC 7-1-46](#); filed Nov 7, 2016, 3:46 p.m.: [20161207-IR-080160210FRA](#))

SECTION 2. [80 IAC 8](#) IS ADDED TO READ AS FOLLOWS:

ARTICLE 8. PROCUREMENT OF SERVICES AND SUPPLIES

Rule 1. General Provisions

[80 IAC 8-1-1](#) Purpose; construction

Authority: [IC 15-13-2-9](#)

Affected: [IC 15-13-2](#)

Sec. 1. The purpose of this article is to establish rules to govern the procurement of supplies and services utilized by the commission and to ensure fair competition among persons competing in the procurement process.

(State Fair Commission; [80 IAC 8-1-1](#); filed Nov 7, 2016, 3:46 p.m.: [20161207-IR-080160210FRA](#))

[80 IAC 8-1-2](#) Application

Authority: [IC 15-13-2-9](#); [IC 15-13-3-8](#)

Affected: [IC 15-13-2](#)

Sec. 2. (a) This article applies to the following:

- (1) Contracts for services as defined in [80 IAC 7-1-40](#).**
- (2) Contracts for supplies.**
- (3) Contracts for insurance and administrative services for insurance.**

(b) A written contract is required for all services and any expenditure of fifty thousand dollars (\$50,000) or more with one (1) person for supplies over the term of the contract.

(State Fair Commission; [80 IAC 8-1-2](#); filed Nov 7, 2016, 3:46 p.m.: [20161207-IR-080160210FRA](#))

[80 IAC 8-1-3](#) Application exceptions

Authority: [IC 15-13-2-9](#); [IC 15-13-3-8](#)

Affected: [IC 15-13-2](#)

Sec. 3. This article applies to every expenditure of public funds by the commission, regardless of their source, for the procurement of services, insurance, or supplies except for the following:

- (1) Collective bargaining agreements between the commission and its employees.
- (2) Employment agreements.
- (3) Investment of public funds.
- (4) Contracts between governmental bodies and bodies corporate and politic.
- (5) Contracts regarding real property of the commission.
- (6) Contracts regarding entertainment.

(State Fair Commission; [80 IAC 8-1-3](#); filed Nov 7, 2016, 3:46 p.m.: [20161207-IR-080160210FRA](#))

[80 IAC 8-1-4](#) Grants, gifts, bequests, and other cooperative agreements; conflicting provisions

Authority: [IC 15-13-2-9](#)

Affected: [IC 15-13-2](#)

Sec. 4. Notwithstanding the provisions of this article, the commission shall comply with the terms and conditions of any grant, gift, bequest, or other cooperative agreement if noncompliance with those terms and conditions would invalidate the grant, gift, bequest, or other cooperative agreement.

(State Fair Commission; [80 IAC 8-1-4](#); filed Nov 7, 2016, 3:46 p.m.: [20161207-IR-080160210FRA](#))

Rule 2. Purchasing Organization

[80 IAC 8-2-1](#) Contracts and purchasing departments

Authority: [IC 15-13-2-9](#); [IC 15-13-3-8](#)

Affected: [IC 15-13-2](#)

Sec. 1. (a) There is established within the commission a contracts department and a purchasing department in conformance with this article.

(b) All procurement functions shall be conducted in conformance with this article by the contracts or purchasing department, or both.

(c) The contracts and purchasing departments may enter into agreements with the procurement division of the state of Indiana to make procurements through an established quantity procurement agreement and the federal General Services Agency processes or directly enter into quantity purchase agreements for the commission, where applicable and cost effective.

(State Fair Commission; [80 IAC 8-2-1](#); filed Nov 7, 2016, 3:46 p.m.: [20161207-IR-080160210FRA](#))

[80 IAC 8-2-2](#) Duties; specifications

Authority: [IC 15-13-2-9](#); [IC 15-13-3-8](#)

Affected: [IC 15-13-2](#)

Sec. 2. (a) The contracts and purchasing departments shall prepare, issue, revise, maintain, and monitor the use of specifications for supplies.

(b) Specifications must:

- (1) promote overall economy for the purposes intended; and
- (2) encourage competition in satisfying the commission's needs.

(State Fair Commission; [80 IAC 8-2-2](#); filed Nov 7, 2016, 3:46 p.m.: [20161207-IR-080160210FRA](#))

[80 IAC 8-2-3](#) Purchasing preferences

Authority: [IC 15-13-2-9](#)

Affected: [IC 5-22-15](#); [IC 15-13-2](#)

Sec. 3. The contracts and purchasing departments shall ensure that requests for quotations and bid packages comply with [IC 5-22-15](#) concerning purchasing preferences.

(State Fair Commission; [80 IAC 8-2-3](#); filed Nov 7, 2016, 3:46 p.m.: [20161207-IR-080160210FRA](#))

Rule 3. Methods of Source Selection and Contract Formation

[80 IAC 8-3-1](#) Methods of source selection; contracts

Authority: [IC 15-13-2-9](#); [IC 15-13-3-8](#)

Affected: [IC 4-13-1-17](#); [IC 15-13-2](#)

Sec. 1. (a) Contracts for:

(1) purchased services;

(2) supplies exceeding fifty thousand dollars (\$50,000); or

(3) administrative services for group insurance or insurance authorized under [IC 4-13-1-17](#) (if the annual premium exceeds five thousand dollars (\$5,000));

must be awarded by the contracts department under section 4, 5, 8 or 9 of this rule unless another method is authorized under this rule.

(b) Contracts for professional or personal services may be procured using any procedure appropriate.

(c) The contracts or purchasing department shall determine which method shall be used under this rule.

(d) The purchase of supplies that do not exceed fifty thousand dollars (\$50,000) does not require a contract.

(e) The purchase of:

(1) services; and

(2) supplies that exceed fifty thousand dollars (\$50,000);

requires a contract.

(State Fair Commission; [80 IAC 8-3-1](#); filed Nov 7, 2016, 3:46 p.m.: [20161207-IR-080160210FRA](#))

[80 IAC 8-3-2](#) Request for information

Authority: [IC 15-13-2-9](#); [IC 15-13-3-8](#)

Affected: [IC 15-13-2](#)

Sec. 2. (a) When the commission and its staff are not fully knowledgeable of the exact service or services or supplies needed and require more information from prospective vendors to complete an invitation to bid or request for proposal, the contracts or purchasing department may issue a request for information using the procedure provided by this section.

(b) The request for information must contain full details of the product requirements, specifications, purchase options, and any other criteria where the commission is in need of additional information.

(c) Responders will be asked to outline or submit, or both, recommendations that best fit the commission and an explanation why.

(d) The contracts or purchasing department shall issue the request for information to known vendors

who provide services or supplies related to the subject matter of the request for information.

(e) Submissions may be reviewed, evaluated, and ranked by an internal team at the commission. The commission may elect to proceed with negotiating a final contract with the prevailing respondent.

(f) If a contract is not entered into by the commission under subsection (e), the commission may issue a solicitation as outlined in this rule based on the information received from respondents.

(g) The commission shall have the right to cancel the request for information as specified under section 9 of this rule.

(State Fair Commission; [80 IAC 8-3-2](#); filed Nov 7, 2016, 3:46 p.m.: [20161207-IR-080160210FRA](#))

[80 IAC 8-3-3](#) Small purchases; quotes

Authority: [IC 15-13-2-9](#); [IC 15-13-3-8](#)

Affected: [IC 15-13-2](#)

Sec. 3. (a) Small purchases, as described under subdivisions (1) and (2), shall be processed under the following provisions:

(1) Purchases of five thousand dollars (\$5,000) or less as follows:

(A) A procurement with an estimated cost not exceeding five thousand dollars (\$5,000) may be made under the procedure outlined in this section.

(B) The purchasing department shall invite quotes from at least one (1) person known to deal in the supplies or purchased services to be procured.

(C) The purchase description and date that quotes are due shall be communicated to the person invited to submit the quote. Means of communication may include mail, telephone, electronic mail, or facsimile machine.

(D) The purchasing department may consider an advertised price in a catalog, newspaper advertisement, radio commercial, television commercial, online, or other media communication to be a quote received by the commission. The commission must know of the advertised price at the time quotes are due.

(E) If a responsive quote is received, the purchasing department shall procure the item from the lowest responsive and responsible contractor.

(F) If no responsive quote is received from a responsible contractor, the purchasing department is authorized to procure the item on the open market without further invitations for quotes.

(2) Purchases of five thousand dollars and one cent (\$5,000.01) to fifty thousand dollars (\$50,000) as follows:

(A) A procurement with an estimated cost between five thousand dollars and one cent (\$5,000.01) and fifty thousand dollars (\$50,000) may be made under the procedure outlined in this section.

(B) Quotes shall be invited from at least three (3) persons known to deal in the supplies or purchased services to be procured.

(C) The purchase description and the date that quotes are due shall be communicated to the person invited to submit the quote. Means of communication may include mail, telephone, electronic mail, or facsimile machine.

(D) The purchasing department may consider an advertised price in a catalog, newspaper advertisement, radio commercial, television commercial, online, or other media communication to be a quote received by the commission. The commission must know of the advertised price at the time quotes are due.

(E) If responsive quotes are received, a contract shall be awarded to the lowest responsive and responsible contractor.

(F) If no responsive quote is received from a responsible contractor, the commission reserves the right to repeat the process described in this section or make a special procurement under section 7(a)(7) of this rule.

(b) Procurement requirements and purchases may not be artificially divided so as to constitute a small purchase under this section.

(c) When two (2) or more quotes are equal, the commission shall ensure that any applicable purchasing preferences that have been claimed by the person submitting the quote as set forth in [80 IAC 8-2-3](#) have been included in the evaluation of the quotes.

(d) If, after review under subsection (c), the quotes remain equal, the award shall be made by utilizing the following preferences:

- (1) An Indiana business.
- (2) An Indiana small business.
- (3) An Indiana farm product.
- (4) A past positive working relationship with the commission.

(State Fair Commission; [80 IAC 8-3-3](#); filed Nov 7, 2016, 3:46 p.m.: [20161207-IR-080160210FRA](#))

[80 IAC 8-3-4](#) Sealed bidding (invitation to bid)

Authority: [IC 15-13-2-9](#); [IC 15-13-3-8](#)

Affected: [IC 15-13-2](#)

Sec. 4. (a) The following procedures shall be followed by the contracts department in awarding contracts by sealed bidding:

(1) An invitation to bid shall be issued and must include the following:

(A) A purchase description.

(B) All contractual terms and conditions applicable to the procurement.

(C) A statement of criteria to be used, including, but not limited to, any of the following:

(i) Inspection, testing, quality, workmanship, delivery, previous contractual relationship with the commission, and suitability for a particular purpose.

(ii) Any requirement imposed under section 11 of this rule.

(D) The time, date, and place for the opening of bids.

(E) A statement concerning whether the bid must be accompanied by a certified check or other evidence of financial responsibility.

(F) A statement concerning the conditions under which a bid proposal may be canceled or rejected in whole or in part as specified under section 9 of this rule.

(2) Public notice shall be given in the manner required under section 10 of this rule.

(3) Bids shall be opened publicly in the presence of one (1) or more witnesses at the time, date, and place designated in the invitation to bid.

(4) Bids shall be:

(A) unconditionally accepted without alteration or correction, except as provided in subsections (e) through (g); and

(B) evaluated based on the requirements set forth in the invitation for bids.

(5) A contract shall be awarded with reasonable promptness by written notice to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation to bid.

(b) Those criteria that will affect the bid price and be considered in the evaluation for an award must be objectively measurable, such as discounts, transportation costs, and total or life cycle costs.

(c) The only criteria that may be used in bid evaluation are those specified in the invitation to bid.

(d) Correction or withdrawal of inadvertently erroneous bids before or after award, or cancellation of awards or contracts based on such mistakes, shall be permitted at the discretion of the executive director. After bid opening, changes in bid prices or other provisions of bids prejudicial to the interest of the commission or fair competition shall not be permitted.

(e) If a bidder inserts contract terms or bids on items not specified in the invitation to bid, the contracts department shall treat the additional material as a proposal for addition to the contract and may:

(1) find the bidder to be nonresponsive;

(2) permit the bidder to withdraw the proposed additions to the contract in order to meet the

requirements and criteria set forth in the invitation to bid; or

(3) accept any of the proposed additions to the contract that are not prejudicial to the interests of the commission or fair competition.

(f) When two (2) or more bids are equal, the commission shall ensure that any applicable purchasing preferences that have been claimed by the person submitting the bid as set forth in [80 IAC 8-2-3](#) have been included in the evaluation of the bids.

(g) If, after review under subsection (f), the quotes remain equal, the award shall be made by utilizing the following preferences:

(1) An Indiana business.

(2) An Indiana small business.

(3) An Indiana farm product.

(4) A past positive working relationship with the commission.(f) The commission shall have the right to withdraw the bid at any time in the process prior to contracting upon notification to all known vendors in receipt of the solicitation. If such action is taken by the commission, no vendor will have claim for recompense.

(State Fair Commission; [80 IAC 8-3-4](#); filed Nov 7, 2016, 3:46 p.m.: [20161207-IR-080160210FRA](#))

[80 IAC 8-3-5](#) Request for proposals

Authority: [IC 15-13-2-9](#); [IC 15-13-3-8](#)

Affected: [IC 15-13-2](#)

Sec. 5. (a) When the contracts or purchasing department determines that the use of competitive sealed bidding is either not practicable or not advantageous to the commission, a contract may be awarded using the procedure provided by this section.

(b) The contracts department shall solicit proposals, which must include the following:

(1) A statement concerning the relative importance of price and the other evaluation factors.

(2) A statement concerning whether the proposal must be accompanied by a certified check or other evidence of financial responsibility.

(c) Public notice shall be given in the manner required under section 10 of this rule.

(d) Proposals shall be opened at the date and time specified in the request for proposals.

(e) The contracts department may conduct discussions with persons submitting proposals for the purpose of clarification to ensure full understanding of, and responsiveness to, the solicitation requirements. Persons submitting proposals must be accorded fair and equal treatment with respect to the opportunity for discussion and revision of proposals. In conducting discussions, the department shall not disclose information derived from proposals submitted by competing persons.

(f) After identification of the responsible offer or whose proposal appears to be the most advantageous to the commission, the commission will enter into contract preparation activities with the offeror. If at any time the contract preparation activities are judged to be ineffective, the commission may cease all activities with that offeror and begin contract preparation activities with the next highest ranked offeror, and the process may continue until a contract is executed. The commission reserves the right to cease all contract preparation activities at any time and to reject all proposals, if such action is determined to be in the best interest of the commission.

(g) When two (2) or more proposals are equal, the award shall go to the offeror with the highest cost score (lowest price).

(State Fair Commission; [80 IAC 8-3-5](#); filed Nov 7, 2016, 3:46 p.m.: [20161207-IR-080160210FRA](#))

[80 IAC 8-3-6](#) Sole source procurement

Authority: [IC 15-13-2-9](#); [IC 15-13-3-8](#)

Affected: [IC 15-13-2](#)

Sec. 6. A contract may be awarded for a service or supply without competition when the executive director or his or her designated representative has determined that there is only one (1) source for the required service or supply. A copy of such determination shall be made a part of the contract file. Any such proposed contract having an expenditure value exceeding one hundred thousand dollars (\$100,000), along with a copy of the executive director's determination, shall be presented to the commission under section 8(c) of this rule.

(State Fair Commission; [80 IAC 8-3-6](#); filed Nov 7, 2016, 3:46 p.m.: [20161207-IR-080160210FRA](#))

[80 IAC 8-3-7](#) Special procurements

Authority: [IC 15-13-2-9](#); [IC 15-13-3-8](#)

Affected: [IC 4-13-1-17](#); [IC 15-13-2](#)

Sec. 7. (a) Notwithstanding any other provision of this article, the executive director or his or her designated representative may make or authorize the contracts or purchasing department to make special procurements:

- (1) when there exists, under emergency conditions, a threat to public health, welfare, or safety;
- (2) when there exists a unique opportunity to obtain supplies at a substantial savings to the commission;
- (3) for the procurement of data processing contracts or license agreements for:
 - (A) software programs; or
 - (B) supplies, when only one (1) source meets the commission's reasonable requirements;
- (4) for contracts for insurance authorized under [IC 4-13-1-17](#) if the annual premium does not exceed five thousand dollars (\$5,000);
- (5) when:
 - (A) the compatibility of equipment, accessories, or replacement parts is a substantial consideration in the procurement; and
 - (B) only one (1) source meets the using department's reasonable requirements;
- (6) when procurement of the required supplies under another section of this rule would seriously impair the function of the using department;
- (7) when the contracts or purchasing department has:
 - (A) solicited for a procurement under another section of this rule; and
 - (B) not received a responsive offer;
- (8) when the time periods for performance as determined by the executive director or his or her designated representative would be seriously impaired by bidding, so long as at least two (2) price quotes are obtained; or
- (9) when a current contract has expired and the commission has recently tested the market within the previous eight (8) to ten (10) years with a request for proposals or invitation to bid.

(b) Special procurements must be made with such competition as is practicable under the circumstances. In the case of an emergency procurement under subsection (a)(1), a written request to the executive director must be submitted within twenty-four (24) business hours after the purchase.

(c) A written determination of the basis for the special procurement and for the selection of the particular contractor must be included in the contract file.

(State Fair Commission; [80 IAC 8-3-7](#); filed Nov 7, 2016, 3:46 p.m.: [20161207-IR-080160210FRA](#))

[80 IAC 8-3-8](#) Approval of contracts, amendments, and renewals

Authority: [IC 15-13-2-9](#); [IC 15-13-3-8](#)

Affected: [IC 15-13-2](#)

Sec. 8. (a) The executive director, on behalf of the commission, shall approve contracts that are:

- (1) less than one hundred thousand dollars (\$100,000); or
- (2) special procurements meeting the terms of section 7(a)(1) or 7(a)(6) of this rule, where expediency and timeliness are essential.

(b) Contracts that have a value of at least fifty thousand dollars (\$50,000) over the term of the contract are subject to the review and approval of the office of attorney general as to form and legality.

(c) The commission shall approve contracts that have a value of at least one hundred thousand dollars (\$100,000) over the term of the contract.

(d) Contract amendments or modifications may be entered into by the commission, and the approval requirements under this section shall apply.

(e) The commission may enter into contract renewals so long as such renewal is provided for in the contract. Renewals that do not contain any amendments or modifications do not require approval by the commission as described in subsection (c) or the office of the attorney general.

(State Fair Commission; [80 IAC 8-3-8](#); filed Nov 7, 2016, 3:46 p.m.: [20161207-IR-080160210FRA](#))

[80 IAC 8-3-9](#) Cancellation or rejection of solicitation; procedures

Authority: [IC 15-13-2-9](#); [IC 15-13-3-8](#)

Affected: [IC 15-13-2](#)

Sec. 9. (a) Prior to opening, a solicitation may be canceled, in whole or in part, when the executive director determines, in writing, that such action is in the best interest of the commission for reasons including, but not limited to, the following:

- (1) The commission no longer requires the services or supplies.
- (2) The commission no longer can reasonably expect to fund the procurement.
- (3) Proposed amendments to the solicitation would be of such magnitude that a new solicitation is desirable.

(b) When a solicitation is canceled prior to opening, notice of cancellation shall be sent to all businesses that have received a solicitation. The notice of cancellation shall identify the solicitation and cite the reason for cancellation. The reason for cancellation shall be made a part of the procurement file and shall be available for public inspection.

(c) After opening but prior to award, all bids or proposals may be rejected, in whole or in part, when the executive director determines, in writing, that such action is in the best interest of the commission for reasons including, but not limited to, the following:

- (1) The services or supplies being procured are no longer required.
- (2) Ambiguous or otherwise inadequate specifications were part of the solicitation.
- (3) Prices exceed available funds, and it would not be appropriate to adjust quantities to come within available funds.
- (4) All otherwise acceptable bids or proposals received are at clearly unreasonable prices.
- (5) There is reason to believe that the bids or proposals:
 - (A) may not have been independently arrived at in open competition;
 - (B) may have been collusive; or
 - (C) may have been submitted in bad faith.

A notice of rejection shall be sent to all businesses that submitted bids or proposals. The reason for rejection shall be made a part of the procurement file and shall be made available for public inspection.

(d) After opening but prior to award, individual bids or proposals may be formally rejected when the executive director makes a written determination that:

- (1) the business that submitted the bid is determined to be not responsible under [80 IAC 8-4-1](#);
- (2) the bid is not responsive in that it does not conform in all material respects to the requirements of the solicitation; and

(3) the services or supplies offered are unacceptable by reason of their failure to meet the requirements of the specifications or permissible alternatives or other acceptability criteria set forth in the solicitation.

The determination shall be made a part of the procurement file.

(State Fair Commission; [80 IAC 8-3-9](#); filed Nov 7, 2016, 3:46 p.m.: [20161207-IR-080160210FRA](#))

[80 IAC 8-3-10](#) Public notice

Authority: [IC 15-13-2-9](#); [IC 15-13-3-8](#)

Affected: [IC 15-13-2](#)

Sec. 10. (a) Whenever public notice is required by applicable sections of this rule, the notice shall be given in the manner prescribed by this section.

(b) When services or supplies are procured under section 4 or 5 of this rule, notice shall be published once a week for two (2) consecutive weeks.

(c) Whenever publication of notice is required by this section, the notice shall be published in one (1) newspaper of general circulation in Marion County, Indiana.

(d) The contracts department shall post notices:

- (1)** on a public bulletin board in or outside the contracts department office; and
- (2)** on the commission's website.

(e) The contracts department shall schedule all notices given under this section so as to provide a reasonable amount of time for preparation and submission of responses after notification. The period between the:

- (1)** last publication, mailing, or posting of notices; and
 - (2)** final date set for submitting bids, offers, or proposals;
- may not be less than five (5) business days, excluding holidays.

(f) The contracts department shall cause issuance of notices, invitations to bid, requests for offers, or requests for proposals by mail or e-mail to prospective bidders or offerors known to or made known to him or her. However, failure to give personal notice to a particular bidder or offeror does not invalidate a procurement under this rule.

(State Fair Commission; [80 IAC 8-3-10](#); filed Nov 7, 2016, 3:46 p.m.: [20161207-IR-080160210FRA](#))

[80 IAC 8-3-11](#) Solicitation for procurement; separate contracts; fixed unit prices

Authority: [IC 15-13-2-9](#); [IC 15-13-3-8](#)

Affected: [IC 15-13-2](#)

Sec. 11. (a) A solicitation for a procurement under this rule may provide that offers will be received and contracts will be awarded in whole or in part or for any combination of a line or class of services or supplies contained in the solicitation. If the solicitation is silent about awarding the solicitation in whole or in part, the commission may award separate contracts under this section to different offerors only if the executive director makes a determination showing that the award of separate contracts is in the interest of efficiency or economy.

(b) A solicitation for a procurement under this rule may provide that the contracts department will award a contract for the procurement of supplies for an unspecified number of items at a fixed price per unit. Such a contract may include a formula or a method for escalation of the unit price.

(State Fair Commission; [80 IAC 8-3-11](#); filed Nov 7, 2016, 3:46 p.m.: [20161207-IR-080160210FRA](#))

[80 IAC 8-3-12](#) Identification of each beneficiary and empowered settlor

Authority: [IC 15-13-2-9](#); [IC 15-13-3-8](#)

Affected: [IC 15-13-2](#); [IC 30-4-1-1](#)

Sec. 12. (a) This section applies whenever a contract is awarded by sealed bidding or acceptance of proposals.

(b) A bid or proposal submitted by a trust (as defined in [IC 30-4-1-1\(a\)](#)) must identify each of the following:

- (1) Beneficiary of the trust.
- (2) Settlor empowered to revoke or modify the trust.

(State Fair Commission; [80 IAC 8-3-12](#); filed Nov 7, 2016, 3:46 p.m.: [20161207-IR-080160210FRA](#))

Rule 4. Qualifications and Duties of Bidders, Offerors, and Prospective Contractors

[80 IAC 8-4-1](#) Determination of nonresponsibility

Authority: [IC 15-13-2-9](#)

Affected: [IC 15-13-2](#)

Sec. 1. (a) If a bidder or offeror fails to provide information required by the solicitation or the commission concerning a determination of whether that bidder or offeror is a responsible bidder or offeror, that bidder or offeror may not be considered a responsible bidder or offeror for the purposes of this rule.

(b) If a bidder or offeror is not a responsible bidder or offeror, that determination shall be made in writing by the procurement officer.

(State Fair Commission; [80 IAC 8-4-1](#); filed Nov 7, 2016, 3:46 p.m.: [20161207-IR-080160210FRA](#))

[80 IAC 8-4-2](#) Foreign corporations; bids and offers; necessity of registration

Authority: [IC 15-13-2-9](#)

Affected: [IC 15-13-2](#); [IC 23-1-49-1](#)

Sec. 2. A bidder or offeror that is a foreign corporation must be registered with the secretary of state to do business in Indiana in order to be considered responsible, unless the activity required by the contract is exempt pursuant to [IC 23-1-49-1](#).

(State Fair Commission; [80 IAC 8-4-2](#); filed Nov 7, 2016, 3:46 p.m.: [20161207-IR-080160210FRA](#))

Rule 5. Types of Contracts

[80 IAC 8-5-1](#) Prohibited contracts

Authority: [IC 15-13-2-9](#)

Affected: [IC 15-13-2](#)

Sec. 1. Any type of contract not otherwise prohibited by law, except a cost plus a percentage of cost contract, may be used; however, a firm fixed price contract is preferred. Any other type of contract may be used only when the executive director determines that it is in the commission's best interest.

(State Fair Commission; [80 IAC 8-5-1](#); filed Nov 7, 2016, 3:46 p.m.: [20161207-IR-080160210FRA](#))

[80 IAC 8-5-2](#) Permissible contract types

Authority: [IC 15-13-2-9](#)

Affected: [IC 15-13-2](#)

Sec. 2. (a) Contracts for a firm fixed price are permissible. All contracts that are not for a firm fixed price must meet the conditions of subsection (b).

(b) A contract type other than a firm fixed price contract may be used only if the executive director determines in writing, the following:

- (1) The proposed contractor's accounting system will permit timely development of all necessary cost data in the form required by the specific contract type contemplated.**
- (2) The proposed contractor's accounting system is adequate to allocate costs in accordance with the generally accepted accounting principles.**

(c) In addition to the requirements of subsection (b), a cost reimbursement contract may be used if the executive director determines in writing that the contract is likely to be less costly to the commission than any other type, or that it is impracticable to obtain the supplies or services required except under such a contract.

(State Fair Commission; [80 IAC 8-5-2](#); filed Nov 7, 2016, 3:46 p.m.: [20161207-IR-080160210FRA](#))

Rule 6. Determinations, Records, and Reports of the Contracts and Purchasing Departments

[80 IAC 8-6-1](#) Anticompetitive practices; reporting

Authority: [IC 15-13-2-9](#)

Affected: [IC 15-13-2](#)

Sec. 1. When, for any reason, collusion or other anticompetitive practices are suspected among any bidders or offerors, a notice of the relevant facts shall be transmitted to the attorney general.

(State Fair Commission; [80 IAC 8-6-1](#); filed Nov 7, 2016, 3:46 p.m.: [20161207-IR-080160210FRA](#))

[80 IAC 8-6-2](#) Retention of procurement records; contracts

Authority: [IC 15-13-2-9](#)

Affected: [IC 5-15-5.1](#); [IC 15-13-2](#)

Sec. 2. All procurement records and contracts shall be retained and disposed of in accordance with records retention guidelines and schedules approved by the Indiana archives and records administration under [IC 5-15-5.1](#).

(State Fair Commission; [80 IAC 8-6-2](#); filed Nov 7, 2016, 3:46 p.m.: [20161207-IR-080160210FRA](#))

SECTION 3. [80 IAC 9](#) IS ADDED TO READ AS FOLLOWS:

ARTICLE 9. COMMISSION WORKS

Rule 1. General Provisions

[80 IAC 9-1-1](#) Applicability

Authority: [IC 15-13-2-9](#)

Affected: [IC 15-13-2](#)

Sec. 1. (a) This article applies to work or improvements to be performed on real property that is being, or that will be, held in trust or leased by the commission from another person if the lease gives the commission an option to buy the real property.

(b) This article does not apply to work or improvements made to real property that is being, or will be

leased by the commission from another person where the commission has no interest in the real property after expiration of the lease. However, a lease between any lessor and the commission may provide that any of the provisions of this article will apply to any work or improvements to be made in the leased real property.

(State Fair Commission; [80 IAC 9-1-1](#); filed Nov 7, 2016, 3:46 p.m.: [20161207-IR-080160210FRA](#))

[80 IAC 9-1-2](#) Compliance with certain statutes

Authority: [IC 15-13-2-9](#)

Affected: [IC 5-16](#); [IC 15-13-2](#)

Sec. 2. The commission shall comply with this article and the following statutes in the administration of commission works contracts:

- (1) [IC 5-16-1](#), if the estimated cost of the commission works project is at least one hundred fifty thousand dollars (\$150,000).
- (2) [IC 5-16-2](#) – Public Works Bids to be Submitted and Opened at Public Meeting.
- (3) [IC 5-16-3](#) – Filing Blueprints and Specifications.
- (4) [IC 5-16-5](#) – Withholding and Bond to Secure Payment of Subcontractors, Labor, and Materialmen.
- (5) [IC 5-16-5.5](#) – Retainage, Bonds, and Payment of Contractors and Subcontractors.
- (6) [IC 5-16-6](#) – Discrimination by Contractors and Subcontractors Prohibited.
- (7) [IC 5-16-6.5](#) – Minority Business Certification.
- (8) [IC 5-16-7.2](#) – Wage Scales for Public Works Projects.
- (9) [IC 5-16-8](#) – Steel Procurement for Public Works.
- (10) [IC 5-16-9](#) – Parking Facilities for Persons with Physical Disabilities.
- (11) [IC 5-16-11](#) – Disclosure of Economic Interests by Consultants in Public Projects.
- (12) [IC 5-16-12.2](#) – Use of Energy Efficient Technology.
- (13) [IC 5-16-13](#) – Requirements for Contractors on Public Works Projects.

(State Fair Commission; [80 IAC 9-1-2](#); filed Nov 7, 2016, 3:46 p.m.: [20161207-IR-080160210FRA](#))

[80 IAC 9-1-3](#) Public records; retention of written determinations

Authority: [IC 15-13-2-9](#)

Affected: [IC 5-14-3](#); [IC 15-13-2](#)

Sec. 3. (a) Except as otherwise provided by law, records of the commission relative to this article are public records subject to inspection under [IC 5-14-3](#).

(b) The commission shall retain written determinations required by this article in the official contract file of the commission.

(State Fair Commission; [80 IAC 9-1-3](#); filed Nov 7, 2016, 3:46 p.m.: [20161207-IR-080160210FRA](#))

Rule 2. Duties of the Commission; Assignment of Commission Works Projects

[80 IAC 9-2-1](#) Duties of the commission

Authority: [IC 15-13-2-9](#)

Affected: [IC 4-22-2](#); [IC 15-13-2](#)

Sec. 1. (a) Except as otherwise provided in this article, the commission shall do the following:

- (1) Consider and decide matters of policy under this article.
- (2) Contract for as needed professional consulting services to carry out the provisions of this article.

(b) The consulting engineer or architect of the commission, and on behalf of the commission, shall do the following:

- (1) Prepare or supervise preparation of contract documents for commission works projects.

- (2) Approve contract documents for commission works projects.
- (3) Advertise for bids for commission works contracts.
- (4) Recommend to the commission and executive director award of commission works contracts.
- (5) Supervise or cause inspection of, or both, all work relating to commission works projects.
- (6) Recommend to the executive director and the commission approval of any necessary lawful changes in contract documents relating to a commission works contract that has been awarded.
- (7) Approve or reject estimates for payment.
- (8) Accept or reject a commission works project, subject to the review and approval of the executive director or the commission, as applicable.

(c) Except as otherwise provided, whenever a duty is specified or authority is granted that relates to the estimated dollar value of a commission works project, the executive director shall make the determination of the value of the project. The determination of the executive director is:

- (1) final and conclusive; and
- (2) the amount against which the existence of the duty or the authority shall be determined; even if it is later found that the determination of the executive director was erroneous.

(State Fair Commission; [80 IAC 9-2-1](#); filed Nov 7, 2016, 3:46 p.m.: [20161207-IR-080160210FRA](#))

Rule 3. Qualifications for Commission Works Projects

[80 IAC 9-3-1](#) Qualifications of prospective contractors and persons providing professional services

Authority: [IC 15-13-2-9](#)

Affected: [IC 4-13.6-4](#); [IC 15-13-2](#)

Sec. 1. (a) All persons desiring to serve as contractors or perform professional services relating to a commission works project must be registered and certified by the state of Indiana, public works certification board, in accordance with the provisions of [IC 4-13.6-4](#).

(b) Proof of such registry or certification must be included with any bid or quotation submitted by persons who desire to perform a professional service or by a contractor in response to any form of an invitation to bid or quote issued by the commission.

(State Fair Commission; [80 IAC 9-3-1](#); filed Nov 7, 2016, 3:46 p.m.: [20161207-IR-080160210FRA](#))

Rule 4. Bidding Requirements

[80 IAC 9-4-1](#) Method of awarding contracts; approval of contract documents

Authority: [IC 15-13-2-9](#)

Affected: [IC 15-13-2](#)

Sec. 1. (a) Commission works contracts must be awarded under section 2 of this rule unless another method is authorized under this rule.

(b) At the discretion of the commission or commission representative, a duly certified or registered architect or licensed engineer may be utilized to approve the contract documents for a commission works project. A consulting engineer or architect may be retained by the commission by a professional services contract for the purpose of assisting in the administration of the provisions of this article.

(State Fair Commission; [80 IAC 9-4-1](#); filed Nov 7, 2016, 3:46 p.m.: [20161207-IR-080160210FRA](#))

[80 IAC 9-4-2](#) Projects costing \$150,000 or more; bidding procedure; records

Authority: [IC 15-13-2-9](#)

Affected: [IC 5-16-1-2](#); [IC 15-13-2](#); [IC 30-4-1-1](#)

Sec. 2. (a) Except as provided by this rule, if the estimated cost of a commission works project is at least one hundred fifty thousand dollars (\$150,000), the commission shall award a contract for the project based on competitive sealed bids.

(b) If the estimated cost of a commission works project is at least one hundred fifty thousand dollars (\$150,000), the commission shall:

- (1)** cause development of contract documents for a commission works contract; and
- (2)** keep the contract documents on file in its offices so that they may be inspected by contractors and members of the public.

(c) The commission shall direct the advertisement for bids under section 7 of this rule. The executive director, with the review and approval of the commission, shall award a contract under [80 IAC 9-5](#).

(d) As a part of the bid, a contractor shall submit under oath a financial statement that complies with the requirements of [IC 5-16-1-2](#).

(e) The commission or executive director, upon the written recommendation of the consulting engineer or architect of the commission, shall reject the bid of a contractor if:

- (1)** the contractor is not qualified under [80 IAC 9-3-1](#);
- (2)** the executive director makes a written determination, based upon information provided under subsection (d) and this subsection, that the contractor is not qualified to perform the commission works contract;
- (3)** the contractor has:
 - (A)** failed to perform a previous contract with the commission satisfactorily based upon a written determination by the executive director; and
 - (B)** submitted the bid during the period of suspension imposed by the executive director; or
- (4)** the contractor has not complied with:
 - (A)** a rule adopted under this article and the rule specifies that failure to comply with it is a ground for rejection of a bid; or
 - (B)** any requirement under subsection (g).

(f) The commission shall keep a record of all bids. The record must include at least the following information:

- (1)** The name of each contractor.
- (2)** The amount bid by each contractor.
- (3)** The name of the contractor making the lowest bid.
- (4)** The name of the contractor to whom the contract was awarded.
- (5)** The reason the contract was awarded to a contractor other than the lowest bidder, if applicable.

(g) This subsection applies whenever a contract is awarded by competitive sealed bidding. A bid submitted by a trust (as defined in [IC 30-4-1-1\(a\)](#)) must identify each of the following:

- (1)** The beneficiary of the trust.
- (2)** The settlor empowered to revoke or modify the trust.

(State Fair Commission; [80 IAC 9-4-2](#); filed Nov 7, 2016, 3:46 p.m.: [20161207-IR-080160210FRA](#))

[80 IAC 9-4-3](#) Projects costing less than \$150,000; quotations from contractors; award

Authority: [IC 15-13-2-9](#)

Affected: [IC 5-16-1-3](#); [IC 15-13-2](#)

Sec. 3. (a) If the estimated cost of a commission works project is less than one hundred fifty thousand dollars (\$150,000), the executive director, in his or her discretion, may award a commission works contract either under:

- (1)** section 2 of this rule; or
- (2)** this section.

(b) If the executive director awards a contract under this section, the commission shall:

- (1) publish notice in accordance with [IC 5-16-1-3\(a\)](#); or
- (2) require the invitation of quotations from at least three (3) contractors known to them to deal in the work required to be done in accordance with [IC 5-16-1-3\(b\)\(2\)](#).

Failure to receive three (3) quotations shall not prevent an award from being made.

(c) Quotations given by a contractor under this section:

- (1) must be in writing;
- (2) shall be considered firm; and
- (3) may be the basis upon which the executive director awards a commission works contract.

(d) A contract shall be awarded to the lowest responsible and responsive contractor.

(e) This subsection applies whenever a contract is awarded by quotation. A quote submitted by a trust (as defined in [IC 30-4-1-1\(a\)](#)) must identify each of the following:

- (1) The beneficiary of the trust.
- (2) The settlor empowered to revoke or modify the trust.

(State Fair Commission; [80 IAC 9-4-3](#); filed Nov 7, 2016, 3:46 p.m.: [20161207-IR-080160210FRA](#))

[80 IAC 9-4-4](#) Performance of commission works projects by employees of the commission

Authority: [IC 15-13-2-9](#)

Affected: [IC 15-13-2](#)

Sec. 4. If the estimated cost of a commission works project, including labor and materials, is less than one hundred fifty thousand dollars (\$150,000), the project may be performed by appropriate employees of the commission without awarding a commission works contract under section 2 of this rule.

(State Fair Commission; [80 IAC 9-4-4](#); filed Nov 7, 2016, 3:46 p.m.: [20161207-IR-080160210FRA](#))

[80 IAC 9-4-5](#) Emergency conditions; quotations from contractors; awards

Authority: [IC 15-13-2-9](#)

Affected: [IC 5-16-1-1.6](#); [IC 15-13-2](#)

Sec. 5. (a) When the executive director, in accordance with [IC 5-16-1-1.6](#), makes a written determination that an emergency condition:

(1) exists due to:

- (A) a fire;
- (B) a flood;
- (C) a windstorm;
- (D) a casualty; or
- (E) another condition (including mechanical failure of any part of a building or structure); and

(2) endangers:

- (A) the health, safety, or welfare of the public; or
- (B) necessary operations;

the executive director may act to repair any damage caused by the emergency condition without awarding a commission works contract under section 2 of this rule.

(b) In the case of an emergency described in subsection (a), the commission may invite quotations from at least three (3) contractors known to the commission to deal in the work required to be done and record the same consistent with the requirements of [IC 5-16-1-1.6](#). Failure to receive three (3) quotations shall not prevent an award from being made.

(c) The contracts department shall keep a copy of the:

- (1) executive director's determination; and
- (2) names of the contractors from whom quotations were invited;

in the appropriate files.

(d) The executive director shall award a contract to the lowest responsible and responsive contractor. However, the executive director may award a contract to a contractor not qualified under [80 IAC 9-3-1](#) if necessary to remedy the emergency condition.

(State Fair Commission; [80 IAC 9-4-5](#); filed Nov 7, 2016, 3:46 p.m.: [20161207-IR-080160210FRA](#))

[80 IAC 9-4-6](#) Land acquisition; professional services

Authority: [IC 15-13-2-9](#)

Affected: [IC 15-13-2](#)

Sec. 6. (a) Competitive bids are not required for the acquisition of land or for professional services relating to commission works projects.

(b) The executive director shall consider only the competence and the qualifications of the persons offering to perform the professional services in relation to the type of services to be performed. The executive director, or his or her authorized designee, shall negotiate compensation for performance of the professional services that the commission determines is reasonable.

(State Fair Commission; [80 IAC 9-4-6](#); filed Nov 7, 2016, 3:46 p.m.: [20161207-IR-080160210FRA](#))

[80 IAC 9-4-7](#) Solicitation of sealed bids; public notice

Authority: [IC 15-13-2-9](#)

Affected: [IC 15-13-2](#)

Sec. 7. (a) This section applies only to commission works contracts bid under section 2 of this rule.

(b) The consulting engineer or architect shall solicit sealed bids by public notice inserted once each week for two (2) successive weeks before the final date of submitting bids in:

(1) one (1) newspaper of general circulation in Marion County, Indiana; and

(2) if any part of the project is located in an area outside of Marion County, Indiana, one (1) newspaper of general circulation in that area.

The contracts department shall designate the newspapers for these publications. The contracts department may designate different newspapers according to the nature of the project and may direct that additional notices be published. The contracts department shall also solicit sealed bids for commission works projects by sending notices by mail to prospective contractors known to the contracts department and by posting notices on a public bulletin board in or outside its office at least two (2) successive weeks before the final date for submitting bids for the commission works project.

(State Fair Commission; [80 IAC 9-4-7](#); filed Nov 7, 2016, 3:46 p.m.: [20161207-IR-080160210FRA](#))

[80 IAC 9-4-8](#) Copies of bids or quotations; files; public records

Authority: [IC 15-13-2-9](#)

Affected: [IC 5-14-3](#); [IC 5-15-5.1](#); [IC 15-13-2](#)

Sec. 8. (a) The contracts department shall make a copy of those portions of the bids or quotations that, if altered, would affect the integrity of the bid or quotation available as soon as possible after the bids or quotations are opened so that they may be inspected and copied by the public under [IC 5-14-3](#). The contracts department may make these copies by means of electronic media or by any other means that the procurement officer may specify.

(b) The contracts department shall keep in a file all original bids or quotations and all documents pertaining to the award of a commission works contract or a professional services contract.

(c) The:

(1) copies required by subsection (a); and

(2) files required by subsection (b);

are public records under [IC 5-14-3](#). The contracts department shall retain these copies and files according to retention schedules established for these records under [IC 5-15-5.1](#).

(State Fair Commission; [80 IAC 9-4-8](#); filed Nov 7, 2016, 3:46 p.m.: [20161207-IR-080160210FRA](#))

[80 IAC 9-4-9](#) Commencement of warranty period

Authority: [IC 15-13-2-9](#)

Affected: [IC 15-13-2](#)

Sec. 9. Each commission works contract must require that all warranty periods applying to work performed under the contract commence not later than the date that all work under the contract is substantially completed as determined by the commission.

(State Fair Commission; [80 IAC 9-4-9](#); filed Nov 7, 2016, 3:46 p.m.: [20161207-IR-080160210FRA](#))

[80 IAC 9-4-10](#) Void contracts

Authority: [IC 15-13-2-9](#)

Affected: [IC 15-13-2](#); [IC 15-16-2-2](#)

Sec. 10. All commission works contracts not let in conformity with this rule are void.

(State Fair Commission; [80 IAC 9-4-10](#); filed Nov 7, 2016, 3:46 p.m.: [20161207-IR-080160210FRA](#))

Rule 5. Bid Opening and Award of Contracts

[80 IAC 9-5-1](#) Sealed bids; opening procedures; time to submit bids

Authority: [IC 15-13-2-9](#)

Affected: [IC 15-13-2](#)

Sec. 1. (a) All bids shall be sealed in an envelope when submitted to the commission's consulting engineer or architect.

(b) The consulting engineer or architect shall open bids in public and read them aloud at the time and place designated in the instructions. Contractors and all other members of the public are entitled to attend bid openings. Before contractors and other members of the public are permitted to inspect and copy bids, the contracts department shall copy bids as required under [80 IAC 9-4-8](#).

(c) The consulting engineer or architect may not require any contractor to submit its bid at any time earlier than the time specified in the instructions for opening of bids.

(d) The consulting engineer or architect shall make a recommendation to the commission concerning the award or rejection of a contract to the lowest responsible and responsive contractor.

(State Fair Commission; [80 IAC 9-5-1](#); filed Nov 7, 2016, 3:46 p.m.: [20161207-IR-080160210FRA](#))

[80 IAC 9-5-2](#) Award of contracts; criteria; rejection or waiver of nonconforming bids

Authority: [IC 15-13-2-9](#)

Affected: [IC 15-13-2](#)

Sec. 2. All bids shall conform to all applicable requirements of the specifications, including the instructions to bidders, general conditions, and special conditions. The executive director shall

tentatively reject any bid failing to adhere to or conform to such conditions. The award of a contract shall be made on the basis of the lowest responsible and responsive bid.

(State Fair Commission, [80 IAC 9-5-2](#); filed Nov 7, 2016, 3:46 p.m.: [20161207-IR-080160210FRA](#))

[80 IAC 9-5-3](#) Single bid received; criteria for acceptance

Authority: [IC 15-13-2-9](#)

Affected: [IC 15-13-2](#)

Sec. 3. If, after proper solicitation of bids, only one (1) bid is received, the executive director shall make a thorough review of the situation in consort with the contracts department to determine whether the one (1) bid should be accepted or rejected and rebid. In making this determination, the executive director shall consider the type of work, its competitiveness, the timely need of the project, the possibility of unfavorable prices if rebid, the possible loss of the low bidder if rebid, and the equitable fairness to the single bidder of having his or her bid divulged to subsequent bidders if the project is rebid.

(State Fair Commission [80 IAC 9-5-3](#); filed Nov 7, 2016, 3:46 p.m.: [20161207-IR-080160210FRA](#))

[80 IAC 9-5-4](#) Notice to proceed; extensions of time; notice of withdrawal of bid and rejection of contract

Authority: [IC 15-13-2-9](#)

Affected: [IC 15-13-2](#)

Sec. 4. (a) Within sixty (60) days from the date on which bids are opened, the executive director may award a contract, or if approval is obtained from the commission based upon the dollar amount of the contract under [80 IAC 8-3-8](#) the commission shall award a contract and direct the contracts department to provide the successful contractor with written notice to proceed.

(b) If the executive director or the commission fails to award and execute a contract and to direct the issuance of a notice to proceed within sixty (60) days after bids for the contract are opened, the successful contractor may grant one (1) or more extensions of time to award a contract, to execute the contract, and to provide a notice to proceed. The date that an extension of time granted under this subsection expires must be a date upon which the executive director and the successful contractor agree.

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

(State Fair Commission; [80 IAC 9-5-4](#); filed Nov 7, 2016, 3:46 p.m.: [20161207-IR-080160210FRA](#))

Rule 6. Bonding; Escrow; Retainages

[80 IAC 9-6-1](#) Applicability

Authority: [IC 15-13-2-9](#)

Affected: [IC 15-13-2](#)

Sec. 1. The executive director may apply this rule to commission works projects with an estimated cost less than the amounts specified in section 2 or 7 of this rule.

(State Fair Commission; [80 IAC 9-6-1](#); filed Nov 7, 2016, 3:46 p.m.: [20161207-IR-080160210FRA](#))

[80 IAC 9-6-2](#) Contract provisions for retainage of payments; escrow accounts and agreements

Authority: [IC 15-13-2-9](#)

Affected: [IC 15-13-2](#)

Sec. 2. (a) If the cost of a commission works project is at least one hundred fifty thousand dollars (\$150,000), the consulting engineer or architect shall include, as part of the commission works contract, provisions for the retainage of portions of payments by the commission to the contractor, by the contractor to subcontractors, and for the payment of subcontractors. The contract must provide that the commission may withhold from the contractor sufficient funds from the contract price to pay subcontractors as provided in section 4 of this rule.

(b) A commission works contract and contracts between contractors and subcontractors, if portions of the commission works contract are subcontracted, must include a provision that at the time any retainage is withheld, the commission or the contractor, as the case may be, may place the retainage in an escrow account with:

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

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

(c) The escrow agreement must provide the following:

- (1) The escrow agent shall promptly invest all escrowed principal in the obligations that the escrow agent selects, in its discretion.**
- (2) The escrow agent shall hold the escrowed principal and income until it receives notice from the executive director and the contractor or the contractor and subcontractor specifying the:**
 - (A) percentage of the escrowed principal to be released from the escrow; and**
 - (B) persons to whom this percentage is to be released.**

When it receives this notice, the escrow agent shall promptly pay the designated portion of escrowed principal and the same proportion of the escrowed income to the persons designated in the notice.

(3) The escrow agent shall be compensated for its services as the parties may agree. The compensation shall be a commercially reasonable fee commensurate with fees being charged at the time the escrow fund is established for the handling of escrow accounts of like size and duration. The fee must be paid from the escrowed income of the escrow account.

(d) The escrow agreement may include other terms and conditions that are not inconsistent with subsection (c). Additional provisions may include provisions:

- (1) authorizing the escrow agent to commingle the escrowed funds held under other escrow agreements; and**
- (2) limiting the liability of the escrow agent.**

(State Fair Commission; [80 IAC 9-6-2](#); filed Nov 7, 2016, 3:46 p.m.: [20161207-IR-080160210FRA](#))

[80 IAC 9-6-3](#) Amount of retainage withheld

Authority: [IC 15-13-2-9](#)

Affected: [IC 15-13-2](#)

Sec. 3. (a) To determine the amount of retainage to be withheld, the commission shall elect one (1) of the following options:

- (1) To withhold no more than ten percent (10%) of the dollar value of all work satisfactorily completed until the commission work is substantially complete.**
- (2) To withhold no more than five percent (5%) of the dollar value of all work satisfactorily completed until the commission work is substantially complete.**

(b) If upon substantial completion of the work there are any remaining uncompleted minor items, the commission shall withhold, until those items are completed, an amount equal to two hundred percent (200%) of the value of each item as determined by the consulting engineer or architect.

(c) As approved by the executive director and director of facility maintenance, or his or her designee, the commission may choose to release a portion of retainage under certain circumstances, including, but

not limited to, the following:

- (1) Lengthy time frame to project completion.
- (2) The dollar amount of the retainage is more than sufficient to complete any remaining work.
- (3) Extenuating circumstances as the commission deems appropriate.

(State Fair Commission; [80 IAC 9-6-3](#); filed Nov 7, 2016, 3:46 p.m.: [20161207-IR-080160210FRA](#))

[80 IAC 9-6-4](#) Payment of subcontractors and suppliers by contractor or escrow agent; certification of previous payments

Authority: [IC 15-13-2-9](#)

Affected: [IC 4-13.6-4-13](#); [IC 15-13-2](#)

Sec. 4. (a) Within ten (10) days of receipt of any payment by the commission or its designated representative, or the escrow agent, the contractor or escrow agent shall pay each subcontractor the appropriate share of the payment the contractor received based upon the service performed by the subcontractor.

(b) The contractor shall furnish to the commission a sworn statement or certification at the time of payment to it that all subcontractors have received their share of the previous payment to the contractor. The making of an incorrect certification may be considered a breach of contract by the commission, and the commission may exercise all its rights set out in the contract in addition to the remedies for falsifying an affidavit. Making an incorrect certification may also result in a submission of notice of such falsification to the state of Indiana, public works certification board, which may result in a revocation of the contractor's qualifications under [IC 4-13.6-4-13\(b\)](#) at the discretion of the public works certification board.

(State Fair Commission; [80 IAC 9-6-4](#); filed Nov 7, 2016, 3:46 p.m.: [20161207-IR-080160210FRA](#))

[80 IAC 9-6-5](#) Bid bonds

Authority: [IC 15-13-2-9](#)

Affected: [IC 15-13-2](#)

Sec. 5. (a) The executive director may require each contractor to submit a good and sufficient bid bond with the bid. The bid bond may equal any percentage of the estimated cost of the commission works project that the executive director requires.

(b) The consulting engineer or architect may accept bids provided on forms specified by the commission or on forms provided by surety companies.

(State Fair Commission; [80 IAC 9-6-5](#); filed Nov 7, 2016, 3:46 p.m.: [20161207-IR-080160210FRA](#))

[80 IAC 9-6-6](#) Payment bonds

Authority: [IC 15-13-2-9](#)

Affected: [IC 15-13-2](#)

Sec. 6. (a) The commission shall require the contractor to execute a good and sufficient payment bond to the commission in an amount equal to one hundred percent (100%) of the total contract price. The bond shall include at least the following provisions:

- (1) The contractor and its successors and assigns, and all subcontractors and their successors and assigns, whether by operation of law or otherwise, shall pay all indebtedness that may accrue to any person on account of any labor or service performed or materials furnished in relation to the commission work.
- (2) The bond shall directly ensure to the benefit of subcontractors, laborers, suppliers, and those performing service or who may have furnished or supplied labor, material, or service in relation to the commission work.
- (3) No change, modification, omission, or addition in or to the terms or conditions of the contract,

plans, specifications, drawings, or profile or any irregularity or defect in the contract or in the procedures preliminary to the letting and awarding of the contract shall affect or operate to release or discharge the surety in any way.

(4) The provisions and conditions of this rule shall be a part of the terms of the contract and bond.

(b) The commission may:

(1) permit the bond given by the contractor to provide for incremental bonding in the form of multiple or chronological bonds that, if taken as a whole, equal the total contract price; and

(2) accept bonds provided on forms:

- (A) specified by the commission; or
- (B) given by surety companies.

(c) The commission shall:

(1) hold the bond of a contractor for the use and benefit of any claimant having an interest in it and entitled to its benefits; and

(2) not release sureties of a contractor until the expiration of one (1) year after the final settlement with the contractor.

(State Fair Commission; [80 IAC 9-6-6](#); filed Nov 7, 2016, 3:46 p.m.: [20161207-IR-080160210FRA](#))

[80 IAC 9-6-7](#) Performance bonds

Authority: [IC 15-13-2-9](#)

Affected: [IC 5-16-5.5](#); [IC 15-13-2](#)

Sec. 7. (a) The commission shall require the contractor to execute a good and sufficient performance bond to the commission in an amount equal to one hundred percent (100%) of the total contract price on all contracts over one hundred fifty thousand dollars (\$150,000) in accordance with [IC 5-16-5.5](#). The bond shall include at least the following provisions:

(1) The contractor shall well and faithfully perform the contract.

(2) No change, modifications, omission, or addition in or to the terms or conditions of the contract, plans, specifications, drawings, or profile or any irregularity or defect in the contract or in the procedures preliminary to the letting and awarding of the contract shall affect or operate to release or discharge the surety in any way.

(3) The provisions and conditions of this rule shall be a part of the terms of the contract and bond.

(b) The commission may:

(1) permit the bond given by the contractor to provide for incremental bonding in the form of multiple or chronological bonds that, if taken as a whole, equal the total contract price; and

(2) accept bonds provided on forms:

- (A) specified by the commission; or
- (B) given by surety companies.

(c) The commission shall not release sureties of a contractor until the expiration of one (1) year after the final settlement with the contractor.

(State Fair Commission; [80 IAC 9-6-7](#); filed Nov 7, 2016, 3:46 p.m.: [20161207-IR-080160210FRA](#))

[80 IAC 9-6-8](#) Substantial completion, final settlement, and release of retainage

Authority: [IC 15-13-2-9](#)

Affected: [IC 5-16-5](#); [IC 15-13-2](#)

Sec. 8. (a) Whenever the project has progressed to the point of substantial completion, a review shall be made by the consulting architect or engineer accompanied by the following:

(1) The contractor.

(2) A representative of the commission.

(b) After all deficiencies have been substantially remedied, the consulting architect or engineer shall recommend to the commission that the construction project be accepted. After the commission has accepted the project, the final billing may be submitted, accompanied by affidavits and other documents evidencing that all subcontracts and bills for materials and services have been paid.

(c) Except for amounts withheld from the contractor under section 3 of this rule for uncompleted items, the commission may make a full, final, and complete settlement with a contractor, including providing for full payment of all escrowed principal and escrowed income, within sixty-one (61) days following the date of substantial completion, as determined in writing by the commission if:

- (1) the contractor has materially fulfilled all of its obligations under the commission works contract;
- (2) the commission has received no claims from subcontractors or suppliers under this rule; and
- (3) the contractor has furnished satisfactory evidence showing full payment of all subcontractors and suppliers in the performance of the contract.

(d) After the commission makes a final settlement with a contractor, all claims by subcontractors and suppliers to funds withheld from the contractor under section 2 of this rule are barred.

(State Fair Commission; [80 IAC 9-6-8](#); filed Nov 7, 2016, 3:46 p.m.: [20161207-IR-080160210FRA](#))

[80 IAC 9-6-9](#) Payment of subcontractors and suppliers by the commission; proration of claims; disputed claims

Authority: [IC 15-13-2-9](#)

Affected: [IC 15-13-2](#)

Sec. 9. (a) If a subcontractor or a supplier files a claim with the commission under section 10 of this rule, and the claim is undisputed, the commission shall do the following:

- (1) Pay the claimant from the amounts retained from the contractor under section 2 of this rule.
- (2) Take a receipt for each payment.
- (3) Deduct the total amount paid to subcontractors and suppliers from the balance due the contractor.

(b) If there is not a sufficient amount owing to the contractor to pay all subcontractors and suppliers making undisputed claims under section 10 of this rule, then the commission shall prorate the amount withheld from the contractor and shall pay the prorated amount to each subcontractor and supplier entitled to a portion of the amount.

(c) If there is a dispute among the contractor, the subcontractors, and the suppliers as to the funds withheld by the commission, the commission shall retain sufficient funds until the dispute is settled and the correct amount to be paid to each person is determined. When the dispute is resolved, the commission shall make payments to persons making claims as provided in this section.

(State Fair Commission; [80 IAC 9-6-9](#); filed Nov 7, 2016, 3:46 p.m.: [20161207-IR-080160210FRA](#))

[80 IAC 9-6-10](#) Claims of subcontractors and suppliers; verification; notice to contractors and sureties; actions upon bonds

Authority: [IC 15-13-2-9](#)

Affected: [IC 15-13-2](#)

Sec. 10. (a) In order to:

- (1) receive payment under section 9 of this rule; or
- (2) proceed against the bond of the contractor required under section 6 of this rule;

any subcontractor or supplier making a claim for payment on account of having performed any labor or having furnished any material or service in relation to a commission works project must file a verified claim with the commission within sixty (60) days from the last labor performed, last material furnished, or last service rendered. The claim shall state the amount due and owing to the person and shall give as much detail explaining the claim as possible. The commission shall notify the contractor of any filed claims before taking action under section 9 of this rule.

(b) The claimant may not file suit against the contractor's surety on the contractor's bond until the expiration of thirty (30) days after filing of the claim with the commission. If the claim is not paid in full at the expiration of the thirty (30) day period, the claimant may bring an action in a court of competent jurisdiction in the claimant's own name upon the bond.

(State Fair Commission; [80 IAC 9-6-10](#); filed Nov 7, 2016, 3:46 p.m.: [20161207-IR-080160210FRA](#))

[80 IAC 9-6-11](#) Limitation of actions against sureties

Authority: [IC 15-13-2-9](#)

Affected: [IC 15-13-2](#)

Sec. 11. Unless the bond provides a greater period of time, all suits must be brought against a surety on a bond required by this rule within one (1) year after final settlement with the contractor under section 8 of this rule. All suits against the surety after this time are barred.

(State Fair Commission; [80 IAC 9-6-11](#); filed Nov 7, 2016, 3:46 p.m.: [20161207-IR-080160210FRA](#))

[80 IAC 9-6-12](#) Relationship to other laws

Authority: [IC 15-13-2-9](#)

Affected: [IC 15-13-2](#)

Sec. 12. This rule is intended to supplement all other laws protecting labor, subcontractors, or suppliers and shall not be construed as conflicting with them.

(State Fair Commission; [80 IAC 9-6-12](#); filed Nov 7, 2016, 3:46 p.m.: [20161207-IR-080160210FRA](#))

SECTION 4. [80 IAC 10](#) IS ADDED TO READ AS FOLLOWS:

ARTICLE 10. DISPOSAL OF PROPERTY

Rule 1. General Provisions

[80 IAC 10-1-1](#) Applicability

Authority: [IC 15-13-2-9](#)

Affected: [IC 15-13-2](#); [IC 32-34-1-17](#)

Sec. 1. The provisions of this article shall apply to all property owned by the commission. This rule shall not apply to unclaimed property as defined under [IC 32-34-1-17](#).

(State Fair Commission; [80 IAC 10-1-1](#); filed Nov 7, 2016, 3:46 p.m.: [20161207-IR-080160210FRA](#))

Rule 2. Disposal of Real and Personal Property

[80 IAC 10-2-1](#) Procedures and authorized methods of disposal

Authority: [IC 15-13-2-9](#)

Affected: [IC 6-2.5-2](#); [IC 15-13-2](#); [IC 15-13-4-3](#); [IC 20-18-2-12](#); [IC 36-1-2-17](#)

Sec. 1. (a) The executive director shall make a finding that property is surplus to the needs of the commission.

(b) Real property that is held in trust by the commission may only be transferred as set forth in [IC 15-13-4-3](#).

(c) One (1) or more of the following methods may be used either singularly or in combination for the disposal of property owned by the commission:

- (1) Transfer to another governmental entity.
- (2) Competitive sealed bid.
- (3) Public sale or auction.
- (4) Sale for reclamation or recycling.
- (5) Allowance made on another purchase.
- (6) Worthless property may be donated to:
 - (A) a charitable corporation;
 - (B) an educational entity or a school corporation (as defined by [IC 36-1-2-17](#)); or
 - (C) nonpublic schools (as defined in [IC 20-18-2-12](#)).
- (7) Worthless personal property with no intrinsic value or worth may be thrown away.

(d) Regardless of the selected method of disposal, detailed listings of property to be disposed of shall be maintained within the files of the commission.

(e) The proceeds derived from any of the selected methods of disposal shall be directly deposited in the general operating fund of the commission. The commission may further designate:

- (1) a specific fund under the general operating fund to which proceeds may be deposited; and
- (2) the types of expenditures of proceeds from the specified fund.

(f) Disposal of commission property shall be in accordance with this rule.

(g) The disposal of property owned by the commission may be subject to the applicable state gross retail tax as outlined in [IC 6-2.5-2](#).

(State Fair Commission; [80 IAC 10-2-1](#); filed Nov 7, 2016, 3:46 p.m.: [20161207-IR-080160210FRA](#))

[80 IAC 10-2-2](#) Disposal of property by means of competitive sealed bids

Authority: [IC 15-13-2-9](#)

Affected: [IC 15-13-2](#)

Sec. 2. (a) The executive director or the commission may direct that items for disposal may be disposed of through the competitive sealed bids method.

(b) When property owned by the commission is to be disposed of utilizing this method, the following procedures will apply:

- (1) A notice of proposed sale containing an itemized list of property to be disposed of must be prepared and published in at least one (1) newspaper of general circulation within Marion County, Indiana. The executive director may direct publication of the itemized list in additional newspapers as determined appropriate.
- (2) The notice of proposed sale will be published thirty (30) days prior to the date of the proposed sale. The notice of proposed sale must include the following:
 - (A) Date and time for the receipt of sealed competitive bids.
 - (B) Location of the property to be disposed of for inspection by potential bidders.
 - (C) Itemized list of property to be disposed of.
 - (D) Terms of the sale.
 - (E) Date and time of bid opening.
- (3) Award of property shall be made to the highest competitive bidder. Settlement and payment for property disposed of shall be as specified in the terms of the sale, unless otherwise approved by the commission or executive director.
- (4) Settlements of disputes arising concerning the property to be disposed of will be determined by the executive director or his or her authorized designee and shall be final and conclusive.

(State Fair Commission; [80 IAC 10-2-2](#); filed Nov 7, 2016, 3:46 p.m.: [20161207-IR-080160210FRA](#))

[80 IAC 10-2-3](#) Disposal of property by means of public sale or auction

Authority: [IC 15-13-2-9](#)

Affected: [IC 15-13-2](#)

Sec. 3. (a) The executive director, with approval of the commission, may direct that items for disposal may be disposed of through the public auction method.

(b) When property owned by the commission is to be disposed of utilizing this method, the following procedures will apply:

- (1) A notice of proposed sale containing an itemized list of property to be disposed of must be prepared and published in at least one (1) newspaper of general circulation within Marion County, Indiana. The executive director may direct publication of the itemized list in additional newspapers as determined appropriate.
- (2) The notice of proposed sale will be published thirty (30) days prior to the date of the proposed sale. The notice of proposed sale must include the following:
 - (A) Date and time of the proposed sale.
 - (B) Location of the property to be disposed of for inspection by the public.
 - (C) Location of the proposed sale, if different from the location for public inspection.
 - (D) Itemized list of property to be disposed of.
 - (E) Terms of the sale.
 - (F) Name of auctioneer, as appropriate.
- (3) Award of property shall be made to the highest bidder. Settlement and payment for property disposed of shall be as specified in the terms of the sale, unless otherwise approved by the commission or executive director.
- (4) Settlements of disputes arising concerning the property to be disposed of will be determined by the executive director or his or her authorized designee and shall be final and conclusive.
- (5) Nothing in this section shall be construed to prevent the designated auctioneer from advertising the sale independently as a normal and regular course of doing business. However, the auctioneer in posting such advertising shall include the items in subdivision (2)(A) through (2)(F) within any such advertisement.

(State Fair Commission; [80 IAC 10-2-3](#); filed Nov 7, 2016, 3:46 p.m.: [20161207-IR-080160210FRA](#))

[80 IAC 10-2-4](#) Disposal of property by means of sale for reclamation or recycling

Authority: [IC 15-13-2-9](#)

Affected: [IC 15-13-2](#)

Sec. 4. (a) The executive director, with approval of the commission, may direct that items for disposal may be disposed of through the sale for reclamation or recycling method.

(b) When property owned by the commission is to be disposed of utilizing this method, the following procedures will apply:

- (1) A detailed listing of materials that will be submitted for reclamation or recycling will be compiled and maintained in the appropriate records of the commission.
- (2) Any materials of toxic or hazardous composition must be identified separately and apart from those of nontoxic or nonhazardous composition. Any such toxic or hazardous materials must be contained or stored in appropriate containers and must be handled in accordance with provisions dictated by type and composition of the toxic or hazardous materials.
- (3) Identification of the contractor having the capabilities of reclamation or recycling of the property to be disposed of shall be recorded in the appropriate records of the commission.
- (4) The amount of the proceeds to be received under this method shall be recorded in the appropriate records of the commission.

(c) The contractor utilized for the purposes of this section must have a contract in full force and effect as outlined under [80 IAC 8](#). A contractor having a contract for the disposal of toxic or hazardous materials must comply with all provisions for the safe handling and disposal of such toxic or hazardous materials.

(State Fair Commission; [80 IAC 10-2-4](#); filed Nov 7, 2016, 3:46 p.m.: [20161207-IR-080160210FRA](#))

[80 IAC 10-2-5](#) Disposal of property by means of allowance made on another purchase

Authority: [IC 15-13-2-9](#)

Affected: [IC 15-13-2](#)

Sec. 5. (a) The executive director or the commission may direct that items for disposal may be disposed of through allowance made on another purchase method.

(b) When property owned by the commission is to be disposed of utilizing this method, the following matters will be recorded in the appropriate records of the commission:

- (1) A detailed listing of materials for which allowance will be made on another purchase.
- (2) A detailed listing of the purchase for which the allowance is being made.
- (3) The name of the entity for which this transaction is being conducted.
- (4) The dollar value of both the allowance and the purchase.

(State Fair Commission; [80 IAC 10-2-5](#); filed Nov 7, 2016, 3:46 p.m.: [20161207-IR-080160210FRA](#))

[80 IAC 10-2-6](#) Records and disclosure

Authority: [IC 15-13-2-9](#)

Affected: [IC 5-14-3](#); [IC 15-13-2](#)

Sec. 6. Regardless of the disposal methods utilized under this rule, all such transactions, files, records, and associated information are considered as a matter of public record in accordance with the provisions of [IC 5-14-3](#) upon completion of all actions utilizing any of the methods outlined in this rule.

(State Fair Commission; [80 IAC 10-2-6](#); filed Nov 7, 2016, 3:46 p.m.: [20161207-IR-080160210FRA](#))

SECTION 5. [80 IAC 11](#) IS ADDED TO READ AS FOLLOWS:

ARTICLE 11. GENERAL OPERATIONS

Rule 1. Traffic and Parking Control

[80 IAC 11-1-1](#) Traffic and parking control

Authority: [IC 15-13-2-9](#)

Affected: [IC 15-13-2](#)

Sec. 1. The purpose of this rule is to establish procedures for the handling of vehicular traffic entering, leaving, and parking on the fairgrounds.

(State Fair Commission; [80 IAC 11-1-1](#); filed Nov 7, 2016, 3:46 p.m.: [20161207-IR-080160210FRA](#))

[80 IAC 11-1-2](#) Speed limit

Authority: [IC 15-13-2-9](#)

Affected: [IC 15-13-2](#)

Sec. 2. The speed limit on any:

- (1) road;
- (2) lot;
- (3) alley; or
- (4) other way;

on the property under the control and jurisdiction of the state fair commission that may be used by

vehicular conveyance is twenty (20) miles per hour. Local city, county, and state police agencies have the right and full abilities to enforce the speed limit on the grounds.

(State Fair Commission; [80 IAC 11-1-2](#); filed Nov 7, 2016, 3:46 p.m.: [20161207-IR-080160210FRA](#))

[80 IAC 11-1-3](#) Restricted parking areas

Authority: [IC 15-13-2-9](#)

Affected: [IC 15-13-2](#)

Sec. 3. (a) Areas, such as:

(1) restricted areas;

(2) temporary restricted parking areas;

(3) designated no parking zones and parking for persons with disabilities; or

(4) unloading zones;

will be clearly marked with either signage, paint, traffic cones, barricades, personnel, or any combination thereof to clearly indicate that the area is not intended as a parking area or facility. The security or parking services department has the responsibility to ensure that when vehicles are parked in a restricted parking zone, they may be towed out of the restricted area with or without notice to the owner or operator.

(b) Every reasonable attempt will be made to locate the owner or operator of a vehicle that is parked in a restricted parking area unless said vehicle poses a threat to public safety, in which case such vehicle will be removed immediately. If, however, after a reasonable period of time the owner or operator cannot be located or fails to move the vehicle, the parking services department will take the necessary steps to remove such vehicle at the owner's expense.

(c) Vehicles may unload product, equipment, and other materials at a building but then must move immediately to a designated parking lot after unloading.

(d) The parking or security department reserves the right to determine which designated parking lot or lots may be used by vehicles described under subsection (c).

(State Fair Commission; [80 IAC 11-1-3](#); filed Nov 7, 2016, 3:46 p.m.: [20161207-IR-080160210FRA](#))

[80 IAC 11-1-4](#) Parking for persons with disabilities; loading or unloading areas

Authority: [IC 15-13-2-9](#)

Affected: [IC 15-13-2](#)

Sec. 4. There are restricted areas designated for parking or loading or unloading for persons with disabilities. The areas will be clearly and visibly marked with appropriate signage indicating the areas are restricted to such usage. Vehicles that are parked in a restricted area must display an authorized license plate or state issued window sticker or hang tag that is visible and that clearly indicates that the vehicle is authorized to use areas designated for parking or loading or unloading for persons with disabilities. Any vehicle not displaying a license plate, window sticker, or hang tag will not be allowed to use that area.

(State Fair Commission; [80 IAC 11-1-4](#); filed Nov 7, 2016, 3:46 p.m.: [20161207-IR-080160210FRA](#))

[80 IAC 11-1-5](#) Signage

Authority: [IC 15-13-2-9](#)

Affected: [IC 15-13-2](#)

Sec. 5. Signage will be displayed at parking zones for persons with disabilities. Such signage shall display the universal symbol of persons with disabilities or wording, or both, indicating that the respective parking space is reserved for persons with disabilities.

(State Fair Commission; [80 IAC 11-1-5](#); filed Nov 7, 2016, 3:46 p.m.: [20161207-IR-080160210FRA](#))

[80 IAC 11-1-6](#) Enforcement

Authority: [IC 15-13-2-9](#)

Affected: [IC 15-13-2](#)

Sec. 6. (a) Security and parking services departments will enforce the provisions of this rule. The supervisor of the security or parking services department may also contact the nearest city, county, or state police department for assistance.

(b) The city, county, or state police department have overall jurisdiction and authority to intercede on behalf of the state fair commission in the enforcement of this rule if requested by the commission.

(State Fair Commission; [80 IAC 11-1-6](#); filed Nov 7, 2016, 3:46 p.m.: [20161207-IR-080160210FRA](#))

[80 IAC 11-1-7](#) Expenses for enforcement

Authority: [IC 15-13-2-9](#)

Affected: [IC 15-13-2](#)

Sec. 7. (a) The owner or operator of a vehicle shall be responsible for any and all costs associated with the enforcement of this rule, including, but not limited to, the cost of towing.

(b) No vehicle will be released to the owner or operator until such time as all costs to move the vehicle have been fully paid.

(State Fair Commission; [80 IAC 11-1-7](#); filed Nov 7, 2016, 3:46 p.m.: [20161207-IR-080160210FRA](#))

Rule 2. Items Prohibited on the Indiana State Fairgrounds

[80 IAC 11-2-1](#) Policy

Authority: [IC 15-13-2-9](#)

Affected: [IC 15-13-2](#); [IC 15-13-7](#)

Sec. 1. (a) The purpose of this rule is to enhance the security of and to protect the health, safety, and welfare of all persons and animals at the fairgrounds.

(b) Unless otherwise specifically set forth in this rule or other applicable statute, this rule applies at all times to all visitors, guests, invitees, vendors, concessionaires, purveyors, exhibitors, commission employees, contractors, and agents.

(c) Exceptions to this rule may be made on a case-by-case basis with the advance written approval of the chief operating officer for the commission, who shall maintain a file of all such approvals.

(State Fair Commission; [80 IAC 11-2-1](#); filed Nov 7, 2016, 3:46 p.m.: [20161207-IR-080160210FRA](#))

[80 IAC 11-2-2](#) Deadly weapons prohibited

Authority: [IC 15-13-2-9](#)

Affected: [IC 15-13-2](#); [IC 15-13-7](#)

Sec. 2. (a) This section does not apply to a federal, state, or local law enforcement officer or to a person who has been employed or authorized by the commission to provide security protection and services.

(b) No person in possession of a deadly weapon shall be permitted onto or be permitted to remain on the fairgrounds, unless that person can demonstrate that the deadly weapon is intended for sale or trade at an event that is taking place on the fairgrounds.

(c) Except as provided in subsection (a), any deadly weapon found in the possession of a person while on the fairgrounds is subject to immediate confiscation by persons authorized under section 3 of this rule.

(d) Any person properly licensed to carry a firearm must secure the firearm in a locked compartment of his or her vehicle, and it shall not be visible to passersby.

(State Fair Commission; [80 IAC 11-2-2](#); filed Nov 7, 2016, 3:46 p.m.: [20161207-IR-080160210FRA](#))

[80 IAC 11-2-3](#) Enforcement

Authority: [IC 15-13-2-9](#)

Affected: [IC 15-13-2](#); [IC 15-13-7](#)

Sec. 3. The following persons may enforce this rule:

- (1) Persons authorized by the executive director to provide security protection and services.
- (2) City, county, and state police agencies, as requested by the commission.

(State Fair Commission; [80 IAC 11-2-3](#); filed Nov 7, 2016, 3:46 p.m.: [20161207-IR-080160210FRA](#))

[80 IAC 11-2-4](#) Unauthorized animals prohibited

Authority: [IC 15-13-2-9](#)

Affected: [IC 15-13-2](#); [IC 15-13-7](#)

Sec. 4. (a) The only animals permitted on the fairgrounds are the following:

- (1) Animals registered, boarded, or entered for, or that will be registered, boarded, or entered for, exhibition, show, or other competition.
- (2) Animals that will be used in a scheduled performance or to perform on the fairgrounds.
- (3) Law enforcement animals.
- (4) Service animals as defined by the Americans with Disabilities Act.

(b) No person in possession of or having control over an unauthorized animal shall be permitted onto or be permitted to remain on the fairgrounds.

(State Fair Commission; [80 IAC 11-2-4](#); filed Nov 7, 2016, 3:46 p.m.: [20161207-IR-080160210FRA](#))

Rule 3. Sampling and Solicitations

[80 IAC 11-3-1](#) Sampling and solicitations occurring on the fairgrounds

Authority: [IC 15-13-2-9](#)

Affected: [IC 15-13-2](#)

Sec. 1. (a) All solicitation, distribution, and sampling of any nature shall take place within the confines of a rented space (building, venue, or booth). No solicitation, distribution, or sampling shall take place anywhere on the fairgrounds except from the confines of a space previously rented from the commission or any of its authorized tenants, lessors, or promoters of events contracted with the commission.

(b) Any tenant, lessor, or promoter of events in which a contract for the use of such facilities owned and operated by the commission is in full force and effect is responsible for the enforcement of the policy in subsection (a) during such term as may be specified in the contract for rental of the facilities in which such activities are being or proposed to be held.

(c) Violation of the policy as stated in subsection (a) by exhibitors, vendors, or any other visitors or users of the fairgrounds will be sufficient grounds for immediate removal from the fairgrounds.

(State Fair Commission; [80 IAC 11-3-1](#); filed Nov 7, 2016, 3:46 p.m.: [20161207-IR-080160210FRA](#))

SECTION 6. [80 IAC 12](#) IS ADDED TO READ AS FOLLOWS:

ARTICLE 12. CODE OF ETHICS

Rule 1. Code of Ethics for Commission

[80 IAC 12-1-1](#) Purpose and scope

Authority: [IC 15-13-2-9](#)

Affected: [IC 4-2-6](#)

Sec. 1. The commission shall be under the jurisdiction and rules adopted by the state ethics commission under [42 IAC 1](#).

(State Fair Commission; [80 IAC 12-1-1](#); filed Nov 7, 2016, 3:46 p.m.: [20161207-IR-080160210FRA](#))

SECTION 7. THE FOLLOWING ARE REPEALED: [80 IAC 1-1-1](#); [80 IAC 1-1-2](#); [80 IAC 1-1-3](#); [80 IAC 1-1-4](#); [80 IAC 1-1-5](#); [80 IAC 1-1-6](#); [80 IAC 1-1-7](#); [80 IAC 1-1-8](#); [80 IAC 1-1-9](#); [80 IAC 1-1-10](#); [80 IAC 1-1-11](#); [80 IAC 1-1-13](#); [80 IAC 1-1-14](#); [80 IAC 1-1-15](#); [80 IAC 1-1-16](#); [80 IAC 1-1-17](#); [80 IAC 1-1-18](#); [80 IAC 1-1-19](#); [80 IAC 1-1-20](#); [80 IAC 1-1-21](#); [80 IAC 1-1-21.5](#); [80 IAC 1-1-22](#); [80 IAC 1-1-23](#); [80 IAC 1-1-24](#); [80 IAC 1-1-25](#); [80 IAC 1-2-1](#); [80 IAC 1-2-2](#); [80 IAC 1-2-3](#); [80 IAC 1-2-4](#); [80 IAC 1-2-5](#); [80 IAC 1-2-6](#); [80 IAC 1-2-7](#); [80 IAC 1-3-2](#); [80 IAC 1-4-2](#); [80 IAC 1-4-3](#); [80 IAC 1-4-4](#); [80 IAC 1-4-5](#); [80 IAC 1-4-6](#); [80 IAC 1-5-1](#); [80 IAC 1-5-2](#); [80 IAC 1-5-3](#); [80 IAC 1-5-4](#); [80 IAC 1-5-5](#); [80 IAC 1-5-7](#); [80 IAC 1-5-8](#); [80 IAC 1-5-9](#); [80 IAC 1-5-10](#); [80 IAC 1-5-11](#); [80 IAC 1-5-11.5](#); [80 IAC 1-5-12](#); [80 IAC 1-5-13](#); [80 IAC 1-5-14](#); [80 IAC 1-6](#); [80 IAC 1-7-1](#); [80 IAC 1-7-2](#); [80 IAC 1-7-3](#); [80 IAC 1-7-5](#); [80 IAC 1-8-1.1](#); [80 IAC 1-8-2](#); [80 IAC 1-8-3](#); [80 IAC 1-8-4](#); [80 IAC 1-9](#); [80 IAC 2-1](#); [80 IAC 2-2](#); [80 IAC 2-3](#); [80 IAC 2-4](#); [80 IAC 2-5-1](#); [80 IAC 2-5-2](#); [80 IAC 2-5-3](#); [80 IAC 2-5-4](#); [80 IAC 2-5-5](#); [80 IAC 2-5-6](#); [80 IAC 2-5-7](#); [80 IAC 2-5-8](#); [80 IAC 2-5-9](#); [80 IAC 2-5-10](#); [80 IAC 2-6](#); [80 IAC 2-7](#); [80 IAC 2-8](#); [80 IAC 3](#); [80 IAC 4](#); [80 IAC 5.1](#).

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Notice of Intent: [20160525-IR-080160210NIA](#)

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