

ARTICLE 12. PROCUREMENT OF SUPPLIES AND SERVICES

NOTE: IC 4-13.4 was repealed by P.L.49-1997, SECTION 86, effective July 1, 1998.

Rule 1. Definitions

105 IAC 12-1-1 Applicability

Authority: IC 8-23-2-6

Affected: IC 4-13.4-2-3

Sec. 1. The definitions in this rule apply throughout this article. *(Indiana Department of Transportation; 105 IAC 12-1-1; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1502; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899)*

105 IAC 12-1-2 "Award" defined

Authority: IC 8-23-2-6

Affected: IC 4-13.4-2-3

Sec. 2. "Award" means the decision of the commissioner to accept a bid, subject to the execution and approval of a satisfactory contract and all other conditions required by the invitation to bid or by law. *(Indiana Department of Transportation; 105 IAC 12-1-2; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1502; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899)*

105 IAC 12-1-3 "Bid" defined

Authority: IC 8-23-2-6

Affected: IC 4-13.4-2-3

Sec. 3. "Bid" means the offer of a bidder, submitted in the prescribed manner, to furnish all labor, equipment, and materials and to perform the specified work within the time prescribed. *(Indiana Department of Transportation; 105 IAC 12-1-3; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1502; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899)*

105 IAC 12-1-4 "Bid bond" defined

Authority: IC 8-23-2-6

Affected: IC 4-13.4-2-3

Sec. 4. "Bid bond" means the approved form of security furnished with a bid to guarantee that the bidder will enter into the contract if its bid is accepted. *(Indiana Department of Transportation; 105 IAC 12-1-4; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1502; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899)*

105 IAC 12-1-5 "Bidder" defined

Authority: IC 8-23-2-6

Affected: IC 4-13.4-2-3

Sec. 5. "Bidder" means a person who submits a bid or proposal for a contract with the department. *(Indiana Department of Transportation; 105 IAC 12-1-5; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1502; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899)*

105 IAC 12-1-6 "Change order" defined

Authority: IC 8-23-2-6

Affected: IC 5-22

Sec. 6. "Change order" means a written order that:

(1) is signed by the purchasing agent; and

(2) directs the contractor to make changes that the contract authorizes the purchasing agent to order without the consent of the contractor.

(Indiana Department of Transportation; 105 IAC 12-1-6; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1502; filed Oct 3, 2001, 9:35 a.m.: 25 IR 366; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899)

105 IAC 12-1-7 “Commissioner” defined

Authority: IC 8-23-2-6

Affected: IC 4-13.4-2-3

Sec. 7. “Commissioner” refers to the commissioner of the Indiana department of transportation or the designee of the commissioner. (*Indiana Department of Transportation; 105 IAC 12-1-7; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1502; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

105 IAC 12-1-8 “Contract” defined

Authority: IC 8-23-2-6

Affected: IC 4-13.4-2-3

Sec. 8. “Contract” means all types of agreements for the procurement of supplies or services. (*Indiana Department of Transportation; 105 IAC 12-1-8; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1502; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

105 IAC 12-1-9 “Contract modification” defined

Authority: IC 8-23-2-6

Affected: IC 5-22

Sec. 9. “Contract modification” means a written alteration:

(1) in a specification, delivery point, rate of delivery, period of performance, price, quantity, or another provision of a contract; and

(2) accomplished by mutual action of the parties to the contract.

(*Indiana Department of Transportation; 105 IAC 12-1-9; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1502; filed Jul 28, 1994, 4:00 p.m.: 17 IR 2802; filed Oct 3, 2001, 9:35 a.m.: 25 IR 366; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

105 IAC 12-1-10 “Contractor” defined

Authority: IC 8-23-2-6

Affected: IC 5-22

Sec. 10. “Contractor” refers to a person who has a contract with the department. (*Indiana Department of Transportation; 105 IAC 12-1-10; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1502; filed Oct 3, 2001, 9:35 a.m.: 25 IR 366; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

105 IAC 12-1-11 “Department” defined

Authority: IC 8-23-2-6

Affected: IC 4-13.4-2-3

Sec. 11. “Department” means the Indiana department of transportation. (*Indiana Department of Transportation; 105 IAC 12-1-11; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1503; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

105 IAC 12-1-12 “Designee” defined

Authority: IC 8-23-2-6

Affected: IC 5-22

Sec. 12. “Designee” means an authorized representative of the commissioner. (*Indiana Department of Transportation; 105 IAC 12-1-12; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1503; filed Oct 3, 2001, 9:35 a.m.: 25 IR 366; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

105 IAC 12-1-13 “Established catalog price” defined

Authority: IC 8-23-2-6

Affected: IC 5-22

Sec. 13. “Established catalog price” refers to the price included in a catalog, price list, schedule, or other form that:

(1) is regularly maintained by the manufacturer or contractor;

(2) is either published or otherwise available for inspection by customers; and

(3) states prices 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 or services involved.

(Indiana Department of Transportation; 105 IAC 12-1-13; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1503; filed Oct 3, 2001, 9:35 a.m.: 25 IR 366; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899)

105 IAC 12-1-13.5 “Fuel” defined

Authority: IC 8-23-2-6

Affected: IC 4-13.4-2-3

Sec. 13.5. “Fuel” means gasoline, diesel fuel, compressed natural gas, electricity, or other product used to operate equipment or a vehicle in the department's fleet. *(Indiana Department of Transportation; 105 IAC 12-1-13.5; filed Jul 28, 1994, 4:00 p.m.: 17 IR 2802; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899)*

105 IAC 12-1-14 “Invitation for bid” defined

Authority: IC 8-23-2-6

Affected: IC 5-22

Sec. 14. “Invitation for bid” means all documents, whether attached or incorporated by reference, used for soliciting bids. *(Indiana Department of Transportation; 105 IAC 12-1-14; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1503; filed Oct 3, 2001, 9:35 a.m.: 25 IR 366; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899)*

105 IAC 12-1-15 “Performance bond” defined

Authority: IC 8-23-2-6

Affected: IC 4-13.4-2-3

Sec. 15. “Performance bond” means the approved form of security, furnished and executed by the bidder and its surety or sureties, guaranteeing complete execution of the contract and all supplemental agreements pertaining thereto and for the payment of all legal debts pertaining to the furnishing of the supplies or services. The performance bond will be in effect after both parties have signed the contract and the contract has been approved by the attorney general of the state of Indiana. *(Indiana Department of Transportation; 105 IAC 12-1-15; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1503; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899)*

105 IAC 12-1-16 “Person” defined

Authority: IC 8-23-2-6

Affected: IC 5-22

Sec. 16. “Person” includes an association, a business, a committee, a corporation, a fiduciary, an individual, a joint stock company, a joint venture, a limited liability company, a partnership, a sole proprietorship, a trust, or another legal entity, organization, or group of individuals. *(Indiana Department of Transportation; 105 IAC 12-1-16; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1503; filed Oct 3, 2001, 9:35 a.m.: 25 IR 367; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899)*

105 IAC 12-1-17 “Procurement” defined

Authority: IC 8-23-2-6

Affected: IC 4-13.4-2-3

Sec. 17. "Procurement" means the process of buying, purchasing, renting, leasing, or otherwise acquiring any supplies or services, including description of requirements, selection or solicitation of sources, preparation and award of contract, and all phases of contract administration. (*Indiana Department of Transportation; 105 IAC 12-1-17; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1503; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

105 IAC 12-1-18 "Proposal" defined

Authority: IC 8-23-2-6

Affected: IC 4-13.4-2-3

Sec. 18. "Proposal" means an offer submitted on the prescribed proposal form to furnish the supplies or services at the prices quoted by the bidder on the proposal form. (*Indiana Department of Transportation; 105 IAC 12-1-18; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1503; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

105 IAC 12-1-19 "Public works" defined

Authority: IC 8-23-2-6

Affected: IC 4-13.4-2-3

Sec. 19. "Public works" means the process of building, altering, repairing, improving, or demolishing any public structure or building, or other public improvement of any kind to any public real property owned by or leased in the name of the state of Indiana; and it includes the routine operation, routine repair, or routine maintenance of existing structures, buildings, or real property. (*Indiana Department of Transportation; 105 IAC 12-1-19; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1503; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

105 IAC 12-1-20 "Purchase description" defined

Authority: IC 8-23-2-6

Affected: IC 5-22

Sec. 20. (a) "Purchase description" means the words used in an invitation for bid to describe the supplies or services to be purchased.

(b) The term includes specifications attached to, or made a part of, the invitation for bid. (*Indiana Department of Transportation; 105 IAC 12-1-20; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1503; filed Oct 3, 2001, 9:35 a.m.: 25 IR 367; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

105 IAC 12-1-20.1 "Purchasing agent" defined

Authority: IC 8-23-2-6

Affected: IC 5-22

Sec. 20.1. "Purchasing agent" means an individual authorized by the department to act as an agent for the department in the administration of the duties of the department. (*Indiana Department of Transportation; 105 IAC 12-1-20.1; filed Oct 3, 2001, 9:35 a.m.: 25 IR 367; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

105 IAC 12-1-21 "Request for proposals" or "RFP" defined

Authority: IC 8-23-2-6

Affected: IC 5-22

Sec. 21. "Request for proposals" or "RFP" means all documents, whether attached or incorporated by reference, used for soliciting proposals. (*Indiana Department of Transportation; 105 IAC 12-1-21; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1504; filed Oct 3, 2001, 9:35 a.m.: 25 IR 367; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

105 IAC 12-1-22 “Responsible bidder” defined

Authority: IC 8-23-2-6

Affected: IC 4-13.4-2-3

Sec. 22. “Responsible bidder” means a person who has:

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

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

(Indiana Department of Transportation; 105 IAC 12-1-22; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1504; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899)

105 IAC 12-1-23 “Responsive bidder” defined

Authority: IC 8-23-2-6

Affected: IC 5-22

Sec. 23. “Responsive bidder” means a person who has submitted a bid that conforms in all material respects to the invitation for bid. *(Indiana Department of Transportation; 105 IAC 12-1-23; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1504; filed Oct 3, 2001, 9:35 a.m.: 25 IR 367; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899)*

105 IAC 12-1-24 “Services” defined

Authority: IC 8-23-2-6

Affected: IC 5-22

Sec. 24. “Services” means the furnishing of labor, time, or effort by a person not involving the delivery of specific supplies other than printed documents or other items that are merely incidental to the required performance. *(Indiana Department of Transportation; 105 IAC 12-1-24; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1504; filed Oct 3, 2001, 9:35 a.m.: 25 IR 367; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899)*

105 IAC 12-1-25 “Specifications” defined

Authority: IC 8-23-2-6

Affected: IC 5-22

Sec. 25. (a) “Specifications” means a description of the physical or functional characteristics of a supply or service or the nature of a supply or service.

(b) The term includes a description of any requirements for inspecting, testing, or preparing a supply or service for delivery. *(Indiana Department of Transportation; 105 IAC 12-1-25; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1504; filed Oct 3, 2001, 9:35 a.m.: 25 IR 367; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899)*

105 IAC 12-1-26 “Supplies” defined

Authority: IC 8-23-2-6

Affected: IC 5-22

Sec. 26. “Supplies” means any property, including equipment, goods, and materials. The term does not include an interest in real property. *(Indiana Department of Transportation; 105 IAC 12-1-26; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1504; filed Oct 3, 2001, 9:35 a.m.: 25 IR 367; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899)*

Rule 2. General Provisions

105 IAC 12-2-1 Purpose and construction

Authority: IC 8-23-2-6

Affected: IC 4-13.4-2-3

Sec. 1. The purpose of this article is to establish rules to govern the procurement of supplies and services utilized by the department and to ensure fair competition among persons competing in the procurement process. (*Indiana Department of Transportation; 105 IAC 12-2-1; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1504; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

105 IAC 12-2-2 Application

Authority: IC 8-23-2-6
Affected: IC 4-13.4-2-3

Sec. 2. This article applies to the following:

- (1) Contracts for supplies.
- (2) Contracts for services.

(*Indiana Department of Transportation; 105 IAC 12-2-2; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1504; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

105 IAC 12-2-3 Exceptions

Authority: IC 8-23-2-6
Affected: IC 8-1-2-1; IC 20-12-0.5-1

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

- (1) Public works contracts, including contracts for the construction and maintenance of highways.
- (2) Employment contracts.
- (3) Contracts between governmental bodies.
- (4) Contracts for which the department utilizes the procurement services provided by the Indiana department of administration.
- (5) Contracts for professional or consulting services.
- (6) Contracts involving the purchase, sale, or lease of real property.
- (7) Contracts with public utilities and municipally owned utilities.
- (8) Contracts with state educational institutions.
- (9) Contracts with the American Association of State Highway and Transportation Officials.

(*Indiana Department of Transportation; 105 IAC 12-2-3; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1504; filed Jul 28, 1994, 4:00 p.m.: 17 IR 2802; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

105 IAC 12-2-4 Minority participation

Authority: IC 8-23-2-6
Affected: IC 5-22

Sec. 4. The department will make good faith efforts to solicit participation of minorities on every invitation for bid. (*Indiana Department of Transportation; 105 IAC 12-2-4; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1504; filed Oct 3, 2001, 9:35 a.m.: 25 IR 368; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

105 IAC 12-2-5 Foreign corporations

Authority: IC 8-23-2-6
Affected: IC 23-1-49-1

Sec. 5. A foreign corporation must obtain a certificate of authority from the Indiana secretary of state, unless the activity required by the contract is exempt pursuant to IC 23-1-49-1. (*Indiana Department of Transportation; 105 IAC 12-2-5; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1505; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

105 IAC 12-2-6 Bid guarantees

Authority: IC 8-23-2-6
Affected: IC 5-22

Sec. 6. At the discretion of the department, a bidder may be required to submit with its bid a bid guarantee in the form of a certified check, a cashier's check, or a bid bond acquired from a surety company authorized to do business in Indiana. If required, the amount shall be specified in the invitation for bid. The bid guarantee of an unsuccessful bidder will be returned upon award of the contract. The bid guarantee of the successful bidder will be returned after the bidder enters into a contract with the department. *(Indiana Department of Transportation; 105 IAC 12-2-6; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1505; filed Oct 3, 2001, 9:35 a.m.: 25 IR 368; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899)*

105 IAC 12-2-7 Performance bonds

Authority: IC 8-23-2-6

Affected: IC 5-22

Sec. 7. At the discretion of the department, a successful bidder may be required to submit a performance bond in the form of a certified check, a cashier's check, or a performance bond acquired from a surety company authorized to do business in Indiana. If required, the amount of the performance bond and the time that it must be submitted will be specified in the invitation for bid. Performance bonds will be returned, upon request, at the successful completion of the contract. *(Indiana Department of Transportation; 105 IAC 12-2-7; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1505; filed Oct 3, 2001, 9:35 a.m.: 25 IR 368; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899)*

105 IAC 12-2-8 Specifications

Authority: IC 8-23-2-6

Affected: IC 4-13.4-2-3

Sec. 8. Specifications used by the department shall not unduly restrict competition. *(Indiana Department of Transportation; 105 IAC 12-2-8; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1505; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899)*

105 IAC 12-2-9 Public notice

Authority: IC 8-23-2-6

Affected: IC 5-3-1; IC 5-22

Sec. 9. The department shall give notice in the manner required by IC 5-3-1. *(Indiana Department of Transportation; 105 IAC 12-2-9; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1505; filed Oct 3, 2001, 9:35 a.m.: 25 IR 368; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899)*

105 IAC 12-2-10 Notice to bidders

Authority: IC 8-23-2-6

Affected: IC 4-13.4-2-3

Sec. 10. (a) The department shall send invitations to bid by mail or as otherwise provided in this article to prospective bidders. Failure to give personal notice to a particular bidder will not invalidate a procurement under this article.

(b) The 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. *(Indiana Department of Transportation; 105 IAC 12-2-10; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1505; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899)*

105 IAC 12-2-11 Qualifications and duties of bidders

Authority: IC 8-23-2-6

Affected: IC 4-13.4-2-3

Sec. 11. (a) The department may request a bidder to submit information to show it is a responsible bidder. Failure of a bidder to submit information requested by the department shall be cause for the department to determine the bidder is not responsible.

(b) If the department determines that a bidder is not responsible, that determination shall be made in writing. *(Indiana Department of Transportation; 105 IAC 12-2-11; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1505; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899)*

25 IR 899)

105 IAC 12-2-12 Determinations of the department

Authority: IC 8-23-2-6

Affected: IC 4-13.4-2-3

Sec. 12. (a) The determinations of the department are final.

(b) A person aggrieved by a determination described in subsection (a) may file a petition for judicial review of that determination in a court of competent jurisdiction. (*Indiana Department of Transportation; 105 IAC 12-2-12; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1506; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

105 IAC 12-2-13 Anticompetitive practices

Authority: IC 8-23-2-6

Affected: IC 4-13.4-2-3

Sec. 13. If the commissioner determines that a bidder has participated in collusion or other anticompetitive practices, the bidder may be prohibited from bidding on contracts with the department for a period of time determined by the department. (*Indiana Department of Transportation; 105 IAC 12-2-13; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1506; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

105 IAC 12-2-14 Withdrawal of bids or proposals

Authority: IC 8-23-2-6

Affected: IC 5-22

Sec. 14. A bidder bearing proper authorization and identification may sign for and receive an unopened bid or proposal and withdraw the bid or proposal prior to the exact time for submission of bids or proposals. A bidder may modify its bid or proposal by withdrawing its bid or proposal as provided above and resubmitting a modified bid or proposal prior to the exact time for submission of bids or proposals. Neither the staff nor the facilities of the department will be available to assist a bidder desiring to make modifications. It is the bidder's responsibility to make all modifications. (*Indiana Department of Transportation; 105 IAC 12-2-14; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1506; filed Oct 3, 2001, 9:35 a.m.: 25 IR 368; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

105 IAC 12-2-15 Bid mistakes

Authority: IC 8-23-2-6

Affected: IC 4-13.4-2-3

Sec. 15. (a) After the opening of bids, the department shall examine all bids for mistakes. If the department finds an obvious clerical mistake in a bid, the department will correct the mistake.

(b) After the award of a contract, the department may:

- (1) rescind an award;
- (2) rescind a contract; or
- (3) modify a contract;

when the department finds a mistake was mutual or unilaterally made by the bidder, but was so obvious that the department should have found the mistake.

(c) The department will not award a contract to a bidder if, due to a material mistake, it would be unconscionable to hold the bidder to its bid.

(d) Changes in bids shall not be permitted if prejudicial to fair competition.

(e) The department will document as a part of the contract file any changes or modifications made pursuant to this section. (*Indiana Department of Transportation; 105 IAC 12-2-15; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1506; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

105 IAC 12-2-16 Award; cancellation; rejection

Authority: IC 8-23-2-6

Affected: IC 5-22

Sec. 16. (a) The department reserves the right to accept or reject any or all bids, or any part thereof, and to award the items separately or all to one (1) bidder. A bidder bidding on an all or none basis must state so in its bid.

(b) Prior to the opening of bids, the department may cancel an invitation for bid in whole or in part, when it is in the best interest of the department. Reasons for cancellation include, but are not limited to:

- (1) the department no longer requires the supplies or services;
- (2) the department no longer can reasonably expect to fund the procurement; or
- (3) proposed amendments to the invitation for bid would be of such magnitude that a new invitation for bid is desirable.

(c) After the opening of bids, but prior to award of a contract, the department may reject all bids, in whole or in part, when it is in the best interest of the department. Reasons for rejection include, but are not limited to:

- (1) the department no longer requires the supplies or services;
- (2) ambiguous or otherwise inadequate specifications were part of the invitation for bid;
- (3) prices exceed available funds and it would not be appropriate to adjust quantities to come within available funds;
- (4) all bids received contain unreasonable prices; or
- (5) there is reason to believe that the bids or proposals may not have been independently prepared.

(d) When the department cancels an invitation for bid, the department will send notice to each person who submitted a bid, stating the reason for cancellation. The reason for cancellation shall be made part of the procurement file and shall be available for public inspection.

(e) When two (2) or more bids are equal, award shall be made by a drawing by lot limited to those bidders. If time permits, the bidders involved shall be given an opportunity to attend the drawing. The drawing shall be witnessed by at least three (3) persons, and the contract file shall contain the names and addresses of the witnesses. (*Indiana Department of Transportation; 105 IAC 12-2-16; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1506; filed Oct 3, 2001, 9:35 a.m.: 25 IR 369; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

105 IAC 12-2-17 Gifts

Authority: IC 8-23-2-6

Affected: IC 4-13.4-2-3

Sec. 17. A bidder or contractor shall not offer or give a gift, including, but not limited to, money, goods, services, meals, and entertainment to any officer, employee, section, division, district, or combination thereof of the department if the gift has a fair market value of ten dollars (\$10) or more. Exceptions to this provision must be approved, in writing, by the department's commissioner. (*Indiana Department of Transportation; 105 IAC 12-2-17; filed Jul 28, 1994, 4:00 p.m.: 17 IR 2802; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

Rule 3. Source Selection and Contract Formation

105 IAC 12-3-1 Purchases less than \$2,500

Authority: IC 8-23-2-6

Affected: IC 5-22

Sec. 1. (a) A procurement with an estimated cost not exceeding two thousand five hundred dollars (\$2,500) may be made under the procedure outlined in this section.

(b) Bids shall be invited from at least one (1) person known to deal in the supplies or services to be procured.

(c) The purchase description and date bids are due shall be communicated to the person invited to bid. Means of communication may include mail, telephone, electronic mail, or facsimile machine.

(d) The department may consider an advertised price in a catalog, newspaper advertisement, radio commercial, television commercial, or other media communication to be a bid received by the department. The department must know of the advertised price at the time bids are due.

(e) If a satisfactory bid is received, a contract shall be awarded to the lowest responsive and responsible bidder.

(f) If no responsive bid is received from a responsible bidder, the department reserves the right to repeat the process described in this section. (*Indiana Department of Transportation; 105 IAC 12-3-1; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1507; filed Jul 28, 1994, 4:00 p.m.: 17 IR 2802; errata filed Sep 14, 1994, 2:50 p.m.: 18 IR 268; filed Oct 3, 2001, 9:35 a.m.: 25 IR 369; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

105 IAC 12-3-2 Purchases less than \$75,000

Authority: IC 8-23-2-6

Affected: IC 5-22

Sec. 2. (a) A procurement with an estimated cost not exceeding seventy-five thousand dollars (\$75,000) may be made under the procedure outlined in this section.

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

(c) The purchase description and the date bids are due shall be communicated to the persons invited to bid. Means of communication may include mail, telephone, electronic mail, or facsimile machine.

(d) The department may consider an advertised price in a catalog, newspaper, advertisement, radio commercial, television commercial, or other media communication to be a bid received by the department. The department must know of the advertised price at the time bids are due.

(e) If satisfactory bids are received, a contract shall be awarded to the lowest responsive and responsible bidder.

(f) If no responsive bid is received from a responsible bidder, the department reserves the right to repeat the process described in this section. (*Indiana Department of Transportation; 105 IAC 12-3-2; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1507; filed Jul 28, 1994, 4:00 p.m.: 17 IR 2803; filed Oct 3, 2001, 9:35 a.m.: 25 IR 369; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

105 IAC 12-3-3 Purchases less than \$25,000 (Repealed)

Sec. 3. (*Repealed by Indiana Department of Transportation; filed Oct 3, 2001, 9:35 a.m.: 25 IR 372*)

105 IAC 12-3-4 Competitive sealed bids

Authority: IC 8-23-2-6

Affected: IC 5-22-18-2

Sec. 4. (a) A contract for supplies or services may be awarded under the procedure outlined in this section regardless of the estimated dollar value.

(b) An invitation for bid under this section shall be issued to potential bidders and must include the following:

(1) A purchase description.

(2) All contractual terms and conditions that apply to the purchase.

(3) A statement of the evaluation criteria that will be used, including any of the following:

(A) Inspection.

(B) Testing.

(C) Quality.

(D) Workmanship.

(E) Delivery.

(F) Suitability for a particular purpose.

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

(5) A statement concerning whether the bid must be accompanied by a certified check or other evidence of financial responsibility that may be imposed in accordance with rules or policies of the governmental body.

(6) A statement concerning the conditions under which a bid may be canceled or rejected in whole or in part as specified under IC 5-22-18-2.

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

(d) A contract shall be awarded with reasonable promptness to the lowest responsible and responsive bidder. (*Indiana*

Department of Transportation; 105 IAC 12-3-4; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1507; filed Oct 3, 2001, 9:35 a.m.: 25 IR 370; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899)

105 IAC 12-3-5 Competitive sealed proposal or request for proposal

Authority: IC 8-23-2-6

Affected: IC 5-3-1

Sec. 5. (a) When a purchasing agent makes a written determination that the use of competitive sealed bidding is either not practicable or not advantageous to the governmental body, the purchasing agent may award a contract using the procedure provided by this section instead of competitive sealed bidding.

(b) The purchasing agent shall solicit proposals through a request for proposals, which must include the following:

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

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

(c) Public notice shall be given in the manner required by IC 5-3-1.

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

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

(f) After identification of the responsible offer or whose proposal appears to be the most advantageous to the department, the department will enter into contract preparation activities with the bidder. If at any time the contract preparation activities are judged to be ineffective, the department may cease all activities with that bidder and begin contract preparation activities with the next highest ranked bidder, and the process may continue until a contract is executed. The department reserves the right to cease all contract preparation activities at any time and to reject all proposals, if such action is determined to be in the best interest of the department. (*Indiana Department of Transportation; 105 IAC 12-3-5; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1508; filed Oct 3, 2001, 9:35 a.m.: 25 IR 370; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

105 IAC 12-3-6 General Services Administration

Authority: IC 8-23-2-6

Affected: IC 4-13.4-2-3

Sec. 6. The commissioner may authorize a procurement from a person at prices equal to or less than the prices contained in current federal supply service schedules established by the General Services Administration. (*Indiana Department of Transportation; 105 IAC 12-3-6; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1508; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

105 IAC 12-3-7 Open-end contracts

Authority: IC 8-23-2-6

Affected: IC 5-22

Sec. 7. (a) Procurement of various types of aggregates and bituminous materials may be awarded under the procedure outlined in this section.

(b) The department will solicit unit prices for the various types of aggregates and bituminous materials in the invitation for bid. Prices submitted in bids shall be binding upon the bidder for the time period specified in the invitation for bid.

(c) A procurement of a specified quantity of material will be awarded to the bidder whose relative cost per unit is the lowest, using the following formula:

$$C = P + (2 \times D \times M)$$

Where:

P	=	Price quoted per unit.
D	=	Haul distance from supplier to the department worksite.
M	=	Cost per mile as determined by the department.
C	=	Relative cost per unit.

(d) The department may continue to procure materials from the bids submitted for the period specified in the invitation for bid. (*Indiana Department of Transportation; 105 IAC 12-3-7; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1508; filed Oct 3, 2001, 9:35 a.m.: 25 IR 370; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

105 IAC 12-3-8 Special procurements

Authority: IC 8-23-2-6

Affected: IC 5-22

Sec. 8. (a) Notwithstanding any other provision of this article, a purchasing agent may make a purchase without soliciting bids or proposals under any of the following circumstances:

- (1) When there exists a unique opportunity to obtain supplies or services at a substantial savings to the department.
- (2) When the market structure requires the department to inspect and bid on the supplies to be procured.
- (3) When only one (1) source meets the department's reasonable requirements for the procurement of data processing contracts or license agreements involving:
 - (A) software programs; or
 - (B) supplies or services.
- (4) When the compatibility of equipment, accessories, or replacement parts is a substantial consideration in the procurement and only one (1) source meets the department's reasonable requirements.
- (5) When there exists, under emergency conditions, a threat to public health, welfare, or safety.
- (6) When the department has solicited for a procurement and has not received a responsive bid from a responsible bidder.
- (7) When procurement of the required supplies or services would seriously impair the functioning of the department.
- (8) For the evaluation of supplies or a system containing supplies to obtain functional information or comparative data or for any other purpose that in the judgment of the commissioner may advance the long term competitive position of the state.
- (9) For the procurement of copyrighted materials to be used, provided, or distributed by the department.

(b) A special procurement must be made with such competition as is practicable under the circumstances.

(c) A purchasing agent shall maintain the contract records for a special purchase in a separate file. The contract file shall include a written determination of a basis for the special purchase and the selection of the particular contract.

(d) A special procurement must be approved by the commissioner. (*Indiana Department of Transportation; 105 IAC 12-3-8; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1508; filed Oct 3, 2001, 9:35 a.m.: 25 IR 371; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

105 IAC 12-3-9 Sole source procurement

Authority: IC 8-23-2-6

Affected: IC 4-13.4-2-3

Sec. 9. A contract may be awarded for a supply or service without competition when the commissioner has determined that there is only one (1) source for the required supply or service. A copy of the determination shall be made a part of the contract file. (*Indiana Department of Transportation; 105 IAC 12-3-9; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1509; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

105 IAC 12-3-10 Fuel contracts

Authority: IC 8-23-2-6

Affected: IC 4-13.4-2-3

Sec. 10. (a) Procurement of fuel may be made under the procedure outlined in this section.

(b) The department may procure fuel for an individual vehicle or piece of equipment in the same manner that a reasonable person would procure the same quantity of fuel. (*Indiana Department of Transportation; 105 IAC 12-3-10; filed Jul 28, 1994, 4:00 p.m.: 17 IR 2803; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

Rule 4. Contract Terms

105 IAC 12-4-1 Price adjustments

Authority: IC 8-23-2-6

Affected: IC 5-22

Sec. 1. The department may enter into a contract that provides for price adjustments under the conditions defined in the invitation for bid. (*Indiana Department of Transportation; 105 IAC 12-4-1; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1509; filed Oct 3, 2001, 9:35 a.m.: 25 IR 371; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

105 IAC 12-4-2 Equipment rental or lease agreements

Authority: IC 8-23-2-6

Affected: IC 8-23-14

Sec. 2. (a) The department may enter into a rental or lease agreement under the following circumstances:

(1) When the total cost of the proposed rental over the anticipated period of use of the equipment does not exceed the original cost of the equipment to be rented.

(2) When the rent to be paid by the department does not exceed the amount listed in the most recent issue of the "Compilation of Rental Rates for Construction Equipment", as prepared and distributed by the Associated Equipment Distributors.

(b) In the case of an emergency, if it is impossible for the department to procure the necessary equipment by rental under subsection (a), the department may rent equipment subject to the approval of the state budget committee. (*Indiana Department of Transportation; 105 IAC 12-4-2; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1509; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

105 IAC 12-4-3 Equipment rental or lease with option to purchase

Authority: IC 8-23-2-6

Affected: IC 5-22

Sec. 3. A contract for rental or lease may contain an option to purchase under the following circumstances:

(1) Exercise of the option shall be at the sole discretion of the commissioner.

(2) The option must be part of the invitation for bid.

(*Indiana Department of Transportation; 105 IAC 12-4-3; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1509; filed Oct 3, 2001, 9:35 a.m.: 25 IR 371; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

105 IAC 12-4-4 Additions

Authority: IC 8-23-2-6

Affected: IC 5-22

Sec. 4. (a) If a bidder inserts contract terms or bids on items not listed in the invitation for bid, the department will 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; or

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

(b) The department will not accept proposed additions to the contract that are prejudicial to the interest of the department or fair competition. The department's decision to permit a change will be made in writing. (*Indiana Department of Transportation; 105 IAC 12-4-4; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1509; filed Oct 3, 2001, 9:35 a.m.: 25 IR 371; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899*)

105 IAC 12-4-5 Modifications and change orders

Authority: IC 8-23-2-6

Affected: IC 4-13.4-2-3

Sec. 5. The department may execute contract modifications and issue change orders on a contract. A contract modification or change order may not materially change the terms of the contract. (*Indiana Department of Transportation; 105 IAC 12-4-5; filed*

Jan 15, 1993, 1:00 p.m.: 16 IR 1509; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899)

105 IAC 12-4-6 Option to renew

Authority: IC 8-23-2-6

Affected: IC 5-22

Sec. 6. A contract may contain an option to renew or extension of its terms, for a specified period of time, under the following circumstances:

- (1) Exercise of the option is at the discretion of the department.
- (2) The provision must be included in the solicitation.
- (3) A contract for supplies may be entered into for a period not to exceed four (4) years.
- (4) Performance obligations for succeeding fiscal years shall be subject to availability of funds for each year.
- (5) The invitation for bid and contract specify the exact payment terms.

(Indiana Department of Transportation; 105 IAC 12-4-6; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1510; filed Jul 28, 1994, 4:00 p.m.: 17 IR 2803; filed Oct 3, 2001, 9:35 a.m.: 25 IR 372; readopted filed Nov 7, 2001, 3:20 p.m.: 25 IR 899)

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