

ARTICLE 2. REAL PROPERTY CONTRACTING PROCEDURES

Rule 1. Definitions

80 IAC 2-1-1 Applicability

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 1. The definitions in this rule apply throughout this article. (*State Fair Commission; 80 IAC 2-1-1; filed Nov 27, 1991, 2:00 p.m.: 15 IR 445; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 2-1-2 “Commission” defined

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 2. “Commission” means the state fair commission. (*State Fair Commission; 80 IAC 2-1-2; filed Nov 27, 1991, 2:00 p.m.: 15 IR 445; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 2-1-3 “Commission works” defined

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 3. “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 2-1-3; filed Nov 27, 1991, 2:00 p.m.: 15 IR 445; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 2-1-4 “Commission works contract” defined

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 4. “Commission works contract” or “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 terms “commission works contract” or “contract” do not include contracts for professional services, unless specifically provided to the contrary. (*State Fair Commission; 80 IAC 2-1-4; filed Nov 27, 1991, 2:00 p.m.: 15 IR 445; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 2-1-5 “Contractor” defined

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 5. “Contractor” means any person who has entered into or seeks to enter into a commission works project. (*State Fair Commission; 80 IAC 2-1-5; filed Nov 27, 1991, 2:00 p.m.: 15 IR 445; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 2-1-6 “Executive director” defined

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 6. “Executive director” means the executive director of the commission. (*State Fair Commission; 80 IAC 2-1-6; filed Nov 27, 1991, 2:00 p.m.: 15 IR 445; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 2-1-7 “Escrowed income” defined

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 7. “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 2-1-7; filed Nov 27, 1991, 2:00 p.m.: 15 IR 445; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 2-1-8 “Escrowed principal” defined

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 8. “Escrowed principal” means the value of all cash, securities, or other property place [*sic., placed*] in an escrow account by the commission or a contractor as a retainage on a commission works contract. (*State Fair Commission; 80 IAC 2-1-8; filed Nov 27, 1991, 2:00 p.m.: 15 IR 446; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 2-1-9 “Person” defined

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 9. “Person” means any association, corporation, fiduciary, individual, joint stock company, joint venture, partnership, sole proprietorship, or otherwise private legal entity. (*State Fair Commission; 80 IAC 2-1-9; filed Nov 27, 1991, 2:00 p.m.: 15 IR 446; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 2-1-10 “Professional services” defined

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2; IC 25-4; IC 25-31

Sec. 10. “Professional services” means one (1) of the following:

(1) The services of a person registered or certified under IC 25-4.

(2) A person licensed under IC 25-31.

(3) 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.

(*State Fair Commission; 80 IAC 2-1-10; filed Nov 27, 1991, 2:00 p.m.: 15 IR 446; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 2-1-11 “Responsible contractor” defined

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 11. “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 2-1-11; filed Nov 27, 1991, 2:00 p.m.: 15 IR 446; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 2-1-12 “Responsive contractor” defined

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 12. “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 2-1-12; filed Nov 27, 1991, 2:00 p.m.: 15 IR 446; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528)*

80 IAC 2-1-13 “Retainage” defined

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 13. “Retainage” means any amount to be withheld from a payment to a contractor or subcontractor under the terms of a contract until the occurrence of a specified event. *(State Fair Commission; 80 IAC 2-1-13; filed Nov 27, 1991, 2:00 p.m.: 15 IR 446; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528)*

80 IAC 2-1-14 “Subcontractor” defined

Authority: IC 15-1.5-2-8

Affected: IC 5-16-5; IC 5-16-5.5; IC 15-1.5-2

Sec. 14. “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 2-1-14; filed Nov 27, 1991, 2:00 p.m.: 15 IR 446; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528)*

80 IAC 2-1-15 “Substantial completion” defined

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 15. “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 2-1-15; filed Nov 27, 1991, 2:00 p.m.: 15 IR 446; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528)*

Rule 2. General Provisions

80 IAC 2-2-1 Purpose

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 1. This article shall be construed and applied to promote its underlying purposes and policies, which are as follows:

- (1) Simplify, clarify, and modernize the rules governing commission works and professional service contracts.
- (2) Maintain public confidence in the procedures surrounding the awarding and administration of commission works and professional service contracts.
- (3) Ensure fair and equitable treatment of all persons who deal with the commission works system covered by this article.
- (4) Provide increased economy in commission works activities covered by this article and maximize the purchasing value of the commission funds.
- (5) Foster effective broad based competition within the free enterprise system.
- (6) Provide safeguards for the maintenance of a commission works system of quality and integrity.

(State Fair Commission; 80 IAC 2-2-1; filed Nov 27, 1991, 2:00 p.m.: 15 IR 446; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528)

80 IAC 2-2-2 Applicability

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 2. (a) This article applies only to commission works contracts solicited after July 1, 1991.

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

(c) 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 the 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 2-2-2; filed Nov 27, 1991, 2:00 p.m.: 15 IR 447; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 2-2-3 Compliance with certain statutes

Authority: IC 15-1.5-2-8

Affected: IC 5-15-6; IC 5-16; IC 15-1.5-2

Sec. 3. (a) The commission shall comply with this article and the following statutes in the administration of commission works contracts:

(1) IC 5-16-1.

(2) IC 5-16-3.

(3) IC 5-16-5.

(4) IC 5-16-5.5.

(5) IC 5-15-6.

(6) IC 5-16-6.5.

(7) IC 5-16-7, if the estimated cost of the commission works project is fifteen thousand dollars (\$15,000) or more.

(8) IC 5-16-8.

(9) IC 5-16-9.

(10) IC 5-16-10.

(11) IC 5-16-11.

(b) The following statutes do not apply to commission works, commission works contracts, or professional service contracts covered under this article:

(1) IC 5-16-2.

(2) IC 5-16-11.2 [*sic.*].

(*State Fair Commission; 80 IAC 2-2-3; filed Nov 27, 1991, 2:00 p.m.: 15 IR 447; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 2-2-4 Good faith

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 4. All parties involved in the negotiation, performance, or administration of contracts covered by this article shall act in good faith. (*State Fair Commission; 80 IAC 2-2-4; filed Nov 27, 1991, 2:00 p.m.: 15 IR 447; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 2-2-5 Grants, gifts, bequests, or cooperative agreements

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 5. Notwithstanding this article, the commission shall comply with the terms and conditions of any grant, gift, bequest,

or cooperative agreement involving the commission if noncompliance with those terms and conditions would invalidate the grant, gift, bequest, or cooperative agreement. (*State Fair Commission; 80 IAC 2-2-5; filed Nov 27, 1991, 2:00 p.m.: 15 IR 447; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 2-2-6 Retention of written determinations

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 6. The commission shall retain written determinations required by this article in the appropriate official contract file of the commission. (*State Fair Commission; 80 IAC 2-2-6; filed Nov 27, 1991, 2:00 p.m.: 15 IR 447; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 2-2-7 Public records; inspection

Authority: IC 15-1.5-2-8

Affected: IC 5-14-3; IC 15-1.5-2

Sec. 7. Except as otherwise [*sic., provided*] by law, records of the commission relative to this article are public records subject to public inspection under IC 5-14-3. (*State Fair Commission; 80 IAC 2-2-7; filed Nov 27, 1991, 2:00 p.m.: 15 IR 447; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

Rule 3. Duties of the Commission; Assignment of Commission Works Projects

80 IAC 2-3-1 Duties of the commission

Authority: IC 15-1.5-2-8

Affected: IC 4-22-2; IC 15-1.5-2

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

(1) May adopt rules under IC 4-22-2 necessary to carry out this article.

(2) Consider and decide matters of policy under this article.

(3) Enforce this article and the rules adopted under it.

(4) Contract for professional consulting services to carry out the provisions of this article.

(b) The consulting engineer 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 and/or cause inspection of 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) Approved [*sic., 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 in the part 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. Such determinations of the executive director is [*sic., are*] final and conclusive and is [*sic., are*] the amount against with [*sic., 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 2-3-1; filed Nov 27, 1991, 2:00 p.m.: 15 IR 447; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

Rule 4. Qualifications for Commission Works Projects

80 IAC 2-4-1 Applicability

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 1. This rule governs the qualifications and classifications of contractors and of persons desiring to perform professional services relating to a commission works project. (*State Fair Commission; 80 IAC 2-4-1; filed Nov 27, 1991, 2:00 p.m.: 15 IR 448; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 2-4-2 Qualifications of prospective contractors

Authority: IC 15-1.5-2-8

Affected: IC 4-13.6-4; IC 15-1.5-2

Sec. 2. All persons desiring to 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. Proof of such registry or certification must be included with any bid or quotation submitted in response to any form of an invitation to bid issued by the commission. (*State Fair Commission; 80 IAC 2-4-2; filed Nov 27, 1991, 2:00 p.m.: 15 IR 448; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

Rule 5. Bidding Requirements

80 IAC 2-5-1 Method of awarding contracts; approval of contract documents

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 1. (a) Commission works contracts must be awarded under section 2 of this chapter [*sic.*, *rule*] unless another method is authorized under this chapter [*sic.*, *rule*].

(b) A duly licensed architect or engineer must approve the contract documents for a commission works project. A consulting engineer may be retained by the commission by professional services contract for the purpose of assisting in the administration of the provisions of this article. (*State Fair Commission; 80 IAC 2-5-1; filed Nov 27, 1991, 2:00 p.m.: 15 IR 448; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 2-5-2 Projects costing \$25,000 or more; bidding procedure; records

Authority: IC 15-1.5-2-8

Affected: IC 5-16-1-2; IC 15-1.5-2; 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 twenty-five thousand dollars (\$25,000), the commission shall award a contract for the project based on competitive bids.

(b) If the estimated cost of a commission works project is at least twenty-five thousand dollars (\$25,000), the commission shall cause development of contract documents for a commission works contract and 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 2-6.

(d) A contractor shall submit under oath a financial statement as a part of the bid which complies with the requirements of IC 5-16-1-2.

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

(1) the estimated cost of the commission works project is one hundred thousand dollars (\$100,000) or more and the contractor is not qualified under 80 IAC 2-4;

(2) the estimated cost of the commission works project is less than one hundred thousand dollars (\$100,000) and the executive director makes a written determination, based upon information provided under subsections (d) through (e) [*subsection (d)*]

and this subsection], that the contractor is not qualified to perform the commission works contract;

(3) the contractor has failed to perform a previous contract with the commission satisfactorily and has submitted the bid during the period of suspension imposed by the executive director (the failure of the contractor to perform a contract satisfactorily must be based upon a written determination by the executive director);

(4) the contractor has not complied with 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

(5) the contractor has not complied with any requirement under subsection (g).

(f) The commission shall keep a record of all bids. The state board of accounts shall approve the form of this record, and 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) Identification of each beneficiary and empowered settlor. This subsection *[sic.]* applies whenever a contract is awarded by competitive sealed bidding or acceptance of quotations. A bid or quotation submitted by a trust (as defined in IC 30-4-1-1(a)) must identify each *[sic., of the following]*:

(1) Beneficiary of the trust.

(2) Settlor empowered to revoke or modify the trust.

(State Fair Commission; 80 IAC 2-5-2; filed Nov 27, 1991, 2:00 p.m.: 15 IR 448; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528)

80 IAC 2-5-3 Projects costing less than \$25,000; quotations from contractors; award

Authority: IC 15-1.5-2-8

Affected: IC 5-16-1-3; IC 15-1.5-2

Sec. 3. (a) If the estimated cost of a commission works project is less than twenty-five thousand dollars (\$25,000), the executive director, with the review and approval of the commission, may award a commission works contract either under section 2 of this rule or under this section, at the discretion of the executive director.

(b) If the executive director awards a contract under this section, the commission shall publish notice in accordance with IC 5-16-1-3(a) or 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 must be in writing and sealed in an envelope, shall be considered firm, and may be the basis upon which the executive director awards a commission works contract.

(d) The commission shall award a contract to the lowest responsible and responsive contractor and in accordance with any requirements imposed under subsection 2(g) of this chapter *[sic., section 2(g) of this rule]*. *(State Fair Commission; 80 IAC 2-5-3; filed Nov 27, 1991, 2:00 p.m.: 15 IR 449; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528)*

80 IAC 2-5-4 Performance of commission works projects by employees of the commission

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 4. If the estimated cost of a commission works project is less than twenty-five thousand dollars (\$25,000), such projects 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 2-5-4; filed Nov 27, 1991, 2:00 p.m.: 15 IR 449; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528)*

80 IAC 2-5-5 Emergency conditions; quotations from contractors; awards

Authority: IC 15-1.5-2-8

Affected: IC 5-16-1-1.6; IC 15-1.5-2

Sec. 5. (a) When the commission, in accordance with IC 5-16-1-1.6, makes a written determination that an emergency condition exists due to fire, flood, windstorm, casualty, or other condition (including mechanical failure of any part of a building or structure), and the emergency condition endangers the health, safety, or welfare of the public or 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 5-6-1-1.6 [*sic.*, IC 5-16-1-1.6]. Failure to receive three (3) quotations shall not prevent an award from being made.

(c) The commission shall keep a copy of the executive director's determinations and the 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 section 4 of this chapter [*sic.*, rule], if necessary to remedy the emergency condition. (*State Fair Commission; 80 IAC 2-5-5; filed Nov 27, 1991, 2:00 p.m.: 15 IR 450; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 2-5-6 Land acquisition; professional services

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 6. (a) Competitive bids are not required for the acquisition of land or for professional services relating to commission works projects. In awarding contracts for professional services relating to commission works projects, the executive director shall submit [*sic.*] a recommendation to the commission, who shall, by majority vote, award a contract.

(b) In making a recommendation to the commission, 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 authorized designee, shall negotiate compensation for performance of the professional services that the commission determines is reasonable. (*State Fair Commission; 80 IAC 2-5-6; filed Nov 27, 1991, 2:00 p.m.: 15 IR 450; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 2-5-7 Solicitation of sealed bids; public notice

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 7. (a) This section applies only to commission works contracts bid under section 2 of this chapter [*sic.*, rule].

(b) The consulting engineer 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 executive director shall designate the newspapers for these publications. The executive director may designate different newspapers according to the nature of the project and may direct that additional notices be published. The procurement department shall also solicit sealed bids for commission works projects by sending notices by mail to prospective contractors known to the procurement department, and by posting notices on a public bulletin board in its office at least seven (7) days before the final date for submitting bids for the commission works project. (*State Fair Commission; 80 IAC 2-5-7; filed Nov 27, 1991, 2:00 p.m.: 15 IR 450; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 2-5-8 Copies of bids or quotations; files; public records

Authority: IC 15-1.5-2-8

Affected: IC 5-14-3; IC 5-15-5.1; IC 15-1.5-2

Sec. 8. (a) In order to preserve the integrity of bids or quotations, the procurement department shall make a copy of each bid

or quotation as soon as possible after the bids or quotations are opened and before they may be inspected and copied by the public under IC 5-14-3. In making these copies, the procurement department is required to copy only those portions of the bids or quotations which, if altered, would affect the integrity of the bid or quotation. The procurement department may make these copies by means of microfilm or *[sic., or]* by any other means that the executive director may specify.

(b) The procurement 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 copies required by subsection (a) and the files required by subsection (b) are public records under IC 5-14-3. The procurement 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 2-5-8; filed Nov 27, 1991, 2:00 p.m.: 15 IR 450; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 2-5-9 Commencement of warranty period

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 9. Each commission works contract must require that all warranty periods applying to work performed under the contract commence no later than the date that work under the contract is substantially completed. (*State Fair Commission; 80 IAC 2-5-9; filed Nov 27, 1991, 2:00 p.m.: 15 IR 451; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 2-5-10 Void contracts

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 10. All commission works contracts not let in conformity with this chapter *[sic., rule]* are void. (*State Fair Commission; 80 IAC 2-5-10; filed Nov 27, 1991, 2:00 p.m.: 15 IR 451; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 2-5-11 Trench safety systems

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 11. (a) This section applies to a commission works project that may require dreation *[sic., creation]* of a trench of at least five (5) feet in depth.

(b) IOSHA regulations 29 CFR 1926, Subpart P, for trench safety systems shall be incorporated into the contract documents for a commission works project.

(c) The contract documents for a commission works project shall provide that the cost for trench safety systems shall be paid for:

(1) as a separate pay item; or

(2) in the pay item of the principal work with which the safety systems are associated.

(*State Fair Commission; 80 IAC 2-5-11; filed Nov 27, 1991, 2:00 p.m.: 15 IR 451; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

Rule 6. Bid Opening and Award of Contracts

80 IAC 2-6-1 Sealed bids; opening procedures; time to submit bids

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

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

(b) The consulting engineer 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 procurement department shall copy bids are *[sic., as]* required under 80 IAC 2-5-8.

(c) The consulting engineer may not require any contractor to submit its bid at any time earlier than the time specified in the instructions for opening of bids. (*State Fair Commission; 80 IAC 2-6-1; filed Nov 27, 1991, 2:00 p.m.: 15 IR 451; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 2-6-2 Award of contracts

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 2. The consulting engineer shall make a recommendation to the commission concerning the awarding or rejection of a contract to the lowest responsible and responsive contractor. (*State Fair Commission; 80 IAC 2-6-2; filed Nov 27, 1991, 2:00 p.m.: 15 IR 451; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 2-6-3 Rejection of all bids

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 3. The commission may, in the reasonable exercise of discretion, reject all bids submitted. (*State Fair Commission; 80 IAC 2-6-3; filed Nov 27, 1991, 2:00 p.m.: 15 IR 451; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 2-6-4 Notice to proceed; extensions of time; notice of withdrawal of bid and rejection of contract

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 4. (a) Within sixty (60) days from the date on which bids are opened, the executive director at the direction of the commission shall award a contract and shall provide the successful contractor with written notice to proceed.

(b) If the executive director fails to award and execute a contract and to issue notice to proceed within sixty (60) days that bids for the contract are opened, the successful contractor may grant one (1) or more extensions of time to the procurement department to award a contract, to execute the contract, and to give 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 that grants the consulting engineer at least fifteen (15) additional days to award a contract to the successful contractor. (*State Fair Commission; 80 IAC 2-6-4; filed Nov 27, 1991, 2:00 p.m.: 15 IR 451; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

Rule 7. Bonding, Escrow, Retainages

80 IAC 2-7-1 Applicability

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 1. The executive director, or as directed by the commission, may apply this chapter *[sic., rule]* to commission works projects with an estimated cost less than the amounts specified in section 2 or 7 of this chapter *[sic., rule]*. (*State Fair Commission; 80 IAC 2-7-1; filed Nov 27, 1991, 2:00 p.m.: 15 IR 452; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 2-7-2 Contract provisions for retainage of payments; escrow accounts and agreements

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 2. (a) If the cost of a commission works project is one hundred thousand dollars (\$100,000) or more, the consulting engineer 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 chapter [sic., rule].

(b) A commission works contracts [sic., 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, shall 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 percentage of the escrowed principal to be released from the escrow and the 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 [sic., conditions] that are not inconsistent with subsection

(c). Additional provisions may include provisions authorizing the escrow agent to commingle the escrowed funds held under other escrow agreements and provisions limiting the liability of the escrow agent. (*State Fair Commission; 80 IAC 2-7-2; filed Nov 27, 1991, 2:00 p.m.: 15 IR 452; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 2-7-3 Amount of retainage withheld

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

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 fifty percent (50%) complete, and nothing further after that.

(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 architect-engineer. (*State Fair Commission; 80 IAC 2-7-3; filed Nov 27, 1991, 2:00 p.m.: 15 IR 452; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 2-7-4 Payment of subcontractors and suppliers by contractor or escrow agent; certification of previous payments

Authority: IC 15-1.5-2-8

Affected: IC 4-13.6-4-13; IC 15-1.5-2

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 2-7-4; filed Nov 27, 1991, 2:00 p.m.: 15 IR 453; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 2-7-5 Bid bonds

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 5. (a) The executive director, or upon recommendation by the commission, 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 may accept bids provided on forms specified by the commission or on forms given by surety companies. (*State Fair Commission; 80 IAC 2-7-5; filed Nov 27, 1991, 2:00 p.m.: 15 IR 453; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 2-7-6 Payment bonds

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

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, its successors and assigns, whether by operation of law or otherwise, and all subcontractors, 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 chapter [*sic., rule*] shall be a part of the terms of the contract and bond.

(b) The commission may 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.

(c) The commission may accept bonds provided on forms specified by the commission or on forms given by surety companies.

(d) The commission shall hold the bond of a contractor for the use and benefit of any claimant having an interest in it and entitled to its benefits.

(e) 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 2-7-6; filed Nov 27, 1991, 2:00 p.m.: 15 IR 453; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 2-7-7 Performance bonds

Authority: IC 15-1.5-2-8

Affected: IC 5-16-5.5; IC 15-1.5-2

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 thousand dollars (\$100,000) 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 *[sic.]* 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 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.
- (c) The commission may accept bonds provided on forms specified by the commission or on forms given by surety companies.
- (d) 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 2-7-7; filed Nov 27, 1991, 2:00 p.m.: 15 IR 453; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 2-7-8 Final settlement with contractor

Authority: IC 15-1.5-2-8

Affected: IC 5-16-5; IC 15-1.5-2

Sec. 8. (a) Except for amounts withheld from the contractor under section 3 of this rule for uncompleted minor items and subject to IC 5-16-5, 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 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.
- (b) 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 2-7-8; filed Nov 27, 1991, 2:00 p.m.: 15 IR 454; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 2-7-9 Payment of subcontractors and suppliers by the commission; proration of claims; disputed claims

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

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 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 2-7-9; filed Nov 27, 1991, 2:00 p.m.: 15 IR 454; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 2-7-10 Claims of subcontractors and suppliers; verification; notice to contractors and sureties; actions upon bonds

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

Sec. 10. (a) In order to receive payment under section 9 of this rule or to 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 *[sic., 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 2-7-10; filed Nov 27, 1991, 2:00 p.m.: 15 IR 454; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 2-7-11 Limitation of actions against sureties

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

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 2-7-11; filed Nov 27, 1991, 2:00 p.m.: 15 IR 455; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

80 IAC 2-7-12 Relationship to other laws

Authority: IC 15-1.5-2-8

Affected: IC 15-1.5-2

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 2-7-12; filed Nov 27, 1991, 2:00 p.m.: 15 IR 455; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

Rule 8. Prevailing Scale of Wages

80 IAC 2-8-1 Prevailing scale of wages; payment

Authority: IC 15-1.5-2-8

Affected: IC 5-16-7; IC 15-1.5-2

Sec. 1. (a) Any firm, individual, partnership, corporation, or contractor which is hereafter awarded a contract by this commission for the construction of any commission work *[sic., works]* project with an estimated cost in excess of fifteen thousand dollars (\$15,000), and any subcontractor thereon, shall be required to pay for each class of work on such project a scale of wages which shall in no case be less than the prevailing scale of wages being paid in the immediate locality for such class of work as determined by the appropriate committee of state government in accordance with IC 5-16-7-1.

(b) The commission, in soliciting bids for any such contracts, shall include a schedule of the wages to be paid to such laborers, workmen, or mechanics as a part of the bid, proposal, or quotation documentation required under 80 IAC 2-5. Such schedule shall be filed before any work is performed on such contract or subcontract; provided, such scale shall not be less than the scale determined as provided in section 1 of this rule *[this section]*; provided further, that nothing in this rule provided shall prevent such contractor or subcontractor from paying a higher rate of wages than *[sic., than]* set out in the schedule of wages filed by him.

(c) A contractor or subcontractor who knowingly fails to pay the rate of wages determined under this chapter *[sic., rule]* and

REAL PROPERTY CONTRACTING PROCEDURES

in accordance with IC 5-16-7, shall be subject to the provisions of IC 5-16-7-3 and all the conditions thereof. (*State Fair Commission; 80 IAC 2-8-1; filed Nov 27, 1991, 2:00 p.m.: 15 IR 455; readopted filed Sep 11, 2001, 2:45 p.m.: 25 IR 528*)

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