

TITLE 80 STATE FAIR COMMISSION

ARTICLE 1. PROCUREMENT OF PROPERTY

Rule 1. Definitions

80 IAC 1-1-1 Applicability

Authority: IC 15-13-2-9

Affected: IC 15-13-2

Sec. 1. The definitions in this rule apply throughout this article unless a more specific definition is given for a particular rule. (*State Fair Commission; 80 IAC 1-1-1; filed Nov 27, 1991, 2:00 p.m.: 15 IR 430; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528; readopted filed Oct 4, 2007, 10:29 a.m.: 20071024-IR-080070451RFA*)

80 IAC 1-1-2 "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 1-1-2; filed Nov 27, 1991, 2:00 p.m.: 15 IR 430; filed Aug 8, 1995, 12:00 p.m.: 18 IR 3366; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528; readopted filed Oct 4, 2007, 10:29 a.m.: 20071024-IR-080070451RFA*)

80 IAC 1-1-3 "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, which the changes clause of the contract authorizes the executive director or his or her designated representative to order without the consent of the contractor.

(*State Fair Commission; 80 IAC 1-1-3; filed Nov 27, 1991, 2:00 p.m.: 15 IR 430; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528; readopted filed Oct 4, 2007, 10:29 a.m.: 20071024-IR-080070451RFA; filed Mar 18, 2008, 2:19 p.m.: 20080416-IR-080070587FRA*)

80 IAC 1-1-4 "Commission" defined

Authority: IC 15-13-2-9

Affected: IC 15-13-2

Sec. 4. "Commission" means the Indiana state fair commission. (*State Fair Commission; 80 IAC 1-1-4; filed Nov 27, 1991, 2:00 p.m.: 15 IR 430; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528; readopted filed Oct 4, 2007, 10:29 a.m.: 20071024-IR-080070451RFA*)

80 IAC 1-1-5 "Construction, commission works, and improvement" defined

Authority: IC 15-13-2-9

Affected: IC 15-13-2

Sec. 5. "Construction", "commission works", "improvement" means the process of building, altering, repairing, improving, or demolishing any structure of 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 1-1-5; filed Nov 27, 1991, 2:00 p.m.: 15 IR 430; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528; readopted filed Oct 4, 2007, 10:29 a.m.: 20071024-IR-080070451RFA*)

80 IAC 1-1-6 "Contract" defined

Authority: IC 15-13-2-9; IC 15-13-3-8
Affected: IC 15-13-2

Sec. 6. "Contract" means all types of agreements, regardless of what they may be called, for the procurement of supplies. (*State Fair Commission; 80 IAC 1-1-6; filed Nov 27, 1991, 2:00 p.m.: 15 IR 430; filed Aug 8, 1995, 12:00 p.m.: 18 IR 3366; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528; readopted filed Oct 4, 2007, 10:29 a.m.: 20071024-IR-080070451RFA*)

80 IAC 1-1-7 "Contract modification" defined

Authority: IC 15-13-2-9
Affected: IC 15-13-2

Sec. 7. "Contract modification" means any written alterations in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract, which alteration is accomplished by mutual action of the parties to the contract. (*State Fair Commission; 80 IAC 1-1-7; filed Nov 27, 1991, 2:00 p.m.: 15 IR 430; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528; readopted filed Oct 4, 2007, 10:29 a.m.: 20071024-IR-080070451RFA*)

80 IAC 1-1-8 "Contractor" defined

Authority: IC 15-13-2-9
Affected: IC 15-13-2

Sec. 8. "Contractor" means any person having a contract with the commission. (*State Fair Commission; 80 IAC 1-1-8; filed Nov 27, 1991, 2:00 p.m.: 15 IR 430; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528; readopted filed Oct 4, 2007, 10:29 a.m.: 20071024-IR-080070451RFA*)

80 IAC 1-1-9 "Cost reimbursement contract" defined

Authority: IC 15-13-2-9
Affected: IC 15-13-2

Sec. 9. "Cost reimbursement contract" means a contract under which a contractor is entitled to receive reimbursement for costs which 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 1-1-9; filed Nov 27, 1991, 2:00 p.m.: 15 IR 430; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528; readopted filed Oct 4, 2007, 10:29 a.m.: 20071024-IR-080070451RFA*)

80 IAC 1-1-10 "Data" defined

Authority: IC 15-13-2-9
Affected: IC 15-13-2

Sec. 10. "Data" means any recorded information, regardless of its form or characteristics. (*State Fair Commission; 80 IAC 1-1-10; filed Nov 27, 1991, 2:00 p.m.: 15 IR 431; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528; readopted filed Oct 4, 2007, 10:29 a.m.: 20071024-IR-080070451RFA*)

80 IAC 1-1-11 "Data processing" defined

Authority: IC 15-13-2-9; IC 15-13-3-8
Affected: IC 15-13-2

Sec. 11. "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 1-1-11; filed Nov 27, 1991, 2:00 p.m.: 15 IR 431; filed Aug 8, 1995, 12:00 p.m.: 18 IR 3366; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528; readopted filed Oct 4, 2007, 10:29 a.m.: 20071024-IR-080070451RFA*)

80 IAC 1-1-12 "Designee" defined (Repealed)

Sec. 12. *(Repealed by State Fair Commission; filed Aug 8, 1995, 12:00 p.m.: 18 IR 3375)*

80 IAC 1-1-13 "Executive director" defined

Authority: IC 15-13-2-9

Affected: IC 15-13-2

Sec. 13. "Executive director" means the chief administrative officer of the commission. *(State Fair Commission; 80 IAC 1-1-13; filed Nov 27, 1991, 2:00 p.m.: 15 IR 431; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528; readopted filed Oct 4, 2007, 10:29 a.m.: 20071024-IR-080070451RFA)*

80 IAC 1-1-14 "Established catalog price" defined

Authority: IC 15-13-2-9; IC 15-13-3-8

Affected: IC 15-13-2

Sec. 14. "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 1-1-14; filed Nov 27, 1991, 2:00 p.m.: 15 IR 431; filed Aug 8, 1995, 12:00 p.m.: 18 IR 3366; errata filed Sep 25, 1995, 3:00 p.m.: 19 IR 209; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528; readopted filed Oct 4, 2007, 10:29 a.m.: 20071024-IR-080070451RFA)

80 IAC 1-1-15 "Invitation for bids" defined

Authority: IC 15-13-2-9

Affected: IC 15-13-2

Sec. 15. "Invitation for bids" means all documents, whether attached or incorporated by reference, used for the purpose of soliciting bids. *(State Fair Commission; 80 IAC 1-1-15; filed Nov 27, 1991, 2:00 p.m.: 15 IR 431; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528; readopted filed Oct 4, 2007, 10:29 a.m.: 20071024-IR-080070451RFA)*

80 IAC 1-1-16 "Person" defined

Authority: IC 15-13-2-9

Affected: IC 15-13-2

Sec. 16. "Person" means any business, individual, committee, or other organization or group of individuals. *(State Fair Commission; 80 IAC 1-1-16; filed Nov 27, 1991, 2:00 p.m.: 15 IR 431; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528; readopted filed Oct 4, 2007, 10:29 a.m.: 20071024-IR-080070451RFA)*

80 IAC 1-1-17 "Procurement" defined

Authority: IC 15-13-2-9; IC 15-13-3-8

Affected: IC 15-13-2

Sec. 17. "Procurement" means buying, purchasing, renting, leasing, or otherwise acquiring any supplies and includes functions that pertain to the obtaining of any supply, including the following:

(1) Description of requirements.

(2) Selection or solicitation of sources.

(3) Preparation and award of contract.

(State Fair Commission; 80 IAC 1-1-17; filed Nov 27, 1991, 2:00 p.m.: 15 IR 431; filed Aug 8, 1995, 12:00 p.m.: 18 IR 3366; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528; readopted filed Oct 4, 2007, 10:29 a.m.: 20071024-IR-080070451RFA)

80 IAC 1-1-18 "Procurement officer" defined

Authority: IC 15-13-2-9

Affected: IC 15-13-2

Sec. 18. "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 1-1-18; filed Nov 27, 1991, 2:00 p.m.: 15 IR 431; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528; readopted filed Oct 4, 2007, 10:29 a.m.: 20071024-IR-080070451RFA)*

80 IAC 1-1-19 "Public funds" defined

Authority: IC 15-13-2-9

Affected: IC 15-13-2

Sec. 19. "Public funds" means funds created by the commission's accounting system and includes the state fair fund administered by the commission and subject to audit by the state board of accounts. *(State Fair Commission; 80 IAC 1-1-19; filed Nov 27, 1991, 2:00 p.m.: 15 IR 431; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528; readopted filed Oct 4, 2007, 10:29 a.m.: 20071024-IR-080070451RFA)*

80 IAC 1-1-20 "Purchase description" defined

Authority: IC 15-13-2-9

Affected: IC 15-13-2

Sec. 20. "Purchase description" means the words used in a solicitation to describe the supplies to be purchased and includes specifications attached to, or made a part of, the solicitations. *(State Fair Commission; 80 IAC 1-1-20; filed Nov 27, 1991, 2:00 p.m.: 15 IR 431; filed Aug 8, 1995, 12:00 p.m.: 18 IR 3367; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528; readopted filed Oct 4, 2007, 10:29 a.m.: 20071024-IR-080070451RFA)*

80 IAC 1-1-21 "Request for proposals" defined

Authority: IC 15-13-2-9

Affected: IC 15-13-2

Sec. 21. "Request for proposals" means all documents, whether attached or incorporated by reference, used for soliciting proposals. *(State Fair Commission; 80 IAC 1-1-21; filed Nov 27, 1991, 2:00 p.m.: 15 IR 432; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528; readopted filed Oct 4, 2007, 10:29 a.m.: 20071024-IR-080070451RFA)*

80 IAC 1-1-21.5 "Responsible bidder" defined

Authority: IC 15-13-2-9; IC 15-13-3-8

Affected: IC 15-13-2

Sec. 21.5. "Responsible bidder" means a person who has:

(1) the capability to perform fully the contract requirements; and

(2) the integrity and reliability that will ensure good faith performance.

(State Fair Commission; 80 IAC 1-1-21.5; filed Aug 8, 1995, 12:00 p.m.: 18 IR 3367; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528; readopted filed Oct 4, 2007, 10:29 a.m.: 20071024-IR-080070451RFA)

80 IAC 1-1-22 "Responsive bidder" defined

Authority: IC 15-13-2-9

Affected: IC 15-13-2

Sec. 22. "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 1-1-22; filed Nov 27, 1991, 2:00 p.m.: 15 IR 432; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528; readopted filed Oct 4, 2007, 10:29 a.m.: 20071024-IR-080070451RFA*)

80 IAC 1-1-23 "Services" defined

Authority: IC 15-13-2-9; IC 15-13-3-8
Affected: IC 15-13-2

Sec. 23. "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. (*State Fair Commission; 80 IAC 1-1-23; filed Nov 27, 1991, 2:00 p.m.: 15 IR 432; filed Aug 8, 1995, 12:00 p.m.: 18 IR 3367; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528; readopted filed Oct 4, 2007, 10:29 a.m.: 20071024-IR-080070451RFA*)

80 IAC 1-1-24 "Specifications" defined

Authority: IC 15-13-2-9; IC 15-13-3-8
Affected: IC 15-13-2

Sec. 24. "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 1-1-24; filed Nov 27, 1991, 2:00 p.m.: 15 IR 432; filed Aug 8, 1995, 12:00 p.m.: 18 IR 3367; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528; readopted filed Oct 4, 2007, 10:29 a.m.: 20071024-IR-080070451RFA*)

80 IAC 1-1-25 "Supplies" defined

Authority: IC 15-13-2-9
Affected: IC 15-13-2

Sec. 25. "Supplies" means all property, including, but not limited to, equipment, materials, and goods but excluding real property. (*State Fair Commission; 80 IAC 1-1-25; filed Nov 27, 1991, 2:00 p.m.: 15 IR 432; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528; readopted filed Oct 4, 2007, 10:29 a.m.: 20071024-IR-080070451RFA*)

Rule 2. General Provisions

80 IAC 1-2-1 Purpose; construction

Authority: IC 15-13-2-9
Affected: IC 15-13-2

Sec. 1. This article is to be construed and applied to promote the following underlying purposes and policies:

- (1) To simplify and clarify the procedures governing procurement by the state fair commission.
- (2) To provide for increased public confidence in the procurement procedures followed by the state fair commission.
- (3) To ensure fair and equitable treatment of all persons who deal with the procurement system covered and utilized by the state fair commission.
- (4) To provide increased economy in procurement activities and to maximize to the fullest extent practicable the purchasing value of the public funds of the state fair commission.
- (5) To foster effective broad-based competition within the free enterprise systems.
- (6) To provide safeguards for the maintenance of a procurement system of quality and integrity.

(*State Fair Commission; 80 IAC 1-2-1; filed Nov 27, 1991, 2:00 p.m.: 15 IR 432; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528; readopted filed Oct 4, 2007, 10:29 a.m.: 20071024-IR-080070451RFA*)

80 IAC 1-2-2 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 supplies.
- (2) Contracts for insurance and administrative services for insurance.

(b) This article does not apply to personal or professional service contracts. (*State Fair Commission; 80 IAC 1-2-2; filed Nov 27, 1991, 2:00 p.m.: 15 IR 432; filed Aug 8, 1995, 12:00 p.m.: 18 IR 3367; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528; readopted filed Oct 4, 2007, 10:29 a.m.: 20071024-IR-080070451RFA*)

80 IAC 1-2-3 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, regardless of their source, for the procurement of 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 1-2-3; filed Nov 27, 1991, 2:00 p.m.: 15 IR 432; filed Aug 8, 1995, 12:00 p.m.: 18 IR 3367; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528; readopted filed Oct 4, 2007, 10:29 a.m.: 20071024-IR-080070451RFA*)

80 IAC 1-2-4 Good faith requirement

Authority: IC 15-13-2-9

Affected: IC 15-13-2

Sec. 4. All parties involved in a negotiation, performance, or administration of contracts covered by this article shall act in good faith. (*State Fair Commission; 80 IAC 1-2-4; filed Nov 27, 1991, 2:00 p.m.: 15 IR 432; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528; readopted filed Oct 4, 2007, 10:29 a.m.: 20071024-IR-080070451RFA*)

80 IAC 1-2-5 Grants, gifts, bequests, and other cooperative agreements; conflicting provisions

Authority: IC 15-13-2-9

Affected: IC 15-13-2

Sec. 5. 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 1-2-5; filed Nov 27, 1991, 2:00 p.m.: 15 IR 433; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528; readopted filed Oct 4, 2007, 10:29 a.m.: 20071024-IR-080070451RFA*)

80 IAC 1-2-6 Retention of written determinations

Authority: IC 15-13-2-9

Affected: IC 15-13-2

Sec. 6. Written determinations required by this article shall be retained in the appropriate official contract file of the state fair commission. (*State Fair Commission; 80 IAC 1-2-6; filed Nov 27, 1991, 2:00 p.m.: 15 IR 433; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528; readopted filed Oct 4, 2007, 10:29 a.m.: 20071024-IR-080070451RFA*)

80 IAC 1-2-7 Public access to procurement information

Authority: IC 15-13-2-9

Affected: IC 15-13-2

Sec. 7. Except as otherwise provided by law, procurement information is public information subject to public inspection under the provisions of IC 5-14-1. (*State Fair Commission; 80 IAC 1-2-7; filed Nov 27, 1991, 2:00 p.m.: 15 IR 433; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528; readopted filed Oct 4, 2007, 10:29 a.m.: 20071024-IR-080070451RFA*)

80 IAC 1-2-8 Preference given to Indiana businesses (Repealed)

Sec. 8. (*Repealed by State Fair Commission; filed Aug 8, 1995, 12:00 p.m.: 18 IR 3375*)

Rule 3. Purchasing Organization

80 IAC 1-3-1 Authority; duties (Repealed)

Sec. 1. (*Repealed by State Fair Commission; filed Aug 8, 1995, 12:00 p.m.: 18 IR 3375*)

80 IAC 1-3-2 Procurement department

Authority: IC 15-13-2-9; IC 15-13-3-8

Affected: IC 15-13-2

Sec. 2. (a) There is established within the commission a procurement department. All procurement functions retained by each director will be conducted in conformance with this article. Except as otherwise specifically provided in this article, the procurement department shall do the following:

(1) Procure or supervise the procurement of all supplies for the commission and establish internal policy for separate functions of the directors.

(2) Exercise general supervision over all inventories of supplies retained by the commission.

(3) Establish and maintain programs for the inspection, testing, and acceptance of supplies procured under this article.

(b) The procurement department may enter into agreements with the procurement division of the state of Indiana to make procurements through an established quantity procurement agreement (QPA) and the federal General Services Agency (GSA) processes, where applicable and cost effective. (*State Fair Commission; 80 IAC 1-3-2; filed Nov 27, 1991, 2:00 p.m.: 15 IR 433; filed Aug 8, 1995, 12:00 p.m.: 18 IR 3367; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528; readopted filed Oct 4, 2007, 10:29 a.m.: 20071024-IR-080070451RFA; filed Mar 18, 2008, 2:19 p.m.: 20080416-IR-080070587FRA*)

Rule 4. Specifications

80 IAC 1-4-1 Duties of the commission (Repealed)

Sec. 1. (*Repealed by State Fair Commission; filed Aug 8, 1995, 12:00 p.m.: 18 IR 3375*)

80 IAC 1-4-2 Duties of the procurement department

Authority: IC 15-13-2-9; IC 15-13-3-8

Affected: IC 15-13-2

Sec. 2. The procurement department shall prepare, issue, revise, maintain, and monitor the use of specifications for supplies. (*State Fair Commission; 80 IAC 1-4-2; filed Nov 27, 1991, 2:00 p.m.: 15 IR 434; filed Aug 8, 1995, 12:00 p.m.: 18 IR 3368; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528; readopted filed Oct 4, 2007, 10:29 a.m.: 20071024-IR-080070451RFA*)

80 IAC 1-4-3 Relationship with using departments

Authority: IC 15-13-2-9

Affected: IC 15-13-2

Sec. 3. The procurement department shall obtain expert advice and assistance from personnel of the using department(s) in the development of specifications. (*State Fair Commission; 80 IAC 1-4-3; filed Nov 27, 1991, 2:00 p.m.: 15 IR 434; readopted filed*

Sep 11, 2001, 2:45 p.m.: 25 IR 528; readopted filed Oct 4, 2007, 10:29 a.m.: 20071024-IR-080070451RFA)

80 IAC 1-4-4 Maximum competition

Authority: IC 15-13-2-9

Affected: IC 15-13-2

Sec. 4. The procurement department shall maintain specifications that must:

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

(State Fair Commission; 80 IAC 1-4-4; filed Nov 27, 1991, 2:00 p.m.: 15 IR 434; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528; readopted filed Oct 4, 2007, 10:29 a.m.: 20071024-IR-080070451RFA)

80 IAC 1-4-5 Disposable plastic products; procurement

Authority: IC 15-13-2-9

Affected: IC 15-13-2

Sec. 5. (a) As used in this section, "biodegradation" means the conversion of all constituents of a:

- (1) plastic; or
- (2) hybrid material containing plastic as a major component;

into miscellaneous component parts by the microbial action of fungi and bacteria upon natural materials such as cornstarch.

(b) As used in this section, "chemical degradation" means the conversion of all constituents of a:

- (1) plastic; or
- (2) hybrid material containing plastic as a major component;

into miscellaneous component parts through the chemical reactions of additives such as auto-oxidants and the environment with the plastic.

(c) As used in this section, "degradable" means capable of being broken down by one (1) or more of the following degradation processes:

- (1) Biodegradation.
- (2) Photodegradation.
- (3) Chemical degradation.

(d) As used in this section, "photodegradation" means the conversion of all constituents of a:

- (1) plastic; or
- (2) hybrid material containing plastic as a major component;

into miscellaneous component parts through the physical breakdown of the plastic product upon sufficient exposure to ultraviolet radiation.

(e) As used in this section, "refuse bag" means a disposable plastic bag that is designed to hold:

- (1) garbage;
- (2) grass clippings;
- (3) fallen leaves; or
- (4) other refuse.

The term includes a disposable plastic bag that is designed to be placed inside and to catch the refuse deposited in a rigid refuse receptacle.

(f) When procuring any disposable plastic products, including refuse bags, the procurement department shall procure disposable plastic products that are degradable if:

- (1) degradable products are available at the time of the procurement;
- (2) it is economically feasible to procure degradable products;
- (3) the procurement of degradable products is not inappropriate because of:
 - (A) federal regulations or policy in matters involving the federal government; or
 - (B) the special requirements of scientific uses;
- (4) the degradable product to be procured is economically and functionally the equivalent of disposable plastic products that:
 - (A) meet applicable specifications; and

- (B) are not degradable; and
- (5) the degradable product to be procured is, in the determination of the procurement officer, a type of product for which the use of degradable materials is appropriate based upon:

- (A) the functional use of the product; and

- (B) whether the product will probably be recycled or disposed of in a final disposal facility.

(State Fair Commission; 80 IAC 1-4-5; filed Nov 27, 1991, 2:00 p.m.: 15 IR 434; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528; readopted filed Oct 4, 2007, 10:29 a.m.: 20071024-IR-080070451RFA; filed Mar 18, 2008, 2:19 p.m.: 20080416-IR-080070587FRA)

80 IAC 1-4-6 Recycled paper products

Authority: IC 15-13-2-9; IC 15-13-3-8

Affected: IC 15-13-2

Sec. 6. The procurement department may procure recycled paper products if:

- (1) recycled paper products are available at the time of a procurement;
- (2) it is economically feasible to procure recycled paper products; and
- (3) the procurement of recycled paper products is not inappropriate because of:
 - (A) federal regulations or policy in matters involving the federal government; or
 - (B) the special requirements of scientific uses.

(State Fair Commission; 80 IAC 1-4-6; filed Nov 27, 1991, 2:00 p.m.: 15 IR 435; filed Aug 8, 1995, 12:00 p.m.: 18 IR 3368; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528; readopted filed Oct 4, 2007, 10:29 a.m.: 20071024-IR-080070451RFA)

Rule 5. Source Selection and Contract Formation

80 IAC 1-5-1 Methods of source selection

Authority: IC 15-13-2-9; IC 15-13-3-8

Affected: IC 4-13-1-17; IC 15-13-2

Sec. 1. Contracts for supplies exceeding seventy-five thousand dollars (\$75,000), 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 under section 3 of this rule unless another method is authorized under this rule. *(State Fair Commission; 80 IAC 1-5-1; filed Nov 27, 1991, 2:00 p.m.: 15 IR 435; filed Aug 8, 1995, 12:00 p.m.: 18 IR 3368; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528; readopted filed Oct 4, 2007, 10:29 a.m.: 20071024-IR-080070451RFA)*

80 IAC 1-5-2 Contracts for supplies

Authority: IC 15-13-2-9; IC 15-13-3-8

Affected: IC 15-13-2

Sec. 2. Contracts for supplies that exceed ten thousand dollars (\$10,000) but do not exceed seventy-five thousand dollars (\$75,000) must be awarded under one (1) of the following:

- (1) Section 3 of this rule.
- (2) Section 4 of this rule.
- (3) Section 5 of this rule.
- (4) Section 8 of this rule.
- (5) Section 9 of this rule.

The procurement officer shall determine which method shall be used. *(State Fair Commission; 80 IAC 1-5-2; filed Nov 27, 1991, 2:00 p.m.: 15 IR 435; filed Aug 8, 1995, 12:00 p.m.: 18 IR 3368; errata filed Sep 25, 1995, 3:00 p.m.: 19 IR 209; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528; readopted filed Oct 4, 2007, 10:29 a.m.: 20071024-IR-080070451RFA; filed Mar 18, 2008, 2:19 p.m.: 20080416-IR-080070587FRA)*

80 IAC 1-5-3 Sealed bidding

Authority: IC 15-13-2-9; IC 15-13-3-8

Affected: IC 15-13-2

Sec. 3. (a) The following procedure shall be followed by the procurement department in awarding contracts by sealed bidding:

(1) An invitation for bids 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 the evaluation criteria to be used, including criteria such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose, and any requirement imposed under section 14 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 11.5 of this rule.

(2) Public notice shall be given in the manner required under section 12 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 for bids.

(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 for bids.

(b) The following information must be maintained by the procurement department and subject to public inspection after bid opening:

(1) The name of each bidder.

(2) The amount of each bid.

(c) 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.

(d) The only criteria that may be used in bid evaluation are those specified in the invitation for bids.

(e) 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.

(f) If a bidder inserts contract terms or bids on items not specified in the invitation for bids, the procurement 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 for bids; or

(3) accept any of the proposed additions to the contract, subject to subsection (g).

(g) The procurement department may not accept proposed additions to the contract that are prejudicial to the interest of the commission or fair competition. (*State Fair Commission; 80 IAC 1-5-3; filed Nov 27, 1991, 2:00 p.m.: 15 IR 435; filed Aug 8, 1995, 12:00 p.m.: 18 IR 3368; errata filed Sep 25, 1995, 3:00 p.m.: 19 IR 209; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528; readopted filed Oct 4, 2007, 10:29 a.m.: 20071024-IR-080070451RFA*)

80 IAC 1-5-4 Sealed bids (two step)

Authority: IC 15-13-2-9; IC 15-13-3-8

Affected: IC 15-13-2

Sec. 4. The procurement officer may utilize a two (2) step sealed bid process by requiring that bidders initially submit unpriced sealed offers in response to an invitation to bid identical to that required in section 3 of this rule excepting those provisions that relate to price. Submission of priced sealed bids may then be restricted to only those offerors whose offer qualified under the criteria set

forth in the original invitation. (*State Fair Commission; 80 IAC 1-5-4; filed Nov 27, 1991, 2:00 p.m.: 15 IR 436; filed Aug 8, 1995, 12:00 p.m.: 18 IR 3369; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528; readopted filed Oct 4, 2007, 10:29 a.m.: 20071024-IR-080070451RFA; filed Mar 18, 2008, 2:19 p.m.: 20080416-IR-080070587FRA*)

80 IAC 1-5-5 Request for proposals

Authority: IC 15-13-2-9; IC 15-13-3-8

Affected: IC 15-13-2

Sec. 5. (a) The following procedure shall be followed by the procurement department in awarding contracts by request for proposals:

(1) Proposals shall be solicited through a request for proposals, which must include the following:

(A) The factors or criteria that will be used in evaluating the proposals, including any requirement under section 14 of this rule.

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

(C) A statement concerning whether the proposal must be accompanied by a certified check or other evidence of financial responsibility, which may be imposed in accordance with this article.

(D) A statement concerning whether discussions may be conducted with responsible offerors, who submit proposals determined to be reasonably susceptible of being selected for award, for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements.

(2) Public notice shall be given in the manner required in section 12 of this rule.

(3) A register of proposals shall be prepared and must be open for public inspection after contract award. The register of proposals must contain the following:

(A) A copy of the request for proposals.

(B) The listing of all proposals received, including the following:

(i) The names and addresses of all offerors.

(ii) The dollar amount of each offer.

(iii) The name of the successful offeror and the dollar amount of the offer.

(C) The basis on which the award was made.

(D) The entire contents of the contract file except for proprietary information, which may have been included with an offer, such as:

(i) trade secrets;

(ii) manufacturing processes; and

(iii) financial information;

that was not required to be made available for public inspection by the terms of the request for proposals itself.

(4) If provided in the request for proposals or determined by the procurement officer to be desirable, discussions may be conducted with responsible offerors, who submit proposals determined to be reasonably susceptible of being selected for award, for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements or correcting errors or omissions in the proposal.

(5) Award shall be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to the commission, taking into consideration price and other evaluation factors set forth in the request for proposals.

(b) Offerors must be accorded fair and equal treatment with respect to any opportunity for discussion and revisions of proposals. In conducting discussions, there must be no disclosure of any information derived from proposals submitted by competing offerors.

(c) The only factors or criteria that may be used in the evaluation of proposals are those specified in the request for the proposals. (*State Fair Commission; 80 IAC 1-5-5; filed Nov 27, 1991, 2:00 p.m.: 15 IR 436; errata, 15 IR 1024; filed Aug 8, 1995, 12:00 p.m.: 18 IR 3370; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528; readopted filed Oct 4, 2007, 10:29 a.m.: 20071024-IR-080070451RFA; filed Mar 18, 2008, 2:19 p.m.: 20080416-IR-080070587FRA*)

80 IAC 1-5-6 Competitive unsealed bids (Repealed)

Sec. 6. (*Repealed by State Fair Commission; filed Aug 8, 1995, 12:00 p.m.: 18 IR 3375*)

80 IAC 1-5-7 Small purchases

Authority: IC 15-13-2-9; IC 15-13-3-8

Affected: IC 15-13-2

Sec. 7. (a) A procurement with an estimated cost not exceeding ten thousand dollars (\$10,000) may be made under small purchases procedures outlined in this section.

(b) Small purchases, as defined under subsection (a), shall be processed under the following provisions:

(1) Before award of purchase, quotations for the desired supplies, including purchase description, price or prices, and terms or conditions, as appropriate, must be solicited from not fewer than three (3) potential bidders of the supplies.

(2) The appropriate director or procurement department shall award a contract to the bidder:

(A) submitting the lowest bid price that meets the specifications; and

(B) who is responsible and has the ability to comply with all of the provisions of the contract.

(c) Corrections or withdrawal of inadvertently erroneous bids shall be permitted before award of any bid. However, upon receipt of a proposed bid, any changes in bid prices or other provisions of bids prejudicial to the interest of the commission or fair competition shall:

(1) not be permitted; and

(2) be cause for the disqualification of that bid.

(d) If a bidder inserts contract terms or bids on items not specified in the quotation or includes additional unsolicited items, the procurement 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 items specified in subsection (b)(2); or

(3) accept any of the proposed additions to the contract subject to subsection (e).

(e) The procurement department or director may not accept proposed additions to the contract that are prejudicial to the interests of the commission or fair competition.

(f) The procurement department or director may reject all quotations received.

(g) If no responsive and responsible quotations are received for an item, the procurement department is authorized to procure the item on the open market without further invitations for quotes.

(h) Procurement requirements may not be artificially divided so as to constitute a small purchase under this section. (*State Fair Commission; 80 IAC 1-5-7; filed Nov 27, 1991, 2:00 p.m.: 15 IR 438; filed Aug 8, 1995, 12:00 p.m.: 18 IR 3370; errata filed Sep 25, 1995, 3:00 p.m.: 19 IR 209; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528; readopted filed Oct 4, 2007, 10:29 a.m.: 20071024-IR-080070451RFA; filed Mar 18, 2008, 2:19 p.m.: 20080416-IR-080070587FRA*)

80 IAC 1-5-8 Sole source procurement

Authority: IC 15-13-2-9; IC 15-13-3-8

Affected: IC 15-13-2

Sec. 8. A contract may be awarded for a supply without competition when the executive director has determined that there is only one (1) source for the required supply. A copy of such determination shall be made a part of the contract file. Any such proposed contract having an expenditure value exceeding fifty thousand dollars (\$50,000), along with a copy of the executive director's determination, shall be presented to the commission. (*State Fair Commission; 80 IAC 1-5-8; filed Nov 27, 1991, 2:00 p.m.: 15 IR 439; filed Aug 8, 1995, 12:00 p.m.: 18 IR 3371; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528; readopted filed Oct 4, 2007, 10:29 a.m.: 20071024-IR-080070451RFA*)

80 IAC 1-5-9 Special procurements

Authority: IC 15-13-2-9; IC 15-13-3-8

Affected: IC 4-13-1-17; IC 15-13-2

Sec. 9. (a) Notwithstanding any other provision of this article, the executive director may make, or authorize the procurement 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) when the market structure requires the commission to inspect and bid on the supplies to be procured;
 - (4) for the procurement of data processing contracts or license agreements for:
 - (A) software programs; or
 - (B) supplies, when only one (1) source meets the procurement department's or director's reasonable requirements;
 - (5) for contracts for insurance authorized under IC 4-13-1-17 if the annual premium does not exceed five thousand dollars (\$5,000);
 - (6) 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;
 - (7) when procurement of the required supplies under another section of this rule would seriously impair the function of the using department;
 - (8) when the procurement department has:
 - (A) solicited for a procurement under another section of this rule; and
 - (B) not received a responsive offer; or
 - (9) when the time periods for performance as determined by the executive director would be seriously impaired by bidding, so long as at least two (2) price quotes are obtained.
 - (b) Special procurements must be made with such competition as is practicable under the circumstances.
 - (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. Contract records for special procurements:
 - (1) shall be maintained in a separate file in the procurement department; and
 - (2) are subject to annual audit by the state board of accounts.
- (State Fair Commission; 80 IAC 1-5-9; filed Nov 27, 1991, 2:00 p.m.: 15 IR 439; filed Aug 8, 1995, 12:00 p.m.: 18 IR 3371; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528; readopted filed Oct 4, 2007, 10:29 a.m.: 20071024-IR-080070451RFA; filed Mar 18, 2008, 2:19 p.m.: 20080416-IR-080070587FRA)*

80 IAC 1-5-10 Approval of contracts

Authority: IC 15-13-2-9; IC 15-13-3-8

Affected: IC 15-13-2

Sec. 10. (a) The executive director, on behalf of the commission, shall approve contracts that are:

- (1) less than fifty thousand dollars (\$50,000); or
 - (2) special procurements meeting the terms of section 9(a)(1) or 9(a)(7) of this rule, where expediency and timeliness are essential.
- (b) Contracts that:
- (1) have a value in excess of ten thousand dollars (\$10,000); and
 - (2) do not exceed fifty thousand dollars (\$50,000);

are subject to the review and approval of the office of attorney general in regards to form and legality.

- (c) The commission shall approve contracts that:
 - (1) exceed fifty thousand dollars (\$50,000); and
 - (2) are approved by the office of attorney general in regards to form and legality.

(State Fair Commission; 80 IAC 1-5-10; filed Nov 27, 1991, 2:00 p.m.: 15 IR 439; errata, 15 IR 1024; filed Aug 8, 1995, 12:00 p.m.: 18 IR 3372; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528; readopted filed Oct 4, 2007, 10:29 a.m.: 20071024-IR-080070451RFA; filed Mar 18, 2008, 2:19 p.m.: 20080416-IR-080070587FRA)

80 IAC 1-5-11 Cancellation or rejection of solicitation

Authority: IC 15-13-2-9; IC 15-13-3-8

Affected: IC 15-13-2

Sec. 11. (a) When the executive director determines under section 11.5 of this rule that it is in the best interests of the

commission, any solicitation, including an invitation for a bid or proposal, may be canceled or rejected in whole or in part as specified in the solicitation.

(b) The reasons for a cancellation or rejection of a solicitation must be made a part of the contract file. (*State Fair Commission; 80 IAC 1-5-11; filed Nov 27, 1991, 2:00 p.m.: 15 IR 440; filed Aug 8, 1995, 12:00 p.m.: 18 IR 3372; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528; readopted filed Oct 4, 2007, 10:29 a.m.: 20071024-IR-080070451RFA*)

80 IAC 1-5-11.5 Cancellation or rejection of solicitation; procedures

Authority: IC 15-13-2-9; IC 15-13-3-8

Affected: IC 15-13-2

Sec. 11.5. (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 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.

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.

(b) 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 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.

(c) 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 nonresponsive under 80 IAC 1-6-1;
- (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 supply offered is unacceptable by reason of its 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 contract file. (*State Fair Commission; 80 IAC 1-5-11.5; filed Aug 8, 1995, 12:00 p.m.: 18 IR 3372; errata filed Sep 25, 1995, 3:00 p.m.: 19 IR 209; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528; readopted filed Oct 4, 2007, 10:29 a.m.: 20071024-IR-080070451RFA*)

80 IAC 1-5-12 Manner of giving notice

Authority: IC 15-13-2-9; IC 15-13-3-8

Affected: IC 15-13-2

Sec. 12. (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) The minimum number of notices shall be given by publication according to the following schedule:

- (1) If the ultimate expenditure involved in a procurement is estimated to exceed seventy-five thousand dollars (\$75,000), a notice shall be published at least once each week for two (2) successive weeks.
- (2) If the ultimate expenditure involved in a procurement is estimated to be twenty-five thousand dollars (\$25,000) or more,

but not to exceed seventy-five thousand dollars (\$75,000), a notice shall be published at least one (1) time.

(3) If the ultimate expenditure involved in a procurement is estimated to be less than twenty-five thousand dollars (\$25,000), publication of notice is not required.

(4) The procurement officer may provide for the publication of additional notices, even if no publication is required by this section.

(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. If any of the supplies being procured are for the specific use of the commission and are located outside of Marion County, Indiana, the notice may also be published in one (1) or more newspapers of general circulation in the area in which the supplies are to be used. The procurement officer may designate additional newspapers for the publication of notice according to the nature of the procurement.

(d) In addition to the publication requirements of this section, notice shall be given in the following manner whenever the ultimate expenditure involved in a procurement is estimated to exceed twenty-five thousand dollars (\$25,000):

(1) The procurement department shall cause issuance of notices, invitations to bid, requests for offers, or requests for proposals by 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.

(2) The procurement department shall post notices on a public bulletin board in the procurement department office.

(e) The procurement 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) normal business days. (*State Fair Commission; 80 IAC 1-5-12; filed Nov 27, 1991, 2:00 p.m.: 15 IR 440; filed Aug 8, 1995, 12:00 p.m.: 18 IR 3373; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528; readopted filed Oct 4, 2007, 10:29 a.m.: 20071024-IR-080070451RFA; filed Mar 18, 2008, 2:19 p.m.: 20080416-IR-080070587FRA*)

80 IAC 1-5-13 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. 13. (a) A solicitation for a procurement under this rule may provide that offers will be received and contracts will be awarded separately or for any combination of a line or class of supplies contained in the solicitation. If the procurement department does not indicate in the solicitation how it might award separate contracts, it 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 procurement 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 1-5-13; filed Nov 27, 1991, 2:00 p.m.: 15 IR 440; filed Aug 8, 1995, 12:00 p.m.: 18 IR 3373; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528; readopted filed Oct 4, 2007, 10:29 a.m.: 20071024-IR-080070451RFA*)

80 IAC 1-5-14 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. 14. (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 1-5-14; filed Nov 27, 1991, 2:00 p.m.: 15 IR 441; filed Aug 8, 1995, 12:00 p.m.: 18 IR 3374; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528; readopted filed Oct 4, 2007, 10:29 a.m.: 20071024-IR-080070451RFA*)

Rule 6. Qualifications and Duties of Bidders, Offerors, and Prospective Contractors

80 IAC 1-6-1 Determination of nonresponsibility

Authority: IC 15-13-2-9

Affected: IC 15-13-2

Sec. 1. (a) If a bidder or offeror is not a responsible bidder or offeror, that determination shall be made in writing by the procurement officer.

(b) If a bidder or offeror fails to provide information required by the procurement department 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. (*State Fair Commission; 80 IAC 1-6-1; filed Nov 27, 1991, 2:00 p.m.: 15 IR 441; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528; readopted filed Oct 4, 2007, 10:29 a.m.: 20071024-IR-080070451RFA; filed Mar 18, 2008, 2:19 p.m.: 20080416-IR-080070587FRA*)

80 IAC 1-6-2 Prequalification of suppliers

Authority: IC 15-13-2-9; IC 15-13-3-8

Affected: IC 15-13-2

Sec. 2. Prospective contractors may be prequalified for particular types of supplies. Solicitation mailing lists of potential contractors may include any or all of such prequalified suppliers. (*State Fair Commission; 80 IAC 1-6-2; filed Nov 27, 1991, 2:00 p.m.: 15 IR 441; filed Aug 8, 1995, 12:00 p.m.: 18 IR 3374; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528; readopted filed Oct 4, 2007, 10:29 a.m.: 20071024-IR-080070451RFA*)

80 IAC 1-6-3 Submission of cost or pricing data; exceptions

Authority: IC 15-13-2-9

Affected: IC 15-13-2

Sec. 3. (a) Except as provided in subsection (c), a contractor shall do the following:

(1) Submit cost or pricing data.

(2) Certify that, to the best of its knowledge and belief, the cost or pricing data submitted is accurate, complete, and current as of a mutually determined specified date prior to the date of either of the following:

(A) The pricing of any contract awarded under 80 IAC 1-5 by competitive sealed proposals concerning the sole source procurement authority, where the total contract price is expected to exceed an amount established by procurement department rules.

(B) The pricing of any change order or contract modification which is expected to exceed an amount established by procurement department rules.

(b) Any contract, change order, or contract modification under which a certificate is required under subsection (a) must contain a provision that the total contract price, including any profit or fee, shall be adjusted to exclude any significant price increase due to inaccurate, incomplete, or outdated cost or pricing data furnished by the contractor as of the date agreed upon between the parties.

(c) The requirements of subsections (a) and (b) do not apply to contracts:

(1) whenever the contract price is based on adequate price competition;

(2) whenever the contract price is based on established catalog prices or market price;

(3) whenever contract prices are set by law or rule; or

(4) whenever it is determined that the requirements of subsections (a) through (b) may be waived, and the reasons for the waiver are stated in writing.

(*State Fair Commission; 80 IAC 1-6-3; filed Nov 27, 1991, 2:00 p.m.: 15 IR 441; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528; readopted filed Oct 4, 2007, 10:29 a.m.: 20071024-IR-080070451RFA*)

80 IAC 1-6-4 Foreign corporations; bids and offers; necessity of registration

Authority: IC 15-13-2-9

Affected: IC 15-13-2

Sec. 4. (a) 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.

(b) The executive director may award a contract to a bidder or offeror pending registration with the secretary of state. If, in the judgment of the executive director, the bidder or offeror has not registered within a reasonable period of time, the executive director shall cancel the contract. A bidder or offeror may not bring a cause of action based on the cancellation of a contract under this subsection. (*State Fair Commission; 80 IAC 1-6-4; filed Nov 27, 1991, 2:00 p.m.: 15 IR 441; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528; readopted filed Oct 4, 2007, 10:29 a.m.: 20071024-IR-080070451RFA*)

Rule 7. Types of Contracts

80 IAC 1-7-1 Prohibited contracts

Authority: IC 15-13-2-9

Affected: IC 15-13-2

Sec. 1. The "cost plus a percentage of cost contract" is prohibited. (*State Fair Commission; 80 IAC 1-7-1; filed Nov 27, 1991, 2:00 p.m.: 15 IR 442; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528; readopted filed Oct 4, 2007, 10:29 a.m.: 20071024-IR-080070451RFA*)

80 IAC 1-7-2 Approval of contracts

Authority: IC 15-13-2-9

Affected: IC 15-13-2

Sec. 2. (a) Except for a firm fixed price contract, the conditions of subsection (b) must be met for the use of any contract type.

(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 1-7-2; filed Nov 27, 1991, 2:00 p.m.: 15 IR 442; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528; readopted filed Oct 4, 2007, 10:29 a.m.: 20071024-IR-080070451RFA*)

80 IAC 1-7-3 Multiterm contracts; specified period

Authority: IC 15-13-2-9; IC 15-13-3-8

Affected: IC 15-13-2

Sec. 3. Unless otherwise provided by law, a contract for supplies may be entered into for any period of time not to exceed two (2) years with up to two (2) one (1) year renewals for supplies, or four (4) years for leases of equipment and related maintenance and support agreements if:

(1) the term of the contract and the conditions for renewal or extension, if any, are included in the solicitation; and

(2) the solicitation and contract specify that payment and performance obligations are subject to the availability of funds.

(*State Fair Commission; 80 IAC 1-7-3; filed Nov 27, 1991, 2:00 p.m.: 15 IR 442; filed Aug 8, 1995, 12:00 p.m.: 18 IR 3374; errata filed Sep 25, 1995, 3:00 p.m.: 19 IR 209; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528; readopted filed Oct 4, 2007, 10:29 a.m.: 20071024-IR-080070451RFA*)

80 IAC 1-7-4 Multiterm contracts; determination prior to use (Repealed)

Sec. 4. (*Repealed by State Fair Commission; filed Aug 8, 1995, 12:00 p.m.: 18 IR 3375*)

80 IAC 1-7-5 Multiterm contracts; cancellation due to unavailability of funds

Authority: IC 15-13-2-9; IC 15-13-3-8

Affected: IC 15-13-2

Sec. 5. When the commission or executive director of the commission makes a determination that funds are not available to support continuation of performance of a multiterm contract, the multiterm contract shall be canceled. A determination by the commission or executive director that funds are not available to support continuation of performance shall be final and conclusive. (*State Fair Commission; 80 IAC 1-7-5; filed Nov 27, 1991, 2:00 p.m.: 15 IR 442; filed Aug 8, 1995, 12:00 p.m.: 18 IR 3374; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528; readopted filed Oct 4, 2007, 10:29 a.m.: 20071024-IR-080070451RFA*)

Rule 8. Determinations, Records, and Reports of the Procurement Department

80 IAC 1-8-1 Finality of determinations; judicial review (Repealed)

Sec. 1. (*Repealed by State Fair Commission; filed Aug 8, 1995, 12:00 p.m.: 18 IR 3375*)

80 IAC 1-8-1.1 Finality of determinations; judicial review

Authority: IC 15-13-2-9

Affected: IC 15-13-2

Sec. 1.1. The determinations required by this article are final and conclusive, subject to judicial review. (*State Fair Commission; 80 IAC 1-8-1.1; filed Mar 18, 2008, 2:19 p.m.: 20080416-IR-080070587FRA*)

80 IAC 1-8-2 Anticompetitive practices; reporting

Authority: IC 15-13-2-9

Affected: IC 15-13-2

Sec. 2. 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 1-8-2; filed Nov 27, 1991, 2:00 p.m.: 15 IR 443; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528; readopted filed Oct 4, 2007, 10:29 a.m.: 20071024-IR-080070451RFA*)

80 IAC 1-8-3 Retention of procurement records

Authority: IC 15-13-2-9

Affected: IC 5-15-5.1; IC 15-13-2

Sec. 3. All procurement records shall be retained and disposed of in accordance with records' retention guidelines and schedules approved by the commission on public records under IC 5-15-5.1. All retained records shall be made available to the attorney general, or his designee, upon request and proper receipt. (*State Fair Commission; 80 IAC 1-8-3; filed Nov 27, 1991, 2:00 p.m.: 15 IR 443; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528; readopted filed Oct 4, 2007, 10:29 a.m.: 20071024-IR-080070451RFA*)

80 IAC 1-8-4 Retention of contract records

Authority: IC 15-13-2-9; IC 15-13-3-8

Affected: IC 15-13-2

Sec. 4. Notwithstanding section 3 of this rule, the procurement department shall maintain a record listing all contracts made under 80 IAC 1-5-8 and 80 IAC 1-5-9 for a minimum of five (5) years. The record must contain the following:

- (1) Each contractor's name.
- (2) The amount and type of each contract.
- (3) A listing of the supplies procured under each contract.

(State Fair Commission; 80 IAC 1-8-4; filed Nov 27, 1991, 2:00 p.m.: 15 IR 443; filed Aug 8, 1995, 12:00 p.m.: 18 IR 3374; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528; readopted filed Oct 4, 2007, 10:29 a.m.: 20071024-IR-080070451RFA)

Rule 9. Modification and Termination of Contracts for Supplies and Services

80 IAC 1-9-1 Contract clauses

Authority: IC 15-13-2-9; IC 15-13-3-8

Affected: IC 15-13-2

Sec. 1. (a) Contract provision clauses may be included in a contract dealing with the following:

(1) The unilateral right of the commission, or the executive director on behalf of the commission, to order, in writing, the following:

(A) Changes in the work within the scope of the contract.

(B) Temporary stopping of the work or delaying performance.

(b) Variations occurring between estimated quantities of work in a contract and actual quantities. *(State Fair Commission; 80 IAC 1-9-1; filed Nov 27, 1991, 2:00 p.m.: 15 IR 443; filed Aug 8, 1995, 12:00 p.m.: 18 IR 3374; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528; readopted filed Oct 4, 2007, 10:29 a.m.: 20071024-IR-080070451RFA)*

80 IAC 1-9-2 Price adjustments

Authority: IC 15-13-2-9; IC 15-13-3-8

Affected: IC 15-13-2

Sec. 2. Adjustments in price under section 1(a)(1) of this rule must be computed in one (1) or more of the following ways:

(1) By agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable.

(2) By unit prices specified in the contract or subsequently agreed upon.

(3) By the costs attributable to the events or situations under such clauses with adjustment of profit or fee, all as specified in the contract or subsequently agreed upon.

(4) In such other manner as the contracting parties may mutually agree.

(5) In the absence of agreements by the parties, by a unilateral determination by the commission or executive director of the costs attributable to the events or situations under such clauses, with adjustment of profit or fee, all as computed by the commission in accordance with applicable provisions issued under 80 IAC 1-3.

(State Fair Commission; 80 IAC 1-9-2; filed Nov 27, 1991, 2:00 p.m.: 15 IR 443; filed Aug 8, 1995, 12:00 p.m.: 18 IR 3375; errata filed Sep 25, 1995, 3:00 p.m.: 19 IR 209; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528; readopted filed Oct 4, 2007, 10:29 a.m.: 20071024-IR-080070451RFA)

80 IAC 1-9-3 Cost or pricing data; submission

Authority: IC 15-13-2-9

Affected: IC 15-13-2

Sec. 3. A contractor shall be required to submit cost or pricing data if any adjustment in contract price is subject to the provisions under 80 IAC 1-6. *(State Fair Commission; 80 IAC 1-9-3; filed Nov 27, 1991, 2:00 p.m.: 15 IR 443; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528; readopted filed Oct 4, 2007, 10:29 a.m.: 20071024-IR-080070451RFA)*

Rule 10. Special Contracting; Entertainment (Repealed)

(Repealed by State Fair Commission; filed Aug 8, 1995, 12:00 p.m.: 18 IR 3375)

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