

ARTICLE 11. CONTROL BOARD PROCEDURES

Rule 1. Purpose and Application

50 IAC 11-1-1 Purpose

Authority: IC 6-1.1-30-14.5; IC 6-1.1-31-1

Affected: IC 5-16-7; IC 6-1.1-20; IC 36-12-12

Sec. 1. The purpose of this rule is to establish procedures to be followed by the department of local government finance, the local government tax control board, and the school property tax control board in their review of local government financing projects, including requirements regarding payments to professionals who work on capital projects in accordance with IC 6-1.1-30-14.5 and disclosure regarding compliance with the requirements of IC 5-16-7. This rule does not restrict the criteria taxing units may use to hire professionals for capital projects, and it does not limit the authority of the department of local government finance to consider such criteria in approving or disapproving capital projects. (*Department of Local Government Finance; 50 IAC 11-1-1; filed Mar 31, 1998, 2:10 p.m.: 21 IR 2726; errata filed Apr 23, 2007, 2:37 p.m.: 20070509-IR-050070234ACA*)

50 IAC 11-1-2 Application

Authority: IC 6-1.1-30-14.5; IC 6-1.1-31-1

Affected: IC 6-1.1-20; IC 36-12-12

Sec. 2. This rule applies to all contracts entered into on or after the effective date of this rule. (*Department of Local Government Finance; 50 IAC 11-1-2; filed Mar 31, 1998, 2:10 p.m.: 21 IR 2726*)

Rule 2. Definitions

50 IAC 11-2-1 Applicability

Authority: IC 6-1.1-30-14.5; IC 6-1.1-31-1

Affected: IC 5-16-7; IC 6-1.1-20; IC 36-12-12

Sec. 1. The definitions in this rule apply throughout this article. (*Department of Local Government Finance; 50 IAC 11-2-1; filed Mar 31, 1998, 2:10 p.m.: 21 IR 2726*)

50 IAC 11-2-2 "Capital project" defined

Authority: IC 6-1.1-30-14.5; IC 6-1.1-31-1

Affected: IC 6-1.1-20; IC 36-12-12

Sec. 2. "Capital project" means any of the following:

(1) the acquisition and/or development of any site by a taxing unit;

(2) the acquisition of, leasing of, construction of, remodeling of, alteration to, and/or installation or extension of service systems for any building or structure owned or used by a taxing unit; or

(3) the acquisition or lease of any equipment by a taxing unit in connection with any of the activities described in this section; so long as the total amount of the project exceeds five thousand dollars (\$5,000) and property tax revenues will or may be used to pay for any portion of the capital project or debt service or lease rental on the capital project. (*Department of Local Government Finance; 50 IAC 11-2-2; filed Mar 31, 1998, 2:10 p.m.: 21 IR 2726*)

50 IAC 11-2-3 "Fee" defined

Authority: IC 6-1.1-30-14.5; IC 6-1.1-31-1

Affected: IC 6-1.1-20; IC 36-12-12

Sec. 3. "Fee" means the compensation paid or to be paid to a professional who provides services in conjunction with a capital project. (*Department of Local Government Finance; 50 IAC 11-2-3; filed Mar 31, 1998, 2:10 p.m.: 21 IR 2726*)

50 IAC 11-2-4 "Professional" defined

Authority: IC 6-1.1-30-14.5; IC 6-1.1-31-1

Affected: IC 6-1.1-20; IC 36-12-12

Sec. 4. (a) "Professional" means a person who is or who performs the services of:

- (1) an accountant;
- (2) an architect;
- (3) an attorney;
- (4) a construction manager;
- (5) an engineer;
- (6) a financial advisor;
- (7) a project administrator;
- (8) a project manager;
- (9) a tax analyst; or
- (10) other person who provides consulting services.

(b) The term, as used in this article, shall not include any person who is or who performs the services of:

- (1) an underwriter;
- (2) an investment banker; or
- (3) a real estate broker or salesperson.

(Department of Local Government Finance; 50 IAC 11-2-4; filed Mar 31, 1998, 2:10 p.m.: 21 IR 2726)

50 IAC 11-2-5 "Taxing unit" defined

Authority: IC 6-1.1-30-14.5; IC 6-1.1-31-1

Affected: IC 6-1.1-1-21; IC 6-1.1-20; IC 36-12-12

Sec. 5. "Taxing unit" means a taxing unit within the meaning of IC 6-1.1-1-21. *(Department of Local Government Finance; 50 IAC 11-2-5; filed Mar 31, 1998, 2:10 p.m.: 21 IR 2727)*

Rule 3. Limitations on the Basis of Payment for Services

50 IAC 11-3-1 Prohibited fees

Authority: IC 6-1.1-30-14.5; IC 6-1.1-31-1

Affected: IC 6-1.1-20; IC 36-12-12

Sec. 1. A professional who renders services in conjunction with a capital project must have a written agreement with the taxing unit setting forth the basis of the professional's fee for services and shall not be paid a fee based on a percentage of the cost of the capital project. A professional shall not be paid on any basis other than a fee for services agreement. A professional's fee may not be based upon factors not related to the services rendered. *(Department of Local Government Finance; 50 IAC 11-3-1; filed Mar 31, 1998, 2:10 p.m.: 21 IR 2727)*

Rule 4. Additional Rules for Construction Managers and Contractors; Common Construction Wage

50 IAC 11-4-1 Application

Authority: IC 6-1.1-30-14.5; IC 6-1.1-31-1

Affected: IC 5-16-7; IC 6-1.1-20; IC 36-12-12

Sec. 1. This rule applies to all agreements with construction managers and contractors working on capital projects as that term is defined in 50 IAC 11-2-2, provided that the capital project is subject to IC 5-16-7. *(Department of Local Government Finance; 50 IAC 11-4-1; filed Mar 31, 1998, 2:10 p.m.: 21 IR 2727)*

50 IAC 11-4-2 Documentation regarding payment of common construction wage

Authority: IC 6-1.1-30-14.5; IC 6-1.1-31-1

Affected: IC 5-16-7; IC 6-1.1-20; IC 36-12-12

Sec. 2. Any taxing unit that enters into an agreement with a construction manager or contractor for a capital project subject to IC 5-16-7, shall provide the school property tax control board or the local government tax control board with documentation regarding the payment of common construction wages for all labor on the capital project as provided in this rule. (*Department of Local Government Finance; 50 IAC 11-4-2; filed Mar 31, 1998, 2:10 p.m.: 21 IR 2727*)

50 IAC 11-4-3 Documentation regarding determination of common construction wage

Authority: IC 6-1.1-30-14.5; IC 6-1.1-31-1

Affected: IC 5-16-7-1; IC 6-1.1-20; IC 36-12-12

Sec. 3. (a) A taxing unit shall be required to demonstrate, through minutes of the wage committee meeting or other documentation, that in determining common construction wages under the procedures of IC 5-16-7, the wage committee considered the following factors:

(1) A determination of the skilled, semiskilled, and unskilled classes required by IC 5-16-7-1(c)(1) for each trade or craft classification of labor to be employed in the performance of the contract for the project.

(2) A determination of the reasonably anticipated costs of providing fringe benefits commonly paid to workers on similar projects if their exclusion would depress real compensation below the level commonly set by the private sector.

(b) A taxing unit shall be required to demonstrate, through minutes of the wage committee meeting or other documentation, that in determining common construction wages under the procedures of IC 5-16-7, the wage committee:

(1) considered common construction wage reports or survey data compiled by the department of workforce development and any other information submitted to the wage committee, including, but not limited to, reports of the U.S. Department of Labor and collective bargaining agreements between bona fide organizations of labor and employers; and

(2) based its determination on data that the committee considered to be representative of the wages most commonly paid in the county where the project is located for the types of work at issue.

(c) If a taxing unit cannot demonstrate that the factors and information described in subsections (a) and (b) were considered, the taxing unit shall be required to provide an explanation of the reasons why such factors and information were not considered.

(d) The taxing unit shall produce the data and information compiled by the committee formed pursuant to IC 5-16-7-1(b) at the request of the state board of tax commissioners or either control board. (*Department of Local Government Finance; 50 IAC 11-4-3; filed Mar 31, 1998, 2:10 p.m.: 21 IR 2727*)

Rule 5. Procedure

50 IAC 11-5-1 Control board monitoring

Authority: IC 6-1.1-30-14.5; IC 6-1.1-31-1

Affected: IC 6-1.1-20; IC 36-12-12

Sec. 1. (a) The local government tax control board and the school property tax control board shall be responsible for investigating compliance with this article and shall report on a taxing unit's compliance with this article when making its recommendation to the department of local government finance.

(b) The department of local government finance shall review the recommendations of the local government tax control board and school property tax control board regarding a taxing unit's compliance with this article, and may make such additional inquiries as it deems necessary. In addition, the department of local government finance may, on its own motion, review a taxing unit's compliance with this article. (*Department of Local Government Finance; 50 IAC 11-5-1; filed Mar 31, 1998, 2:10 p.m.: 21 IR 2727; errata filed Apr 23, 2007, 2:37 p.m.: 20070509-IR-050070234ACA*)

50 IAC 11-5-2 Enforcement of rule

Authority: IC 6-1.1-30-14.5; IC 6-1.1-31-1

Affected: IC 6-1.1-20; IC 36-12-12

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Sec. 2. If the department of local government finance determines that a project is not financially prudent based on the factors described in this article, the department of local government finance may enforce the provisions of this article through any of the powers available to the department of local government finance pursuant to its review of capital projects, including, but not limited to, the denial or postponement of approval of the project. (*Department of Local Government Finance; 50 IAC 11-5-2; filed Mar 31, 1998, 2:10 p.m.: 21 IR 2728; errata filed Apr 23, 2007, 2:37 p.m.: 20070509-IR-050070234ACA*)

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