

ARTICLE 9. COMMISSION WORKS

Rule 1. General Provisions

80 IAC 9-1-1 Applicability

Authority: IC 15-13-2-9

Affected: IC 15-13-2

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

(b) This article does not apply to work or improvements made to real property that is being, or will be leased by the commission from another person where the commission has no interest in the real property after expiration of the lease. However, a lease between any lessor and the commission may provide that any of the provisions of this article will apply to any work or improvements to be made in the leased real property. (*State Fair Commission; 80 IAC 9-1-1; filed Nov 7, 2016, 3:46 p.m.: 20161207-IR-080160210FRA*)

80 IAC 9-1-2 Compliance with certain statutes

Authority: IC 15-13-2-9

Affected: IC 5-16; IC 15-13-2

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

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

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

80 IAC 9-1-3 Public records; retention of written determinations

Authority: IC 15-13-2-9

Affected: IC 5-14-3; IC 15-13-2

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

(b) The commission shall retain written determinations required by this article in the official contract file of the commission. (*State Fair Commission; 80 IAC 9-1-3; filed Nov 7, 2016, 3:46 p.m.: 20161207-IR-080160210FRA*)

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

80 IAC 9-2-1 Duties of the commission

Authority: IC 15-13-2-9

Affected: IC 4-22-2; IC 15-13-2

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

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

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

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

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

(2) Approve contract documents for commission works projects.

(3) Advertise for bids for commission works contracts.

(4) Recommend to the commission and executive director award of commission works contracts.

(5) Supervise or cause inspection of, or both, all work relating to commission works projects.

(6) Recommend to the executive director and the commission approval of any necessary lawful changes in contract documents relating to a commission works contract that has been awarded.

(7) Approve or reject estimates for payment.

(8) Accept or reject a commission works project, subject to the review and approval of the executive director or the commission, as applicable.

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

(1) final and conclusive; and

(2) the amount against which the existence of the duty or the authority shall be determined;

even if it is later found that the determination of the executive director was erroneous. (*State Fair Commission; 80 IAC 9-2-1; filed Nov 7, 2016, 3:46 p.m.: 20161207-IR-080160210FRA*)

Rule 3. Qualifications for Commission Works Projects

80 IAC 9-3-1 Qualifications of prospective contractors and persons providing professional services

Authority: IC 15-13-2-9

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

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

(b) Proof of such registry or certification must be included with any bid or quotation submitted by persons who desire to perform a professional service or by a contractor in response to any form of an invitation to bid or quote issued by the commission. (*State Fair Commission; 80 IAC 9-3-1; filed Nov 7, 2016, 3:46 p.m.: 20161207-IR-080160210FRA*)

Rule 4. Bidding Requirements

80 IAC 9-4-1 Method of awarding contracts; approval of contract documents

Authority: IC 15-13-2-9

Affected: IC 15-13-2

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

(b) At the discretion of the commission or commission representative, a duly certified or registered architect or licensed engineer may be utilized to approve the contract documents for a commission works project. A consulting engineer or architect may be retained by the commission by a professional services contract for the purpose of assisting in the administration of the provisions of this article. (*State Fair Commission; 80 IAC 9-4-1; filed Nov 7, 2016, 3:46 p.m.: 20161207-IR-080160210FRA*)

80 IAC 9-4-2 Projects costing \$150,000 or more; bidding procedure; records

Authority: IC 15-13-2-9

Affected: IC 5-16-1-2; IC 15-13-2; IC 30-4-1-1

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

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

(1) cause development of contract documents for a commission works contract; and

(2) keep the contract documents on file in its offices so that they may be inspected by contractors and members of the public.

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

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

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

(1) the contractor is not qualified under 80 IAC 9-3-1;

(2) the executive director makes a written determination, based upon information provided under subsection (d) and this subsection, that the contractor is not qualified to perform the commission works contract;

(3) the contractor has:

(A) failed to perform a previous contract with the commission satisfactorily based upon a written determination by the executive director; and

(B) submitted the bid during the period of suspension imposed by the executive director; or

(4) the contractor has not complied with:

(A) a rule adopted under this article and the rule specifies that failure to comply with it is a ground for rejection of a bid; or

(B) any requirement under subsection (g).

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

(1) The name of each contractor.

(2) The amount bid by each contractor.

(3) The name of the contractor making the lowest bid.

(4) The name of the contractor to whom the contract was awarded.

(5) The reason the contract was awarded to a contractor other than the lowest bidder, if applicable.

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

(1) The beneficiary of the trust.

(2) The settlor empowered to revoke or modify the trust.

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

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

Authority: IC 15-13-2-9

Affected: IC 5-16-1-3; IC 15-13-2

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

(1) section 2 of this rule; or

(2) this section.

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

(1) publish notice in accordance with IC 5-16-1-3(a); or

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(2) require the invitation of quotations from at least three (3) contractors known to them to deal in the work required to be done in accordance with IC 5-16-1-3(b)(2).

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

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

(1) must be in writing;

(2) shall be considered firm; and

(3) may be the basis upon which the executive director awards a commission works contract.

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

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

(1) The beneficiary of the trust.

(2) The settlor empowered to revoke or modify the trust.

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

80 IAC 9-4-4 Performance of commission works projects by employees of the commission

Authority: IC 15-13-2-9

Affected: IC 15-13-2

Sec. 4. If the estimated cost of a commission works project, including labor and materials, is less than one hundred fifty thousand dollars (\$150,000), the project may be performed by appropriate employees of the commission without awarding a commission works contract under section 2 of this rule. (*State Fair Commission; 80 IAC 9-4-4; filed Nov 7, 2016, 3:46 p.m.: 20161207-IR-080160210FRA*)

80 IAC 9-4-5 Emergency conditions; quotations from contractors; awards

Authority: IC 15-13-2-9

Affected: IC 5-16-1-1.6; IC 15-13-2

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

(1) exists due to:

(A) a fire;

(B) a flood;

(C) a windstorm;

(D) a casualty; or

(E) another condition (including mechanical failure of any part of a building or structure); and

(2) endangers:

(A) the health, safety, or welfare of the public; or

(B) necessary operations;

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

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

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

(1) executive director's determination; and

(2) names of the contractors from whom quotations were invited;

in the appropriate files.

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

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

80 IAC 9-4-6 Land acquisition; professional services

Authority: IC 15-13-2-9

Affected: IC 15-13-2

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

(b) The executive director shall consider only the competence and the qualifications of the persons offering to perform the professional services in relation to the type of services to be performed. The executive director, or his or her authorized designee, shall negotiate compensation for performance of the professional services that the commission determines is reasonable. *(State Fair Commission; 80 IAC 9-4-6; filed Nov 7, 2016, 3:46 p.m.: 20161207-IR-080160210FRA)*

80 IAC 9-4-7 Solicitation of sealed bids; public notice

Authority: IC 15-13-2-9

Affected: IC 15-13-2

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

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

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

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

The contracts department shall designate the newspapers for these publications. The contracts department may designate different newspapers according to the nature of the project and may direct that additional notices be published. The contracts department shall also solicit sealed bids for commission works projects by sending notices by mail to prospective contractors known to the contracts department and by posting notices on a public bulletin board in or outside its office at least two (2) successive weeks before the final date for submitting bids for the commission works project. *(State Fair Commission; 80 IAC 9-4-7; filed Nov 7, 2016, 3:46 p.m.: 20161207-IR-080160210FRA)*

80 IAC 9-4-8 Copies of bids or quotations; files; public records

Authority: IC 15-13-2-9

Affected: IC 5-14-3; IC 5-15-5.1; IC 15-13-2

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

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

(c) The:

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

(2) files required by subsection (b);

are public records under IC 5-14-3. The contracts department shall retain these copies and files according to retention schedules established for these records under IC 5-15-5.1. *(State Fair Commission; 80 IAC 9-4-8; filed Nov 7, 2016, 3:46 p.m.: 20161207-IR-080160210FRA)*

80 IAC 9-4-9 Commencement of warranty period

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

Sec. 9. Each commission works contract must require that all warranty periods applying to work performed under the contract commence not later than the date that all work under the contract is substantially completed as determined by the commission. (*State Fair Commission; 80 IAC 9-4-9; filed Nov 7, 2016, 3:46 p.m.: 20161207-IR-080160210FRA*)

80 IAC 9-4-10 Void contracts

Authority: IC 15-13-2-9
Affected: IC 15-13-2; IC 15-16-2-2

Sec. 10. All commission works contracts not let in conformity with this rule are void. (*State Fair Commission; 80 IAC 9-4-10; filed Nov 7, 2016, 3:46 p.m.: 20161207-IR-080160210FRA*)

Rule 5. Bid Opening and Award of Contracts

80 IAC 9-5-1 Sealed bids; opening procedures; time to submit bids

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

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

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

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

(d) The consulting engineer or architect shall make a recommendation to the commission concerning the award or rejection of a contract to the lowest responsible and responsive contractor. (*State Fair Commission; 80 IAC 9-5-1; filed Nov 7, 2016, 3:46 p.m.: 20161207-IR-080160210FRA*)

80 IAC 9-5-2 Award of contracts; criteria; rejection or waiver of nonconforming bids

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

Sec. 2. All bids shall conform to all applicable requirements of the specifications, including the instructions to bidders, general conditions, and special conditions. The executive director shall tentatively reject any bid failing to adhere to or conform to such conditions. The award of a contract shall be made on the basis of the lowest responsible and responsive bid. (*State Fair Commission, 80 IAC 9-5-2; filed Nov 7, 2016, 3:46 p.m.: 20161207-IR-080160210FRA*)

80 IAC 9-5-3 Single bid received; criteria for acceptance

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

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

the single bidder of having his or her bid divulged to subsequent bidders if the project is rebid. (*State Fair Commission 80 IAC 9-5-3; filed Nov 7, 2016, 3:46 p.m.: 20161207-IR-080160210FRA*)

80 IAC 9-5-4 Notice to proceed; extensions of time; notice of withdrawal of bid and rejection of contract

Authority: IC 15-13-2-9

Affected: IC 15-13-2

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

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

(c) After the sixty (60) day period set by subsection (a) and all extension periods set under subsection (b) have expired, a successful contractor may elect to withdraw its bid and reject the contract only by delivering a written notice to the consulting engineer or architect that grants the consulting engineer or architect at least fifteen (15) additional days to award a contract to the successful contractor. (*State Fair Commission; 80 IAC 9-5-4; filed Nov 7, 2016, 3:46 p.m.: 20161207-IR-080160210FRA*)

Rule 6. Bonding; Escrow; Retainages

80 IAC 9-6-1 Applicability

Authority: IC 15-13-2-9

Affected: IC 15-13-2

Sec. 1. The executive director may apply this rule to commission works projects with an estimated cost less than the amounts specified in section 2 or 7 of this rule. (*State Fair Commission; 80 IAC 9-6-1; filed Nov 7, 2016, 3:46 p.m.: 20161207-IR-080160210FRA*)

80 IAC 9-6-2 Contract provisions for retainage of payments; escrow accounts and agreements

Authority: IC 15-13-2-9

Affected: IC 15-13-2

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

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

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

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

(c) The escrow agreement must provide the following:

- (1) The escrow agent shall promptly invest all escrowed principal in the obligations that the escrow agent selects, in its

discretion.

(2) The escrow agent shall hold the escrowed principal and income until it receives notice from the executive director and the contractor or the contractor and subcontractor specifying the:

(A) percentage of the escrowed principal to be released from the escrow; and

(B) persons to whom this percentage is to be released.

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

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

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

(1) authorizing the escrow agent to commingle the escrowed funds held under other escrow agreements; and

(2) limiting the liability of the escrow agent.

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

80 IAC 9-6-3 Amount of retainage withheld

Authority: IC 15-13-2-9

Affected: IC 15-13-2

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

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

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

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

(c) As approved by the executive director and director of facility maintenance, or his or her designee, the commission may choose to release a portion of retainage under certain circumstances, including, but not limited to, the following:

(1) Lengthy time frame to project completion.

(2) The dollar amount of the retainage is more than sufficient to complete any remaining work.

(3) Extenuating circumstances as the commission deems appropriate.

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

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

Authority: IC 15-13-2-9

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

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

(b) The contractor shall furnish to the commission a sworn statement or certification at the time of payment to it that all subcontractors have received their share of the previous payment to the contractor. The making of an incorrect certification may be considered a breach of contract by the commission, and the commission may exercise all its rights set out in the contract in addition to the remedies for falsifying an affidavit. Making an incorrect certification may also result in a submission of notice of such falsification to the state of Indiana, public works certification board, which may result in a revocation of the contractor's qualifications under IC 4-13.6-4-13(b) at the discretion of the public works certification board. *(State Fair Commission; 80 IAC 9-6-4; filed Nov 7, 2016, 3:46 p.m.: 20161207-IR-080160210FRA)*

80 IAC 9-6-5 Bid bonds

Authority: IC 15-13-2-9

Affected: IC 15-13-2

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

(b) The consulting engineer or architect may accept bids provided on forms specified by the commission or on forms provided by surety companies. (*State Fair Commission; 80 IAC 9-6-5; filed Nov 7, 2016, 3:46 p.m.: 20161207-IR-080160210FRA*)

80 IAC 9-6-6 Payment bonds

Authority: IC 15-13-2-9

Affected: IC 15-13-2

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

(1) The contractor and its successors and assigns, and all subcontractors and their successors and assigns, whether by operation of law or otherwise, shall pay all indebtedness that may accrue to any person on account of any labor or service performed or materials furnished in relation to the commission work.

(2) The bond shall directly ensure to the benefit of subcontractors, laborers, suppliers, and those performing service or who may have furnished or supplied labor, material, or service in relation to the commission work.

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

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

(b) The commission may:

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

(2) accept bonds provided on forms:

(A) specified by the commission; or

(B) given by surety companies.

(c) The commission shall:

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

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

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

80 IAC 9-6-7 Performance bonds

Authority: IC 15-13-2-9

Affected: IC 5-16-5.5; IC 15-13-2

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

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

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

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

(b) The commission may:

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

(2) accept bonds provided on forms:

(A) specified by the commission; or

(B) given by surety companies.

(c) The commission shall not release sureties of a contractor until the expiration of one (1) year after the final settlement with the contractor. (*State Fair Commission; 80 IAC 9-6-7; filed Nov 7, 2016, 3:46 p.m.: 20161207-IR-080160210FRA*)

80 IAC 9-6-8 Substantial completion, final settlement, and release of retainage

Authority: IC 15-13-2-9

Affected: IC 5-16-5; IC 15-13-2

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

(1) The contractor.

(2) A representative of the commission.

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

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

(1) the contractor has materially fulfilled all of its obligations under the commission works contract;

(2) the commission has received no claims from subcontractors or suppliers under this rule; and

(3) the contractor has furnished satisfactory evidence showing full payment of all subcontractors and suppliers in the performance of the contract.

(d) After the commission makes a final settlement with a contractor, all claims by subcontractors and suppliers to funds withheld from the contractor under section 2 of this rule are barred. (*State Fair Commission; 80 IAC 9-6-8; filed Nov 7, 2016, 3:46 p.m.: 20161207-IR-080160210FRA*)

80 IAC 9-6-9 Payment of subcontractors and suppliers by the commission; proration of claims; disputed claims

Authority: IC 15-13-2-9

Affected: IC 15-13-2

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

(1) Pay the claimant from the amounts retained from the contractor under section 2 of this rule.

(2) Take a receipt for each payment.

(3) Deduct the total amount paid to subcontractors and suppliers from the balance due the contractor.

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

(c) If there is a dispute among the contractor, the subcontractors, and the suppliers as to the funds withheld by the commission, the commission shall retain sufficient funds until the dispute is settled and the correct amount to be paid to each person is determined. When the dispute is resolved, the commission shall make payments to persons making claims as provided in this section. (*State Fair Commission; 80 IAC 9-6-9; filed Nov 7, 2016, 3:46 p.m.: 20161207-IR-080160210FRA*)

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

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

Sec. 10. (a) In order to:

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

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

(b) The claimant may not file suit against the contractor's surety on the contractor's bond until the expiration of thirty (30) days after filing of the claim with the commission. If the claim is not paid in full at the expiration of the thirty (30) day period, the claimant may bring an action in a court of competent jurisdiction in the claimant's own name upon the bond. (*State Fair Commission; 80 IAC 9-6-10; filed Nov 7, 2016, 3:46 p.m.: 20161207-IR-080160210FRA*)

80 IAC 9-6-11 Limitation of actions against sureties

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

Sec. 11. Unless the bond provides a greater period of time, all suits must be brought against a surety on a bond required by this rule within one (1) year after final settlement with the contractor under section 8 of this rule. All suits against the surety after this time are barred. (*State Fair Commission; 80 IAC 9-6-11; filed Nov 7, 2016, 3:46 p.m.: 20161207-IR-080160210FRA*)

80 IAC 9-6-12 Relationship to other laws

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

Sec. 12. This rule is intended to supplement all other laws protecting labor, subcontractors, or suppliers and shall not be construed as conflicting with them. (*State Fair Commission; 80 IAC 9-6-12; filed Nov 7, 2016, 3:46 p.m.: 20161207-IR-080160210FRA*)

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