

TITLE 25 INDIANA DEPARTMENT OF ADMINISTRATION

ARTICLE 1. SUPPLY DIVISION (REPEALED)

(Repealed by Indiana Department of Administration; filed Dec 15, 1981, 1:45 pm: 5 IR 245)

ARTICLE 1.1. STATE PROCUREMENT

NOTE: IC 4-13.4 was repealed by P.L.49-1997, SECTION 86, effective July 1, 1998.

Rule 1. General Provisions

25 IAC 1.1-1-1 Definitions

Authority: IC 4-13.4-3-1

Affected: IC 4-13.4-1-29

Sec. 1. The requirements of IC 4-13.4 [*IC 4-13.4 was repealed by P.L.49-1997, SECTION 86, effective July 1, 1998.*] do not apply to employment agreements. (*Indiana Department of Administration; 25 IAC 1.1-1-1; filed Dec 15, 1981, 1:45 pm: 5 IR 239; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

25 IAC 1.1-1-2 Competitive sealed bids; bid guarantee

Authority: IC 4-13.4-3-1

Affected: IC 4-13.4-5-2

Sec. 2. At the discretion of the Director, bidders may be required to submit, with their bid, a bid guarantee in the form of a certified check, a cashiers' check, or a bond acquired from a surety company authorized to do business in the State of Indiana. If such is required, the amount of the bid guarantee shall be specified in the Invitation to Bid. Bid guarantees will be returned to bidders, upon request, after an award has been made or the solicitation has been cancelled.

At the discretion of the Director, a successful bidder may be required to submit, after the award has been made, a performance guarantee in the form of a certified check, a cashiers' check, or a bond acquired from a surety company authorized to do business in the State of Indiana. If such is required, the amount of the performance guarantee and the time that it must be submitted shall be specified in the Invitation to Bid. Performance guarantees will be returned, upon request, at the successful completion of the contract. (*Indiana Department of Administration; 25 IAC 1.1-1-2; filed Dec 15, 1981, 1:45 pm: 5 IR 239; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

25 IAC 1.1-1-3 Competitive sealed bids; public inspection

Authority: IC 4-13.4-3-1

Affected: IC 4-13.4-5-2

Sec. 3. The following information shall be subject to public inspection after the contract award: (a) The invitation for bids; (b) A list of all vendors who received the invitation for bids; (c) The name and address of each bidder; (d) The amount of each bid; (e) A record showing the name of the successful bidder, the dollar amount of the bid, and the basis on which the award was made; (f) The entire contents of the contract file except for proprietary information which may have been included with a bid such as:

- (1) trade secrets,
- (2) manufacturing processes,
- (3) financial information not otherwise publically [*sic.*] available, or
- (4) other data which does not bear on the competitive goals of public procurement,

which was not required by the terms of the invitation for bids itself to be made available for public inspection. A bidder shall identify information which he proposes to remain confidential and bind it separately from the remainder of his bid.

Requests for public disclosure of information which a bidder has identified as proprietary shall be made to the Director in

writing. The Director shall examine the information to determine the validity of the bidder's request for confidentiality and shall inform the bidder of his decision, which decision shall become a part of the contract file. (*Indiana Department of Administration; 25 IAC 1.1-1-3; filed Dec 15, 1981, 1:45 pm: 5 IR 239; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

25 IAC 1.1-1-4 Competitive sealed bids; withdrawal

Authority: IC 4-13.4-3-1

Affected: IC 4-13.4-5-2

Sec. 4. Withdrawal of a bid shall be permitted before the exact date and hour for submission of bids, either by an agent of the bidder bearing proper authorization and identification who shall receive and sign for the unopened bid packet, or by the timely receipt of a certified letter or telegram from the bidder.

A bid already submitted may be modified by withdrawal of the bid as provided above and resubmission of the modified bid before the exact date and hour for submission of bids. The bid may also be modified by the timely receipt of a certified letter or telegram from the bidder.

Neither the staff nor the facilities of the department of administration shall be available to a bidder desiring to make modifications.

The Commissioner has the authority to cancel awards or contracts based on bid mistakes when he determines that such action is in the best interest of the state. Such action shall be supported by a written determination made by the Commissioner.

This rule [*this section*] shall also apply to competitive sealed proposals. (*Indiana Department of Administration; 25 IAC 1.1-1-4; filed Dec 15, 1981, 1:45 pm: 5 IR 239; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

25 IAC 1.1-1-5 Competitive sealed proposals; bid guarantee

Authority: IC 4-13.4-3-1

Affected: IC 4-13.4-5-4

Sec. 5. At the discretion of the Director, offerors may be required to submit, with their proposal, a proposal guarantee in the form of a certified check, a cashiers' check, or a bond acquired from a surety company authorized to do business in the State of Indiana. If such is required, the amount of the proposal guarantee shall be specified in the Request for Proposals (RFPs). Proposal guarantees will be returned to offerors, upon request, after the execution of the contract.

At the discretion of the Director, a successful offeror may be required to submit, after the award has been made, a performance guarantee in the form of a certified check, a cashiers' check, or a bond acquired from a surety company authorized to do business in the State of Indiana. If such is required, the amount of the performance guarantee and the time that it must be submitted shall be specified in the Request for Proposals. Performance guarantees will be returned, upon request, at the successful completion of the contract. (*Indiana Department of Administration; 25 IAC 1.1-1-5; filed Dec 15, 1981, 1:45 pm: 5 IR 240; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

25 IAC 1.1-1-6 Competitive sealed proposals; public inspection

Authority: IC 4-13.4-3-1

Affected: IC 4-13.4-5-4

Sec. 6. The following information shall be subject to public inspection after the contract award: (a) The request for proposals; (b) A list of all vendors who received the request for proposals; (c) The name and address of each offeror; (d) The amount of each offer; (e) A record showing the name of the successful offeror, the dollar amount of the offer, and the basis on which the award was made.

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

- (1) trade secrets,
- (2) manufacturing processes,
- (3) financial information not otherwise publically [*sic.*] available, or

(4) other data which does not bear on the competitive goals of public procurement, which was not required by the terms of the request for proposals itself to be made available for public inspection. An offeror shall identify information which he proposes to remain confidential and bind it separately from the remainder of his offer.

Requests for public disclosure of information which an offeror has identified as proprietary shall be made to the Director in writing. The Director shall examine the information to determine the validity of the offeror's request for confidentiality and shall inform the offeror of his decision, which decision shall become a part of the contract file.

After opening, but prior to the contract award, the following information shall be subject to public inspection: (a) the request for proposals; (b) a list of all vendors who received the request for proposals; (c) the name and address of each offeror. (*Indiana Department of Administration; 25 IAC 1.1-1-6; filed Dec 15, 1981, 1:45 pm; 5 IR 240; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

25 IAC 1.1-1-7 Competitive sealed proposals; clarification

Authority: IC 4-13.4-3-1

Affected: IC 4-13.4-5-4

Sec. 7. As provided for in the request for proposals, discussions may be conducted with responsible offerors, who submit proposals determined to be reasonably susceptible of being selected for award, for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements.

No discussions shall be held with an offeror whose proposal fails to meet a mandatory requirement of the RFP.

Discussions shall be held to: (a) promote understanding of the State's requirements and the offerors' proposals; and

(b) facilitate arriving at a contract that will be most advantageous to the State, taking into consideration price and other evaluation factors set forth in the RFP.

In conducting discussions, there must be no disclosure of any information derived from proposals submitted by competing offerors.

The only factors or criteria that may be used in the evaluation of proposals are those specified in the request for proposals. The requirements of the RFP shall not be altered.

After identification of the responsible offeror whose proposal appears to be the most advantageous to the State, the State will enter into contract preparation activities with the offeror. If at any time the contract preparation activities are judged to be ineffective, the State may cease all activities with that offeror and begin contract preparation activities with the next highest ranked offeror. This process may continue until a completed contract is executed. The State reserves the right to cease all contract preparation activities at any time and to reject all proposals if such action is determined by the Commissioner to be in the best interest of the State. (*Indiana Department of Administration; 25 IAC 1.1-1-7; filed Dec 15, 1981, 1:45 pm; 5 IR 240; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

25 IAC 1.1-1-8 Competitive sealed proposals; determination (Repealed)

Sec. 8. (*Repealed by Indiana Department of Administration; filed Feb 25, 1994, 10:00 a.m.: 17 IR 1518*)

25 IAC 1.1-1-9 Small purchases

Authority: IC 4-13.4-3-1

Affected: IC 4-13.4-5-5

Sec. 9. All purchases for which the amount of the ultimate expenditure is estimated not to exceed the amount set out in IC 4-13.4-5-5(a) [*IC 4-13.4 was repealed by P.L. 49-1997, SECTION 86, effective July 1, 1998.*] may be made either upon competitive sealed bids or in the open market, at the discretion of the Director. If made in the open market, a manually signed quote must be secured and shall be filed with the requisition. If practicable, two or three quotes shall be secured, but failure to do so shall not prevent the purchase from being made. (*Indiana Department of Administration; 25 IAC 1.1-1-9; filed Dec 15, 1981, 1:45 pm; 5 IR 241; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

25 IAC 1.1-1-10 Sole source procurement

Authority: IC 4-13.4-3-1
Affected: IC 4-13.4-5-6

Sec. 10. (a) The signature of the governor on a contract satisfies the requirements of this section for the governor's written approval.

(b) In instances where the compatibility of equipment, accessories or replacement parts is the paramount consideration, a contract may be awarded without formal competition when the Commissioner states in writing his determination that there is only one (1) source which meets the agency's reasonable requirements, on the basis of a written justification submitted by the head of the state agency desiring to procure such supplies.

(c) In the case of high technology supplies, or a combination of supplies and services, such as word processing systems, a contract may be awarded without formal competition when the commissioner states in writing his determination that there is only one (1) source which meets the agency's reasonable requirements, on the basis of a specific written recommendation by the data processing division of the department of administration, developed as the result of a formal analysis of the state agency's needs undertaken by the division which meets the criteria established by the division, including cost factors.

(d) In the case of services not to exceed fifty thousand dollars (\$50,000), a contract may be awarded without formal competition when the Commissioner states in writing his determination that there is only one (1) source which meets the agency's reasonable requirements, on the basis of a written justification submitted by the head of the state agency desiring to procure such services.

(e) A contract may be awarded for a supply or service without competition in other instances when the Commissioner states in writing his determination that there is only one (1) source for the required supply or service. (*Indiana Department of Administration; 25 IAC 1.1-1-10; filed Dec 15, 1981, 1:45 pm: 5 IR 241; filed Jul 5, 1983, 3:22 pm: 6 IR 1371; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

25 IAC 1.1-1-11 Emergency procurements

Authority: IC 4-13.4-3-1
Affected: IC 4-13.4-5-7

Sec. 11. An emergency condition is a situation which creates a threat to the public health, welfare or safety such as may arise by reason of floods, epidemics, riots, equipment failures, or such other reason as may be proclaimed by the Governor, or determined by the Commissioner. The existence of such conditions create an immediate and serious need for supplies or services that cannot be met through normal procurement methods, and the lack of which would seriously threaten: (1) the functioning of state government; (2) the preservation or protection of property; or (3) the health or safety of any person.

Any state agency may make emergency procurements of up to \$1,500 for the repair of moveable equipment without prior Department of Administration approval when an emergency condition, as defined above, arises and the need cannot be met through normal procurement methods. Whenever practical, however, approval by the Commissioner or Director shall be obtained prior to the procurement. Emergency procurements of \$1,500 or more require the prior approval of the Commissioner or Director, either in writing or orally followed by written confirmation.

The procurement procedure used shall be selected to assure that the required supplies or services can be procured in time to meet the emergency. Given this constraint, such competition as is practicable shall be obtained. The agency head shall make a written determination stating the basis for an emergency procurement and for the selection of the particular contractor. Such determination shall be sent promptly to the Director. (*Indiana Department of Administration; 25 IAC 1.1-1-11; filed Dec 15, 1981, 1:45 pm: 5 IR 241; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

25 IAC 1.1-1-12 Procurement by federal supply service schedules

Authority: IC 4-13.4-3-1
Affected: IC 4-13.4-5-7

Sec. 12. (a) "Procurement" from federal supply service schedules includes buying, purchasing, renting, leasing, or otherwise acquiring any supplies or services.

(b) Any vendor listed on the current federal supply service schedules who is willing to make those prices available to the State

for a fixed period of time shall make this availability known to the Director by filing with him a form available from the Procurement Division and receiving an identifying number.

(c) In the event the Commissioner determines in writing that it is advantageous to the State's interests in efficiency and economy to procure an agency's request for specified supplies or services from federal supply service schedules rather than to conduct a competitive procurement, the Director shall select from the schedules the available (as specified above) vendor whose supplies or services best meet the agency's criteria and offer the best value to the State and shall enter into a contract with said vendor to meet the agency's request.

(d) In the event no appropriate vendor has filed with the Division, the Director may contact up to three scheduled vendors whose supplies or services best meet the agency's criteria and offer the best value to the State and invite them to file. The Director shall make his selection from the vendors who file pursuant to this request within a specified period of time. In the event no vendor files, a selection process other than IC 4-13.4-5-8 [*IC 4-13.4-5-8 was repealed by P.L.14-1996, SECTION 8, effective July 1, 1996.*] shall be used.

(e) In making a selection among vendors listed on the schedules on any basis other than price, the Director shall justify his selection in writing. (*Indiana Department of Administration; 25 IAC 1.1-1-12; filed Dec 15, 1981, 1:45 pm: 5 IR 242; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

25 IAC 1.1-1-13 Cancellation or rejection of solicitations

Authority: IC 4-13.4-3-1

Affected: IC 4-13.4-5-9; IC 4-13.4-6-1

Sec. 13. (a) Prior to opening, a solicitation may be cancelled in whole or in part when the Commissioner or Director determines in writing that such action is in the best interest of the State for reasons including, but not limited to:

- (1) The State no longer requires the supplies or services;
- (2) The State no longer can reasonably expect to fund the procurement;
- (3) Proposed amendments to the solicitation would be of such magnitude that a new solicitation is desirable.

When a solicitation is cancelled prior to opening, notice of cancellation shall be sent to all businesses which have received a solicitation.

The notice of cancellation shall: (a) identify the solicitation, and (b) cite the reason for cancellation.

The reason for cancellation shall be made part of the procurement file and shall be available for public inspection.

(b) After opening but prior to award, all bids or proposals may be rejected in whole or in part when the Commissioner or the Director determines in writing that such action is in the State's best interest for reasons including but not limited to:

- (1) The supplies or services being procured are no longer required;
- (2) Ambiguous or otherwise inadequate specifications were part of the solicitation;
- (3) Prices exceed available funds and it would not be appropriate to adjust quantities to come within available funds;
- (4) All otherwise acceptable bids or proposals received are at clearly unreasonable prices;
- (5) There is reason to believe that the bids or proposals may not have been independently arrived at in open competition, may have been collusive, or may have been submitted in bad faith;

A notice of rejection shall be sent to all businesses which submitted bids or proposals.

The reason for rejection shall be made part of the procurement file and shall be available for public inspection.

(c) After opening but prior to award, individual bids or proposals may be formally rejected when the Director or Commissioner makes a written determination that:

- (1) The business that submitted the bid is nonresponsible pursuant to IC 4-13.4-6-1 [*IC 4-13.4 was repealed by P.L.49-1997, SECTION 86, effective July 1, 1998.*]
- (2) The bid is not responsive in that it does not conform in all material respects to the requirements of the solicitation.
- (3) The supply or service offered is unacceptable by reason of its failure to meet the requirements of the specifications or permissible alternatives or other acceptability criteria set forth in the solicitation.

The determination shall be made a part of the contract file. (*Indiana Department of Administration; 25 IAC 1.1-1-13; filed Dec 15, 1981, 1:45 pm: 5 IR 242; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

25 IAC 1.1-1-14 Qualifications and duties of bidders, offerors, and prospective contractors; determination of nonresponsible bidder

Authority: IC 4-13.4-3-1

Affected: IC 4-13.4-6-1

Sec. 14. (a) Factors to be considered in determining whether the standard of responsibility has been met include whether a prospective contractor has:

- (1) available the appropriate financial, material, equipment, facility, and personnel resources and expertise, or the ability to obtain them, necessary to indicate its capability to meet all contractual requirements;
- (2) a satisfactory record of performance;
- (3) a satisfactory record of integrity;
- (4) qualified legally to contract with the State;
- (5) supplied all requested information in connection with the inquiry concerning responsibility.

This section shall not prevent the Director from establishing additional responsibility standards for a particular procurement, provided that they are set forth in the solicitation.

(b) The prospective contractor shall supply information requested by the Director concerning the responsibility of such contractor. If the contractor fails to supply the requested information, the Director shall base the determination of responsibility upon any available information or may find the prospective contractor nonresponsible if such failure to respond is unreasonable.

(c) The prospective contractor may demonstrate the availability of necessary financing, equipment, facilities, expertise, and personnel by submitting upon request:

- (1) evidence that the contractor possesses such items;
 - (2) acceptable plans to subcontract for such items; or
 - (3) a documented commitment from, or explicit arrangement with, a satisfactory source to provide the items.
- (d) Before awarding a contract, the Director must be satisfied that the prospective contractor is responsible.

(e) If a bidder or offeror is found nonresponsible, a written determination of nonresponsibility setting forth the basis of the finding shall be prepared by the Commissioner or Director and shall be made part of the contract file. A copy of the determination shall be sent promptly to the nonresponsible bidder or offeror. (*Indiana Department of Administration; 25 IAC 1.1-1-14; filed Dec 15, 1981, 1:45 pm: 5 IR 243; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

25 IAC 1.1-1-15 Cost or pricing data; contractor certification

Authority: IC 4-13.4-3-1

Affected: IC 4-13.4-6-3; IC 4-13.4-9-1

Sec. 15. Except in cases: (a) where the contract price is based on adequate price competition;

(b) where the contract price is based on established catalog prices or market prices;

(c) where the contract prices are set by law or rule; or

(d) where the Director makes a determination that these requirements may be waived and the reasons for the waiver are stated in writing;

the following requirements shall apply.

An offeror submitting a competitive sealed proposal must submit cost or pricing data which he certifies is accurate, complete and current as of a mutually agreed date prior to the date of the pricing of any contract awarded pursuant to a Request for Proposals, where the total contract price is expected to exceed \$50,000.

A proposed sole source contractor must submit cost or pricing data which he certifies is accurate, complete and current as of a mutually agreed date prior to the date of the pricing of any contract awarded pursuant to the sole source provisions of the law, where the total contract price is expected to exceed \$25,000.

A contractor who wishes to obtain a change order or modification pursuant to IC 4-13.4-9-1 [*IC 4-13.4 was repealed by P.L.49-1997, SECTION 86, effective July 1, 1998.*] must submit cost or pricing data which he certifies is accurate, complete and current as of a mutually agreed date prior to the date of the pricing of any change order or contract modification, whenever the original contract price exceeds \$50,000 and the amount of the change order or contract modification is expected to exceed \$5,000.

The Director may require the submission of certified cost or pricing data prior to contract award in cases where only one qualified bid is received in response to an invitation for bids. (*Indiana Department of Administration; 25 IAC 1.1-1-15; filed Dec*

15, 1981, 1:45 pm: 5 IR 243; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265)

25 IAC 1.1-1-16 Types of contracts; prohibited contracts

Authority: IC 4-13.4-3-1

Affected: IC 4-13.4-7-1; IC 4-13.4-9-1

Sec. 16. (a) Any type of contract not otherwise prohibited by law, except a cost plus a percentage of cost contract, may be used. However, a firm fixed price contract is preferred; any other type of contract may be used only when the director or commissioner determines that such use is in Indiana's best interest. Any solicitation shall include notice of the contract terms and conditions.

(b) The following are among the factors which may be considered in selecting contract type:

(1) The type or complexity of the supply or service being procured.

(2) The difficulty of estimating performance costs such as the inability of Indiana to develop definitive specifications, to identify the risks to the contractor inherent in the nature of the work to be performed, or otherwise establish clearly the requirements of the contract.

(3) The administrative costs to both parties.

(4) The degree to which Indiana must provide technical coordination during the performance of the contract.

(5) The effect of the choice type on the amount of compensation to be expected.

(6) The stability of material or commodity market prices or wage levels.

(7) The urgency of the requirement.

(8) The length of contract performance.

(9) Federal requirements.

(c) A contract may contain an option for renewal or extension of its terms, without modification, for a specified period of time.

However:

(1) exercise of the option is at the sole discretion of Indiana and not subject to agreement or acceptance by the contractor;

(2) notice of such provision must be included in any solicitation; and

(3) such renewal or extension must be approved by the commissioner and the state budget director.

(d) A contract for rental or lease may contain an option to purchase. However:

(1) exercise of the option is at the sole discretion of Indiana and not subject to agreement or acceptance by the contractor;

(2) provision of such option must be part of any solicitation;

(3) a means of computing the cost of the item to Indiana at fixed intervals, should it exercise its option, which is no more than the actual resale or fair market value of the item at the time of exercising the option, must be part of the agreement;

(4) Indiana must have the right to cancel the lease or rental agreement, at fixed intervals, without penalty; and

(5) exercise of the option to purchase must be subject to the approval of the commissioner and the state budget director.

(e) A using agency may not enter into an installment sales contract unless the contract contains the following:

(1) A contract clause that permits the department to cancel the contract if the budget director makes a written determination that funds are not appropriated or otherwise available to support continuation of the contract.

(2) Other contract terms that the commissioner may require.

(f) As used in this section, "quantity purchase agreement" includes the following:

(1) A contract for an indefinite amount of specific supplies or services to be furnished at a specific time, or as ordered, that establishes a fixed price per unit.

(2) A contract for supplies or services to furnish all the actual requirements of a designated using agency or agencies, or a determinable part of the actual requirements (such as a percentage), during a specified period of time.

(g) Indiana may enter into an indefinite quantity contract if:

(1) the director determines it appropriate;

(2) an approximate quantity or the best information available as to quantity is stated in the solicitation; and

(3) the term of the contract is specified.

(h) Indiana may enter into a requirements contract if:

(1) the director determines it appropriate;

(2) an approximate quantity or the best information available as to quantity is stated in the solicitation;

(3) the term of the contract is specified; and

(4) use of this type contract is limited to instances where actual requirements can be reasonably estimated.

(i) A solicitation for an indefinite quantity contract or a requirements contract and the resultant contract may reserve the right to Indiana to separately meet requirements of the using agency or agencies.

(j) The vendor for a quantity purchase agreement may be selected by means of an invitation for bids, request for proposals, or in any other manner not prohibited by law.

(k) Price adjustments in quantity purchase agreements will be permitted only:

(1) under the terms and conditions specified in the solicitation; and

(2) if the adjustment is computed by a rule, method, or formula specified in the agreement.

(l) Upon the termination of a quantity purchase agreement, the director may reaward the agreement to the vendor quarterly, semiannually, or annually, without further competition, if the vendor consents to the same prices as the original award. A quantity purchase agreement may not be extended unless notice of it was part of the solicitation. No reaward may extend the total period of the agreement with the vendor beyond a two (2) year term.

(m) The director shall make every effort to ensure that no more quantity purchase orders than are reasonably necessary for the efficient operation of the governmental bodies affected thereby are in effect at any one (1) time. Although this does not preclude the issuance of more than one (1) quantity purchase order for any specific item, effort shall be made to specify the governmental agency, geographic location, etc. for which each is applicable so that there is little or no overlap. (*Indiana Department of Administration; 25 IAC 1.1-1-16; filed Dec 15, 1981, 1:45 p.m.: 5 IR 244; filed Jul 5, 1983, 3:22 p.m.: 6 IR 1371; filed May 13, 1987, 11:55 a.m.: 10 IR 2262; filed Jul 26, 1988, 4:10 p.m.: 11 IR 4070; filed Apr 17, 1991, 3:00 p.m.: 14 IR 1710; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

25 IAC 1.1-1-17 Modification and termination of contracts for supplies and services; contract clauses

Authority: IC 4-13.4-3-1

Affected: IC 4-13.4-9-1

Sec. 17. A fixed price contract with price adjustment provides for variation in the contract price under special conditions defined in the contract. The formula or other basis by which adjustment in contract price can be made shall be specified in the solicitation and resulting contract. Adjustment allowed may be upward, downward, or both. Examples of special conditions for which contract adjustments provisions may be permitted by the Director to be included in a fixed price contract include changes due to rapid and substantial price fluctuations, which can be related to an accepted index (such as contracts for gasoline, heating oils, and dental gold alloy). (*Indiana Department of Administration; 25 IAC 1.1-1-17; filed Dec 15, 1981, 1:45 pm: 5 IR 245; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

25 IAC 1.1-1-18 Specifications; inspections, tests, and preparations for delivery

Authority: IC 4-13.4-3-1; IC 4-13.4-4-1

Affected: IC 4-13.4-4

Sec. 18. Specifications shall, to the extent practicable, emphasize the functional or performance requirements of an agency's procurement of supplies or services. Using agencies shall include as part of their purchase requisition the supply or service specification or description and all requirements for inspecting, testing or preparing a service or supply item for delivery. The following procedures governing the preparation, maintenance and utilization of specifications, unless otherwise prescribed by the director, are to be used in the procurement of supplies and services for governmental use.

(a) Specification preparation: (1) Using agencies may prepare and submit individual agency specifications for the procurement of supplies and services. These specifications are subject to procurement division approval and acceptance for use in public purchasing procedures.

(2) Common or general use specifications are to be prepared by the procurement division for all agency use. Wherever practical, agencies shall use specifications developed by the procurement division.

(3) Any specifications developed and used by the United States government or its agencies may be used by the procurement division in the procurement of supplies.

(b) Maintenance of specifications: (1) The procurement division shall maintain a central file of common or general use specifications for all state agency use. Agencies may submit general use specifications to the director for approval and subsequent utilization for the procurement of supplies or services that may be awarded on individual competitive sealed bids, regularly

scheduled class bids, or all state agency quantity purchase awards.

(2) Any agency preparing specifications for its use shall maintain a central file of specifications which the division and other agencies may utilize in the procurement of supplies and services.

(c) Specification content: (1) All specifications shall contain the description of the physical or functional characteristics or the nature of a supply or service procurement. This description may also include, with reasonable particularity, the kind, quantity and quality of all materials, equipment goods and supplies to be purchased.

(2) The following types of specifications, and those prescribed by the director from time to time, may be used by the division and agencies in the procurement of supplies and services:

(A) Design-type (also physical or technical)—A description of materials or components to be used, and dimensions to be adhered to, in a detailed, precise manner.

(B) Functional—A description of performance characteristics to be met, without prescribing exactly how they are to be accomplished.

(C) Brand name or equivalent—A specification which uses one (1) or more manufacturer's names or catalogue numbers to describe the standard of quality, performance or other characteristics needed to meet the state agencies requirements, and which provides for the submission of equivalent products.

(D) Common or general use—Those specifications developed and maintained by the division for use by all agencies for recurring procurement needs where the characteristics of supplies or services, as commercially produced or provided, remain relatively stable, although the frequency or volume of procurements may vary.

(3) A specification may provide alternate description of supplies or services where two (2) or more design, functional or performance criteria will satisfactorily meet the state's procurement requirements.

(4) A specification may include a description of any requirement for inspecting, testing or preparing a supply or service for delivery.

(5) To the extent practical, a specification should not include any solicitation or contract term or condition such as a requirement for time or place of bid opening, time of delivery, payment, liquidated damages or qualification of bidders.

(d) Inspection and testing: (1) All supplies and services provided to the state are subject to the division's inspection and testing requirements at all times before, during or after manufacture or delivery. All such inspection and testing requirements may be established as part of individual bid solicitations or as part of operational procedures developed by the director. Those operational procedures may also allow for reasonable charges assessed to supplying vendors to recover costs of inspections or testing as required by the division.

(2) Vendors shall furnish, without additional charges, all reasonable facilities and assistance for the safe and convenient inspections and tests required by the division.

(3) The division shall have the right to reject and return at the vendor's expense, or to require at vendor's expense, the correction or replacement of supplies or services which are defective or do not conform with solicitation or purchase order requirements. All rejection shall be held at the vendor's expense and risk, including all transportation and handling costs, until returned to the vendor or corrected by the vendor. (*Indiana Department of Administration; 25 IAC 1.1-1-18; filed Nov 21, 1983, 4:29 pm: 7 IR 320; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

Rule 2. Indiana Business Definition, Certification, and Enforcement (Repealed)

(Repealed by Indiana Department of Administration; filed Jul 11, 1996, 8:50 a.m.: 19 IR 3290)

Rule 3. United States Manufactured Product Definition, Policy, Certification, and Enforcement

25 IAC 1.1-3-1 General provisions

Authority: IC 4-13-1-4; IC 4-13-1-7

Affected: IC 4-13.4-2-10

Sec. 1. IC 4-13.4-2-10 [*IC 4-13.4 was repealed by P.L.49-1997, SECTION 86, effective July 1, 1998.*] allows a preference to promote the purchase of products manufactured in the United States. (*Indiana Department of Administration; 25 IAC 1.1-3-1; filed Aug 30, 1994, 2:25 p.m.: 18 IR 6; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

25 IAC 1.1-3-2 “Components” defined

Authority: IC 4-13-1-4; IC 4-13-1-7
Affected: IC 4-13.4-2-10

Sec. 2. As used in this rule, “components” means those articles, materials, and supplies incorporated directly into the products. (*Indiana Department of Administration; 25 IAC 1.1-3-2; filed Aug 30, 1994, 2:25 p.m.: 18 IR 6; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

25 IAC 1.1-3-3 “United States” defined

Authority: IC 4-13-1-4; IC 4-13-1-7
Affected: IC 4-13.4-2-10

Sec. 3. As used in this rule, “United States” means the United States, its possessions, Puerto Rico, and any other place subject to its jurisdiction, but does not include trust territories. (*Indiana Department of Administration; 25 IAC 1.1-3-3; filed Aug 30, 1994, 2:25 p.m.: 18 IR 6; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

25 IAC 1.1-3-4 “United States manufactured product” defined

Authority: IC 4-13-1-4; IC 4-13-1-7
Affected: IC 4-13.4-2-10

Sec. 4. As used in this rule, “United States manufactured product” means either of the following:

- (1) An unmanufactured product mined or produced in the United States.
- (2) A product manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds fifty percent (50%) of the cost of all its components. (In determining if a product is manufactured in the United States, only the product and its components shall be considered.) The cost of each component includes transportation costs to the place of incorporation into the product and any applicable duty (whether or not a duty-free entry certificate is issued). Components of a foreign origin of the same class or kind for which determinations have been made in accordance with section 5(a)(3) or 5(a)(4) of this rule are treated as United States manufactured. Scrap generated, collected, and prepared for processing in the United States is considered United States manufactured.

(*Indiana Department of Administration; 25 IAC 1.1-3-4; filed Aug 30, 1994, 2:25 p.m.: 18 IR 6; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

25 IAC 1.1-3-5 Policy

Authority: IC 4-13-1-4; IC 4-13-1-7
Affected: IC 4-13.4-2-10

Sec. 5. (a) The statute requires that only United States manufactured products be acquired for public use, except articles, materials, and supplies as determined by the commissioner or designee:

- (1) for use outside the United States;
- (2) for which the cost would be unreasonable;
- (3) for which the preference would be inconsistent with the public interest; or
- (4) that are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality.

(b) For purposes of determining unavailability, the items listed in Federal Acquisition Regulation 25.108 (48 CFR 25.108) are presumed to be not reasonably available. However, the commissioner or designee reserves the right to determine an item to be available for a particular bid, request for proposal, or other acquisition procedure. (*Indiana Department of Administration; 25 IAC 1.1-3-5; filed Aug 30, 1994, 2:25 p.m.: 18 IR 6; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

25 IAC 1.1-3-6 Certification

Authority: IC 4-13-1-4; IC 4-13-1-7
Affected: IC 4-13.4-2-10

Sec. 6. (a) Any business which makes an offer, a proposal, or a bid for the purpose of seeking the preference in IC 4-13.4-2-10 [IC 4-13.4 was repealed by P.L.49-1997, SECTION 86, effective July 1, 1998.] shall certify under the penalties of perjury that it is offering United States manufactured products within the meaning of section 4 of this rule. The certification will be made on forms provided by the department and approved by the commission on public records.

(b) The director may presume the representations contained in the certification are true, thereby qualifying the business for the United States manufactured products preference. However, this presumption may be rebutted under section 7 of this rule or if the director has reason to question the representations contained in the certification.

(c) Whether the United States manufactured product preference is offered shall be stated in each invitation for bid, request for proposal, or other acquisition procedure.

(d) The decision to grant the United States manufactured product preference shall be at the sole discretion of:

(1) the director of procurement of the department or designee; or

(2) the commissioner or designee.

(Indiana Department of Administration; 25 IAC 1.1-3-6; filed Aug 30, 1994, 2:25 p.m.: 18 IR 6; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265)

25 IAC 1.1-3-7 Enforcement

Authority: IC 4-13-1-4; IC 4-13-1-7

Affected: IC 4-13.4-2-10

Sec. 7. (a) If, prior to award, the commissioner or designee determines the business does not qualify for the United States manufactured product preference, the commissioner or designee may do any of the following in any combination deemed appropriate:

(1) Declare the business nonresponsible and bar it from doing business with the state for a specified period, not exceeding two (2) years.

(2) Require the business to reimburse the state for the costs incurred due to rebidding of the contract.

(b) If, after the award, the commissioner or designee determines the business does not qualify for the United States manufactured product preference, the commissioner or designee may do any of the following in any combination deemed appropriate:

(1) Cancel the contract.

(2) Declare the business nonresponsible and bar it from doing business with the state for a specified period, not exceeding two (2) years.

(3) Require the business to reimburse the state for the amount incurred due to rebidding of the contract.

(c) The sanctions in subsections (a) and (b) in no way limit what actions could be taken through appropriate civil or criminal statutes.

(d) Any applicant for the United States manufactured product preference who is dissatisfied with the decision rendered concerning sanctions may, within fifteen (15) days after receiving such notification, request in writing a reconsideration of that decision and submit additional written evidence bearing on the sanction. The commissioner or designee will consider any such request within forty-five (45) days of receipt thereof. A written decision will be issued. (Indiana Department of Administration; 25 IAC 1.1-3-7; filed Aug 30, 1994, 2:25 p.m.: 18 IR 7; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265)

ARTICLE 1.5. SMALL BUSINESS PROCUREMENTS AND PROJECTS

Rule 1. Definitions

25 IAC 1.5-1-1 Application of definitions

Authority: IC 4-13-1-7; IC 4-13.6-3-1

Affected: IC 4-13-13.5; IC 4-13.6

Sec. 1. (a) Unless indicated otherwise, all words in 25 IAC 1.5 have the meanings specified in IC 4-13-13.5 [IC 4-13-13.5 was repealed by P.L.49-1997, SECTION 86, effective July 1, 1998.], IC 4-13.4 [IC 4-13.4 was repealed by P.L.49-1997, SECTION 86, effective July 1, 1998.], or IC 4-13.6.

(b) The definitions in 25 IAC 1.5-1 apply throughout 25 IAC 1.5. (*Indiana Department of Administration; 25 IAC 1.5-1-1; filed Jul 17, 1985, 11:48 am: 8 IR 1697; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

25 IAC 1.5-1-2 “Construction business” defined

Authority: IC 4-13-1-7; IC 4-13.6-3-1
Affected: IC 4-13-13.5-2

Sec. 2. “Construction business” means a business that derives its principal source of income from the participation in the erection of buildings, facilities, structures, bridges, overpasses or highways. (*Indiana Department of Administration; 25 IAC 1.5-1-2; filed Jul 17, 1985, 11:48 am: 8 IR 1697; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

25 IAC 1.5-1-3 “Director” defined

Authority: IC 4-13-1-7; IC 4-13.6-3-1
Affected: IC 4-13-13.5; IC 4-13.6

Sec. 3. “Director” means the director of the procurement division in relation to a procurement under IC 4-13.4 [*IC 4-13.4 was repealed by P.L.49-1997, SECTION 86, effective July 1, 1998.*] and means the director of the public works division in relation to a public works project under IC 4-13.6. (*Indiana Department of Administration; 25 IAC 1.5-1-3; filed Jul 17, 1985, 11:48 am: 8 IR 1697; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

25 IAC 1.5-1-4 “Employee” defined

Authority: IC 4-13-1-7; IC 4-13.6-3-1
Affected: IC 4-13-13.5-2

Sec. 4. “Employee” means any individual employed by a business full-time, part-time or temporarily. (*Indiana Department of Administration; 25 IAC 1.5-1-4; filed Jul 17, 1985, 11:48 am: 8 IR 1697; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

25 IAC 1.5-1-5 “Manufacturing business” defined

Authority: IC 4-13-1-7; IC 4-13.6-3-1
Affected: IC 4-13-13.5-2

Sec. 5. “Manufacturing business” means a business that derives its principal source of income from the sale of goods made from raw, unfinished materials, as distinguished from the final product. (*Indiana Department of Administration; 25 IAC 1.5-1-5; filed Jul 17, 1985, 11:48 am: 8 IR 1697; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

25 IAC 1.5-1-6 “Offer” defined

Authority: IC 4-13-1-7; IC 4-13.6-3-1
Affected: IC 4-13-13.5

Sec. 6. “Offer” means a response to a solicitation. (*Indiana Department of Administration; 25 IAC 1.5-1-6; filed Jul 17, 1985, 11:48 am: 8 IR 1697; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

25 IAC 1.5-1-7 “Retail business” defined

Authority: IC 4-13-1-7; IC 4-13.6-3-1
Affected: IC 4-13-13.5-2

Sec. 7. “Retail business” means a business that derives its principal source of income from the sale of supplies to the ultimate consumer. (*Indiana Department of Administration; 25 IAC 1.5-1-7; filed Jul 17, 1985, 11:48 am: 8 IR 1697; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

25 IAC 1.5-1-8 “Service business” defined

Authority: IC 4-13-1-7; IC 4-13.6-3-1
Affected: IC 4-13-13.5-2

Sec. 8. “Service business” means a business that derives its principal source of income from the sale of useful artistic, educational, intellectual, literary, or scientific labor from which no necessary tangible commodity is derived. (*Indiana Department of Administration; 25 IAC 1.5-1-8; filed Jul 17, 1985, 11:48 am: 8 IR 1697; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

25 IAC 1.5-1-9 “Small business” defined

Authority: IC 4-13-1-7; IC 4-13.6-3-1
Affected: IC 4-13-13.5-2

Sec. 9. “Small business” means a business that:

- (1) is independently owned and operated;
- (2) is not dominant in its industry; and
- (3) meets the restrictions imposed by 25 IAC 1.5-3-1.

(*Indiana Department of Administration; 25 IAC 1.5-1-9; filed Jul 17, 1985, 11:48 am: 8 IR 1697; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

25 IAC 1.5-1-10 “Small business procurement” defined

Authority: IC 4-13-1-7; IC 4-13.6-3-1
Affected: IC 4-13-13.5

Sec. 10. “Small business procurement” means a procurement limited to small businesses under 25 IAC 1.5. (*Indiana Department of Administration; 25 IAC 1.5-1-10; filed Jul 17, 1985, 11:48 am: 8 IR 1698; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

25 IAC 1.5-1-11 “Small business project” defined

Authority: IC 4-13-1-7; IC 4-13.6-3-1
Affected: IC 4-13-13.5

Sec. 11. “Small business project” means a public works project limited to small businesses under 25 IAC 1.5. (*Indiana Department of Administration; 25 IAC 1.5-1-11; filed Jul 17, 1985, 11:48 am: 8 IR 1698; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

25 IAC 1.5-1-12 “Solicitation” defined

Authority: IC 4-13-1-7; IC 4-13.6-3-1
Affected: IC 4-13-13.5; IC 4-13.6-5

Sec. 12. “Solicitation” means:

- (1) any procedure authorized under IC 4-13.4-5 [*IC 4-13.4 was repealed by P.L.49-1997, SECTION 86, effective July 1, 1998.*] by which a procurement may be made, whether by invitation to bid, request for proposals or other procedure; or
- (2) an invitation to bid on a public works project under IC 4-13.6-5.

(*Indiana Department of Administration; 25 IAC 1.5-1-12; filed Jul 17, 1985, 11:48 am: 8 IR 1698; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

25 IAC 1.5-1-13 “Wholesale business” defined

Authority: IC 4-13-1-7; IC 4-13.6-3-1
Affected: IC 4-13-13.5-2

Sec. 13. “Wholesale business” means a business that derives its principal source of income from sales to retailers, other

merchants, or industrial, institutional or commercial users who will use the goods for resale or business use. (*Indiana Department of Administration; 25 IAC 1.5-1-13; filed Jul 17, 1985, 11:48 am: 8 IR 1698; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

Rule 2. Policies

25 IAC 1.5-2-1 Purpose

Authority: IC 4-13-1-7; IC 4-13.6-3-1

Affected: IC 4-13-13.5

Sec. 1. The purpose of 25 IAC 1.5-2 is to implement the public policy of the state of Indiana, expressed in IC 4-13-13.5 [*IC 4-13-13.5 was repealed by P.L.49-1997, SECTION 86, effective July 1, 1998.*], so that a fair proportion of state government's total purchases and contracts for supplies and services is placed with small businesses. (*Indiana Department of Administration; 25 IAC 1.5-2-1; filed Jul 17, 1985, 11:48 am: 8 IR 1698; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

25 IAC 1.5-2-2 Applicability of other law

Authority: IC 4-13-1-7; IC 4-13.6-3-1

Affected: IC 4-13.6

Sec. 2. The provisions of IC 4-13.4 [*IC 4-13.4 was repealed by P.L.49-1997, SECTION 86, effective July 1, 1997.*], IC 4-13.6, 25 IAC 1.1, 25 IAC 1.5 and other applicable law shall otherwise govern small business procurements and small business projects. (*Indiana Department of Administration; 25 IAC 1.5-2-2; filed Jul 17, 1985, 11:48 am: 8 IR 1698; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

Rule 3. Procedures

25 IAC 1.5-3-1 Qualification as small business

Authority: IC 4-13-1-7; IC 4-13.6-3-1

Affected: IC 4-13-13.5-2

Sec. 1. (a) For purposes of determining whether a business is a small business, all affiliates of the business will be considered as part of the business.

(b) Whenever reference is made to a number of employees in this section, the number shall mean the average number of employees that the business had during its most recently completed fiscal year.

(c) A business is not a small business if it fails to meet the following restrictions:

(1) For a construction business: average gross annual receipts for the current and three (3) previous fiscal years is [*sic.*] four million dollars (\$4,000,000) or less.

(2) For a manufacturing business: the number of its employees is one hundred (100) or less.

(3) For a retail business: average sales and receipts for the current and three (3) previous fiscal years is [*sic.*] five hundred thousand dollars (\$500,000) or less.

(4) For a service business: average sales for the current and three (3) previous fiscal years is [*sic.*] five hundred thousand dollars (\$500,000) or less and the number of its employees is twenty-five (25) or less.

(5) For a wholesale business: annual sales for its most recently completed fiscal year is [*sic.*] four million dollars (\$4,000,000) or less.

(*Indiana Department of Administration; 25 IAC 1.5-3-1; filed Jul 17, 1985, 11:48 a.m.: 8 IR 1698; filed Nov 3, 1988, 9:20 a.m.: 12 IR 526; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

25 IAC 1.5-3-2 Designation of small business procurements and projects

Authority: IC 4-13-1-7; IC 4-13.6-3-1

Affected: IC 4-13.6-5

Sec. 2. (a) The director may, with the approval of the commissioner, require the procurement to be a small business

procurement or that the project be performed as a small business project.

(b) The director shall not recommend to the commissioner that a procurement be a small business procurement or that a public works project be a small business project unless there is a reasonable expectation that at least two (2) responsible small businesses are capable of submitting an offer at a fair and reasonable price. (*Indiana Department of Administration; 25 IAC 1.5-3-2; filed Jul 17, 1985, 11:48 am: 8 IR 1699; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

25 IAC 1.5-3-3 Notification of designation

Authority: IC 4-13-1-7; IC 4-13.6-3-1

Affected: IC 4-13.6-5

Sec. 3. When the director makes a small business procurement or designates a public works project as a small business project, the solicitation shall indicate that the procurement or the project is limited to small businesses. (*Indiana Department of Administration; 25 IAC 1.5-3-3; filed Jul 17, 1985, 11:48 am: 8 IR 1699; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

25 IAC 1.5-3-4 Certification as a small business

Authority: IC 4-13-1-7; IC 4-13.6-3-1

Affected: IC 4-13.6-5

Sec. 4. (a) Any business which makes an offer in the case of a small business procurement or in the case of a small business project shall certify that it is a small business within the meaning of 25 IAC 1.5.

(b) The director shall presume the representations contained in the small business certification submitted by an offeror are true, thereby qualifying the offeror as a small business. However, this presumption may be rebutted under 25 IAC 1.5-4-1, under 25 IAC 1.5-4-2 or if the director has reason to question the representations contained in the certification.

(c) The director may require a business which submits an offer as a small business to provide information the director considers necessary to demonstrate that the business is a small business. (*Indiana Department of Administration; 25 IAC 1.5-3-4; filed Jul 17, 1985, 11:48 am: 8 IR 1699; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

25 IAC 1.5-3-5 Awards

Authority: IC 4-13-1-7; IC 4-13.6-3-1

Affected: IC 4-13.6-5

Sec. 5. (a) The director shall make an award to the small business which has submitted the lowest priced offer if:

- (1) the business is responsive and responsible; and
- (2) the offer is reasonable in the judgment of the director.

(b) If either of the criteria set out in subsection (a) is not met, the director may:

- (1) make an award to the small business that has made the next lowest priced offer and that satisfies both criteria set out in subsection (a); or
- (2) cancel the solicitation as a small business procurement or a small business project.

(c) If the director does not make an award under this section, then the procurement may be made or the public works project performed without limitation to small businesses. (*Indiana Department of Administration; 25 IAC 1.5-3-5; filed Jul 17, 1985, 11:48 a.m.: 8 IR 1699; filed Nov 3, 1988, 9:20 a.m.: 12 IR 526; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

25 IAC 1.5-3-6 Acceptance of procedures and sanctions

Authority: IC 4-13-1-7; IC 4-13.6-3-1

Affected: IC 4-13.6-5

Sec. 6. A solicitation under 25 IAC 1.5 shall state that businesses submitting offers as small businesses will accept all procedures and possible sanctions provided in 25 IAC 1.5-4 and that the provisions of 25 IAC 1.5 are incorporated by reference into any contract awarded under 25 IAC 1.5. (*Indiana Department of Administration; 25 IAC 1.5-3-6; filed Jul 17, 1985, 11:48 am: 8 IR 1699; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

Rule 4. Compliance

25 IAC 1.5-4-1 Challenge of small business status—prior to award

Authority: IC 4-13-1-7; IC 4-13.6-3-1

Affected: IC 4-13.6-5

Sec. 1. (a) After offers are opened, and prior to award, any person may submit information to the commissioner regarding the qualifications as a small business of the business which would be awarded a contract under 25 IAC 1.5.

(b) If the commissioner determines that the information provided has some foundation, the commissioner may:

- (1) hold a hearing to determine whether the business qualifies as a small business;
- (2) cancel the solicitation as a small business procurement or a small business project; or
- (3) act under both subsection (b)(1) and subsection (b)(2).

(c) If the commissioner does not cancel the solicitation as a small business procurement or small business project, the commissioner shall not award a contract until a determination is made on the merits of the case.

(d) If after a hearing under subsection (b), the commissioner determines the business which would be awarded a contract under 25 IAC 1.5 does not qualify as a small business, the commissioner may impose the following sanctions in any combination deemed appropriate:

- (1) the offer of the business shall be rejected;
- (2) the bid bond of the business shall be forfeited;
- (3) the business shall not be permitted to submit an offer for the same supplies, services or public works project if the solicitation is cancelled and subsequently opened to all businesses generally; or
- (4) the business shall be barred from doing business with the state of Indiana for a specified period, not exceeding two (2) years.

(Indiana Department of Administration; 25 IAC 1.5-4-1; filed Jul 17, 1985, 11:48 am: 8 IR 1700; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265)

25 IAC 1.5-4-2 Challenge of small business status—after award

Authority: IC 4-13-1-7; IC 4-13.6-3-1

Affected: IC 4-13.6-5

Sec. 2. (a) After a contract has been awarded, any person may submit information to the commissioner regarding the qualifications as a small business of the business which has been awarded the contract.

(b) If the commissioner determines that the information has some foundation, the commissioner may hold a hearing to determine whether the business qualified as a small business at the time of the award.

(c) Until a determination is made on the merits of the case, the department shall presume that the business qualified as a small business at the time of award and the business shall be permitted to continue performance of the contract without prejudice until a determination is made on the merits of the case.

(d) If after a hearing under subsection (b), the commissioner determines that a business to which a contract has been awarded under 25 IAC 1.5 did not qualify as a small business at the time the award was made, the commissioner may impose the following sanctions in any combination deemed appropriate:

- (1) the business will pay the state of Indiana an amount, determined by the commissioner, not greater than ten percent (10%) of the amount of the offer made by the business or such an amount shall be deducted from any amounts due the business under the contract;
- (2) the contract with the business shall be cancelled;
- (3) the business shall not be permitted to submit an offer for the same supplies, services or project if the contract is cancelled, and a new solicitation is made for the same supplies, services or project; or
- (4) the business shall be barred from doing business with the state of Indiana for a specified period, not exceeding two (2) years.

(Indiana Department of Administration; 25 IAC 1.5-4-2; filed Jul 17, 1985, 11:48 am: 8 IR 1700; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265)

ARTICLE 2. PUBLIC WORKS DIVISION

Rule 1. Scope of Activities

25 IAC 2-1-1 New construction requisitions; public works division's duties

Authority: IC 4-13-2-9; IC 4-13.6-3-1

Affected: IC 4-13-1-3; IC 4-13-1-4

Sec. 1. The Public Works Division is responsible for the approval and processing of all requisitions and project requests for all new construction by the State and some field control over such construction as needed. Such control shall not extend to the Indiana Department of Highways and Division of Transportation, facilities under the jurisdiction of the State Fair Board, the State Armory Board, and other Commissions or Boards created by law to operate separately or the facilities at the state supported Colleges and Universities. These duties include: (1) making "on site" investigations to ascertain the physical need for the proposed project as well as the judgment of its economic justification, (2) making recommendations for the selection of architects and engineers to do the design of projects where the project is too large or complicated to be performed by the State, (3) designing and writing the specifications for projects, (4) supervising the advertising and bidding of contracts for construction, (5) analyzing the bids and making a bid report with recommendations as to award of contracts, (6) composing and administering contracts with the successful contractors, (7) making periodic visits to the major construction projects, and conferring with the Designer regarding progress and approval of construction, (8) approving all payments to contractors, (9) making a final inspection of the construction, and (10) accepting the construction on behalf of the State. (*Indiana Department of Administration; Public Works Division Sec A,1; filed Feb 29, 1972, 4:10 pm: Rules and Regs. 1973, p. 1; filed Feb 3, 1982, 1:05 pm: 5 IR 508; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

25 IAC 2-1-2 Public works division duties; building rehabilitation, alteration, repair; preventive maintenance program

Authority: IC 4-13-2-9; IC 4-13.6-3-1

Affected: IC 4-13-1-3; IC 4-13-1-4

Sec. 2. The Division also performs the technical engineering tasks involved in the rehabilitation, alterations and repair of buildings owned by the State, except those structures exempted under Section 1 [25 IAC 2-1-1] above, acting in a staff function in furnishing technical advice to the several institutions in this work. Whenever such rehabilitation, alteration, demolition or repair require the services of outside designers and contractors, the Division performs the necessary functions of obtaining outside Designer services as set out in the preceding section (25 IAC 2-1-1). It also is responsible for the administration of a continuing preventive maintenance program for all State owned buildings except those structures exempted under Section 1 [25 IAC 2-1-1] above, and has the authority to authorize emergency parts and supplies, initiate remedial programs of construction or service contracts whenever needed to ensure an adequate preventive maintenance program. The Division is not intimately involved with, but will be available to aid the Natural Resources Department, the Indiana State Police and the Department of Highway in the implementing and administering of their respective preventive maintenance programs. (*Indiana Department of Administration; Public Works Division Sec A,2; filed Feb 29, 1972, 4:10 pm: Rules and Regs. 1973, p. 1; filed Feb. 3, 1982, 1:05 pm: 5 IR 508; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

Rule 2. Definitions

25 IAC 2-2-1 Definitions

Authority: IC 4-13-2-9; IC 4-13.6-3-1

Affected: IC 4-13-1-3; IC 4-13-1-4; IC 4-13.6

Sec. 1. The following words and phrases, as used in these rules and regulations [25 IAC 2] shall have the following meaning:
(a) "Department" means the Indiana Department of Administration created by IC 4-13-1.
(b) "Commissioner" means the Commissioner of the Department of Administration.

- (c) "Division" means the Division of Public Works, Indiana Department of Administration.
- (d) "Operating Department" means the unit of government that will be responsible for the operation, maintenance and use of structure, equipment or apparatus being contracted for.
- (e) "Director" means the Director of Public Works Division of the Department of Administration.
- (f) "Bid Officer" means the representative of the Division in responsible charge of the bid opening.
- (g) "Bid" means a sealed proposal to construct or perform services as set out in the information to bidders.
- (h) "Bidder" means a supplier or contractor who submits offers to construct or perform services for the Department.
- (i) "Approved Bidder" means a bidder who is certified with the Department in accord with the rules and regulations as promulgated by the prequalification certification board.
- (j) "Certification Board" means the prequalification certification board as established by IC 4-13-7 [*Repealed by P.L.24-1985, SECTION 25.*].
- (k) "Contract Designer" means any Architect, Engineer or other professional under contract with the State to perform certain consultant or design services for the State.
- (l) "State Designer" means any Architect, Engineer or other professional or technician performing certain design services for the State while within the employ of the State.
- (m) "Contractor" means any firm supplying construction or other services to the State under a direct contract with the State.
- (n) "Subcontractor" means any firm supplying construction or other services to the Contractor under a contract with said Contractor.
- (o) "Inspector" means an employee of the Division having the responsibility of inspecting State Construction Projects.
- (p) "Designer" means any Architect, Engineer, Surveyor or other professional who by formal training and/or registration are otherwise legally authorized to perform services and design work for the State and may be either a contract or state designer.
- (q) "Professional Contractual Service" means a professional firm who by formal training, registration or are otherwise legally authorized by the manufacturer or supplier to perform maintenance or repair services on complicated or specialized equipment or controlled systems.
- (r) "Project Manager" means Public Work's professional assigned to coordinate projects.
- (s) "Executive Secretary" means secretary for Certification Board.

(Indiana Department of Administration; Public Works Division Sec B; filed Feb 29, 1972, 4:10 pm: Rules and Regs. 1973, p.2; filed Feb 3, 1982, 1:05 pm: 5 IR 509; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265)

Rule 3. Approved Designer List and Selection of Designer

25 IAC 2-3-1 List of prequalified designers

Authority: IC 4-13-2-9; IC 4-13.6-3-1
Affected: IC 4-13.6

Sec. 1. The Division shall maintain a list of prequalified Designers, composed of Architects, Engineers, Surveyors, and other professionals who by an application to the Certification Board have expressed an interest in furnishing their services for proposed State work. *(Indiana Department of Administration; Public Works Division Sec C, 1; filed Feb 29, 1972, 4:10 pm: Rules and Regs. 1973, p.2; filed Feb 3, 1982, 1:05 pm: 5 IR 509; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265)*

25 IAC 2-3-2 Application for prequalification; approval as precondition for selection

Authority: IC 4-13-2-9; IC 4-13.6-3-1
Affected: IC 4-13.6; IC 5-16-1-2

Sec. 2. A Designer desiring to do design work for the Division must, as an act prior to being considered for such services, apply to the State Certification Board, supply all of the pertinent information required by that Board and obtain prequalification approval of said Board. The designer must keep said prequalification current as set out in these rules and regulations [25 IAC 2]. *(Indiana Department of Administration; Public Works Division Sec C,2; filed Feb 29, 1972, 4:10 pm: Rules and Regs. 1973, p.2; filed Feb 3, 1982, 1:05 pm: 5 IR 509; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265)*

25 IAC 2-3-3 Selection procedure for contract designers; qualifications; limitations on subcontractors

Authority: IC 4-13-2-9; IC 4-13.6-3-1

Affected: IC 4-13.6; IC 5-16-1-2

Sec. 3. For any project which the Director determines that the assignment of a contract designer is required, the head of the interested facility requesting the project shall be asked to submit his recommendations to the Director and the Director shall recommend at least three who qualify in classification of work and are currently in good standing with the State Certification Board, and the Commissioner shall select a Contract Designer for negotiating a contract for the proposed design work. Such negotiations will be predicated upon a showing that his personnel availability and work in progress will warrant that the work contemplated can be done in a timely manner. The Contract Designer shall not subcontract any of the contracted design work, considered to be part of the prime contract work, except those functions normally subcontracted in similar circumstances, and such proposed subcontract professionals shall be subject to the same prequalifications as the Contract Designer and must be approved for such subcontract design work by the Director prior to use. Approval of a Contract Design firm shall only be considered where a sufficient number of the personnel of said firm shall have valid professional qualification and requisites to ensure intimate, competent control over all facets of the design work under consideration as evidenced by professional registration. (*Indiana Department of Administration; Public Works Division Sec C,3; filed Feb 29, 1972, 4:10 pm: Rules and Regs. 1973, p.3; filed Feb 3, 1982, 1:05 pm: 5 IR 510; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

25 IAC 2-3-4 Fee proposals for design work; selection procedure for alternate contract designer

Authority: IC 4-13-2-9; IC 4-13.6-3-1

Affected: IC 4-13.6; IC 5-16-11.1

Sec. 4. Director shall recommend to the Commissioner the fee proposed for the professional work. In making his fee proposal for this design work, the Director shall consider the project as a whole considering its location, complexity, need for expediency, and the aid to be given by the State in the design and control of construction. The various points considered in reaching the fee, be it a percentage of eventual cost or as a firm figure, shall be reflected in the design contract itself. If after a review of the project and negotiations as to scope and fee, an agreement is not reached, then the director shall report such circumstances to the Commissioner and he shall decide whether to continue the negotiations or contact another Designer from the Recommendation List. (*Indiana Department of Administration; Public Works Division Sec C,4; filed Feb 29, 1972, 4:10 pm: Rules and Regs. 1973, p.3; filed Feb 3, 1982, 1:05 pm: 5 IR 510; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

25 IAC 2-3-5 Supervision of designer contracts

Authority: IC 4-13-2-9; IC 4-13.6-3-1

Affected: IC 4-13.6

Sec. 5. The Director shall be responsible for seeing that all points of the Designer contract are adhered to administratively. Should the designer fail to so adhere to the contract to any significant degree, the Director shall inform the Commissioner and/or Attorney General of this fact and request guidance in the successful promulgating of the design contract. (*Indiana Department of Administration; Public Works Division Sec C,5; filed Feb 29, 1972, 4:10 pm: Rules and Regs. 1973, p. 3; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

25 IAC 2-3-6 Designer's duty to assure a bid within budget

Authority: IC 4-13-2-9; IC 4-13.6-3-1

Affected: IC 4-13.6

Sec. 6. Designer shall make every effort possible to ensure that the scope and cost of the project remains within the budget allocation. Where bids are over allocated funds and additional funds are not available, the Designer shall redesign, at no additional cost to the State, to bid within allocation or the project shall be abandoned at the option of the State. (*Indiana Department of Administration; Public Works Division Sec C,6; filed Feb 29, 1972, 4:10 pm: Rules and Regs. 1973, p.3; filed Feb 3, 1982, 1:05 pm: 5 IR 510; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

Rule 4. Approved Contractors List and Contractors Qualifications

25 IAC 2-4-1 List of prequalified contractors

Authority: IC 4-13-2-9; IC 4-13.6-3-1

Affected: IC 4-13.6; IC 5-16-1-2

Sec. 1. The Division shall maintain a list of prequalified contractors who, by an application to the Certification Board of the Division have expressed an interest in contracting with the State to perform construction work within the financial and experience limits of their prequalification as set out in their current certificate. (*Indiana Department of Administration; Public Works Division Sec D,1; filed Feb 29, 1972, 4:10 pm: Rules and Regs. 1973, p. 3; filed Feb 3, 1982, 1:05 pm: 5 IR 510; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

25 IAC 2-4-2 Application for prequalification approval as precondition to bidding

Authority: IC 4-13-2-9; IC 4-13.6-3-1

Affected: IC 4-13.6

Sec. 2. A Contractor desiring to so perform construction work for the Division must, as an act prior to being allowed to bid on projects with a valuation exceeding \$50,000, apply to the State Certification Board supplying all of the pertinent information required by that Board and obtain their prequalification approval, as set out in these rules and regulations [25 IAC 2] of the Public Works Division. A Contractor shall not be considered to have legally received plans on a particular project having a valuation exceeding \$50,000 without being currently qualified by said Board both in the classification of work involved and having the financial availability to do the work, said financial position being based on the criteria and formula as also set out in these rules and regulations [25 IAC 2]. (*Indiana Department of Administration; Public Works Division Sec D,2; filed Feb 29, 1972, 4:10 pm: Rules and Regs. 1973, p. 4; filed Feb 3, 1982, 1:05 pm: 5 IR 511; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

25 IAC 2-4-3 Subcontractors' prequalification as precondition to starting work

Authority: IC 4-13-2-9; IC 4-13.6-3-1

Affected: IC 4-13.6; IC 5-16-1-2

Sec. 3. Any subcontractor proposing to do work which has a valuation in excess of \$50,000 shall also be prequalified as set out in Section 2 [25 IAC 2-4-2] above before the prime contractor can start any work on the site. (*Indiana Department of Administration; Public Works Division Sec D,3; filed Feb 29, 1972, 4:10 pm: Rules and Regs. 1973, p.4; filed Feb 3, 1982, 1:05 pm: 5 IR 511; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

25 IAC 2-4-4 Limitation on subcontracting

Authority: IC 4-13-2-9; IC 4-13.6-3-1

Affected: IC 4-13.6

Sec. 4. Any prime contractor or subcontractor doing work for the State is required to complete at least (20%) twenty percent of the work, measured in dollars of the total contract price, with his own forces. (*Indiana Department of Administration; Public Works Division; 25 IAC 2-4-4; filed Feb 3, 1982, 1:05 pm: 5 IR 511; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

Rule 5. Solicitation of Bids

25 IAC 2-5-1 Projects less than \$500; criteria for bid exemption

Authority: IC 4-13-2-9; IC 4-13.6-3-1

Affected: IC 4-13.6

Sec. 1. (a) When the estimated cost of construction is less than five hundred dollars (\$500), contracts may be issued without taking competitive bids upon receipt of two or more offers from firms interested in the subject project.

(b) Competitive bids shall not be required for professional contractual services where no competition exist such as manufacturer representatives special expertise service on specialized equipment, and where rates or prices are fixed by law or ordinance or where purchases are made from the United States government or any agency, division or instrumentality there of *[sic.]*. Competitive bids shall not be required for repair parts for machinery or equipment which can only be procured from the manufacturer of such machinery or equipment. (*Indiana Department of Administration; Public Works Division Sec E,1; filed Feb 29, 1972, 4:10 pm; Rules and Regs. 1973, p.4; filed Feb 3, 1982, 1:05 pm: 5 IR 511; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

25 IAC 2-5-2 Projects between \$500 and \$5,000; personal and general bid notices

Authority: IC 4-13-2-9; IC 4-13.6-3-1
Affected: IC 4-13.6; IC 5-16-1-3

Sec. 2. When the estimated cost of construction exceeds five hundred dollars (\$500) but less than five thousand dollars (\$5,000), sealed bids shall be solicited by posting a notice on the bulletin board in the office of the Commissioner and in office of Director at least seven working days preceding the date set for the opening of bids. The Division shall also contact contractors in the immediate area of the work involving them to consider bidding the project. (*Indiana Department of Administration; Public Works Division Sec E,2; filed Feb 29, 1972, 4:10 pm; Rules and Regs. 1973, p.4; filed Feb 3, 1982, 1:05 pm: 5 IR 511; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

25 IAC 2-5-3 Sealed bids awarded under IC 4-13.6-5; posted solicitation; wage scale limitation

Authority: IC 4-13-2-9; IC 4-13.6-3-1
Affected: IC 4-13.6-5; IC 5-16-1-3; IC 5-16-7-2

Sec. 3. When required under IC 4-13.6-5, sealed bids will be solicited by posting on a public bulletin board in the office of the director seven (7) days before the final date for submitting bids, and public notice shall be inserted at least once each week for two (2) successive weeks before the final date of submitting bids in one (1) newspaper of general circulation in Marion County, Indiana, and, if any part of the project is located in an area outside Marion County, Indiana, one (1) newspaper of general circulation in that area. A project may be listed with one (1) or more private bid service organizations. A prevailing wage scale shall be secured and such rates incorporated in every project, except those under 25 IAC 2-11 when time will not permit. The contractor shall post rates to be paid on the job on state premises and file with the Department of Administration, Public Works Division, Indiana Government Center-South, 402 West Washington Street, Room W467, Indianapolis, Indiana 46204-2743. (*Indiana Department of Administration; Public Works Division Sec E,3; filed Feb 29, 1972, 4:10 p.m.: Rules and Regs. 1973, p. 4; filed Feb 3, 1982, 1:05 p.m.: 5 IR 512; filed May 4, 1992, 9:30 a.m.: 15 IR 1906; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

25 IAC 2-5-4 Exception from bidding; emergency work

Authority: IC 4-13-2-9; IC 4-13.6-3-1
Affected: IC 4-13.6; IC 5-16-1-1.1; IC 36-1-12

Sec. 4. The Commissioner of the Department of Administration may authorize contracts to perform necessary work or construction in an emergency as described in Rule 11 [25 IAC 2-11] of this document without calling for bids under normal procedures. If the estimated cost is less than \$5,000, authorization for such emergency work may be given verbally by the Director. If the emergency is estimated to exceed \$5,000 in cost, then approval of the Commissioner shall be obtained prior to giving verbal approval. In either case the award shall be confirmed in writing with copies filed with the Director and Department as provided under Rule 11 [25 IAC 2-11] of these rules. (*Indiana Department of Administration; Public Works Division Sec E,4; filed Feb 29, 1972, 4:10 pm; Rules and Regs. 1973, p.4; filed Feb 3, 1982, 1:05 pm: 5 IR 512; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

25 IAC 2-5-5 Scope and design of project commensurable with allocation

Authority: IC 4-13-2-9; IC 4-13.6-3-1
Affected: IC 4-13.6; IC 5-16-1-3

Sec. 5. It shall be the intent of the Division, Designer and operating unit to make every effort in the scope and design of the project to ensure that the low bid will be within the allocation prior to soliciting bids in order to preclude the bidders from expending efforts and costs to formulate bids with little possibility of being awarded and in so doing divulging their bid to others prior to a possible rebid. (*Indiana Department of Administration; Public Works Division Sec E,5; filed Feb 29, 1972, 4:10 pm: Rules and Regs. 1973, p. 4; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

Rule 6. Receipt and Acceptance of Bids

25 IAC 2-6-1 Receipt of bids; time requirement

Authority: IC 4-13-2-9; IC 4-13.6-3-1
Affected: IC 4-13.6; IC 5-16-2-1

Sec. 1. All bids shall be received prior to the appointed bid opening time, in the office of the Director and shall be dated and time stamped showing the time and date of receiving the bid. (*Indiana Department of Administration; Public Works Division Sec F,1; filed Feb 29, 1972, 4:10 pm: Rules and Regs. 1973, p. 5; filed Feb 3, 1982, 1:05 pm: 5 IR 512; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

25 IAC 2-6-2 Bid preparation and submittal requirements

Authority: IC 4-13-2-9; IC 4-13.6-3-1
Affected: IC 4-13.6; IC 5-16-1-3

Sec. 2. Bids shall be contained in a sealed envelope with attached blue label as supplied by the Division or marked as specified and/or supplied by the Designer. It shall be plainly marked as a bid with job and time identification clearly stated. (*Indiana Department of Administration; Public Works Division Sec F,2; filed Feb 29, 1972, 4:10 pm: Rules and Regs. 1973, p.5; filed Feb 3, 1982, 1:05 pm: 5 IR 512; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

25 IAC 2-6-3 Bidder's prequalification review by executive secretary; bid acceptance conditions

Authority: IC 4-13-2-9; IC 4-13.6-3-1
Affected: IC 4-13.6; IC 5-16-1-2

Sec. 3. The Executive Secretary of the Certification Board or his/her designate shall, immediately prior to the designated time for acceptance of bids for projects estimated to exceed \$50,000, review the prequalification of all bidders submitting bids. If a bid packet is received and the bidder is not currently qualified with said Board or his financial availability is not approved at the time, then this fact shall be brought to the attention of the Director or in his absence the Commissioner and the bid shall not be opened until receiving a decision as to the acceptability of the bid. The Director may solicit the aid of the Attorney General in making such a decision. (*Indiana Department of Administration; Public Works Division Sec F,3; filed Feb 29, 1972, 4:10 pm: Rules and Regs. 1973, p.5; filed Feb 3, 1982, 1:05 pm: 5 IR 512; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

25 IAC 2-6-4 Opening and reading bids; notifying bidders of delay or changes

Authority: IC 4-13-2-9; IC 4-13.6-3-1
Affected: IC 4-13.6; IC 5-16-2-1

Sec. 4. All bids shall be opened publicly and read at the place and time stated in the public notice and/or instructions to bidders, unless some condition or situation makes it impractical or impossible to do so. Should the time of opening be delayed or place of opening be changed for reason, every effort shall be expended in bringing knowledge of the change to the interested bidders as soon as the need for such a change becomes known to the Director. Bids shall never be opened prior to the appointed time. (*Indiana Department of Administration; Public Works Division Sec F,4; filed Feb 29, 1972, 4:10 pm: Rules and Regs. 1973, p.5; filed Feb 3, 1982, 1:05 pm: 5 IR 513; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

25 IAC 2-6-5 Contract bid award criteria; rejection or waiver of nonconforming bids

Authority: IC 4-13-2-9; IC 4-13.6-3-1
Affected: IC 4-13.6; IC 5-16-1-2

Sec. 5. All bids shall conform to all applicable requirements of the specifications including the instructions to bidders, general conditions, and special conditions. The Bid Officer shall tentatively reject any bid failing to adhere to or conform to such and shall inform the Director or in his absence the Commissioner of this fact and await a decision as to the acceptability of the bid. It is the intent of the Department to not waive technicalities of the bidding procedure. The award of such contract shall be made on the basis of the lowest qualified bid, deemed to be the best bid. (*Indiana Department of Administration; Public Works Division Sec F,5; filed Feb 29, 1972, 4:10 pm: Rules and Regs. 1973, p.5; filed Feb 3, 1982, 1:05 pm: 5 IR 513; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

25 IAC 2-6-6 Single bid received; criteria for acceptance

Authority: IC 4-13-2-9; IC 4-13.6-3-1
Affected: IC 4-13.6

Sec. 6. If after proper solicitation of bids, only one bid is received, the Director shall make a thorough review of the situation in consort with the operating department to determine whether the one bid should be accepted or rejected and rebid. In making this judgment they should 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 bid divulged to subsequent bidders if the project is rebid. (*Indiana Department of Administration; Public Works Division Sec F,6; filed Feb 29, 1972, 4:10 pm: Rules and Regs. 1973, p. 5; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

25 IAC 2-6-7 Confirmation of significantly low bid

Authority: IC 4-13-2-9; IC 4-13.6-3-1
Affected: IC 4-13.6; IC 5-16-2-1

Sec. 7. A bid significantly below the other bids or the project cost estimate shall not be treated as prima facie evidence of mistake and no bid will be rejected based on presumed error in bid. In such instances the Bid Officer shall ask the low bidder, if represented at the opening, to quickly confirm his bid, while the bid opening is still in session, and if an error is alleged to have been made to submit evidence of such error in a timely manner to the Director, for consideration by the State. If the apparent low bidder is not present at the bid opening, the Bid Officer shall contact him as soon as possible and secure a confirmation of his bid or evidence of error. (*Indiana Department of Administration; Public Works Division Sec F,7; filed Feb 29, 1972, 4:10 pm: Rules and Regs. 1973, p. 5; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

25 IAC 2-6-8 Low bid exceeds available funds

Authority: IC 4-13-2-9; IC 4-13.6-3-1
Affected: IC 4-13.6

Sec. 8. If the low bid exceeds the allocation, and additional funds are requested but not approved, then bids shall be rejected and project suspended or rebid with design revised in value equivalent to the overrun. (*Indiana Department of Administration; Public Works Division Sec F,8; filed Feb 29, 1972, 4:10 pm: Rules and Regs. 1973, p. 6; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

Rule 7. Award of Contracts

25 IAC 2-7-1 Bid acceptance or rejection; written contracts; director's recommendation

Authority: IC 4-13-2-9; IC 4-13.6-3-1
Affected: IC 4-13.6; IC 5-16-1-1.1; IC 36-1-12

Sec. 1. For all proposals under \$5,000 the Public Works Project Manager shall, after consultation with the Designer, make

a recommendation to the Director as to acceptance or rejection of the bids. If the Director concurs in a recommendation for acceptance, a letter type contract may be sent to the successful bidder with approval by the Commissioner. For bids that exceed \$5,000 the project manager and Designer, after a full review of the bid and discussion with all interested parties to the bid, shall make recommendation to the Director as to acceptance or rejection of the bids. If the Director concurs in a recommendation for acceptance the Director shall compose a formal contract for the signature of the Commissioner, for said work after determining that funds are available. If bids are rejected, the Director shall consult all parties concerned to ascertain the advisability of rebidding or cancelling the project, commensurate with the provisions of Rule 25 IAC 2-3-6 and Rule 25 IAC 2-6-8 above. (*Indiana Department of Administration; Public Works Division Sec G,1; filed Feb 29, 1972, 4:10 pm; Rules and Regs. 1973, p.6; filed Feb 3, 1982, 1:05 pm; 5 IR 513; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

25 IAC 2-7-2 Lowest responsible bid acceptance criteria; rejection conditions

Authority: IC 4-13-2-9; IC 4-13.6-3-1

Affected: IC 4-13.6-1-15; IC 5-16-1-1.1; IC 36-1-12

Sec. 2. A bid may only be awarded to a responsible contractor. Factors to be used in making a responsibility determination are quality of material, experience, efficiency, and reputation of the bidder, the character, integrity, credit, and conscientiousness of the bidder, the ability of the bidder to respond and answer in accordance with what is expected or demanded and to fulfill letter and spirit the contract made with him, the accessibility of the bidder, and any other factor that the commissioner determines to affect responsibility as defined in IC 4-13.6-1-15. (*Indiana Department of Administration; Public Works Division Sec G,2; filed Feb 29, 1972, 4:10 p.m.; Rules and Regs. 1973, p. 6; filed Feb 3, 1982, 1:05 p.m.: 5 IR 513; filed May 4, 1992, 9:30 a.m.: 15 IR 1906; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

25 IAC 2-7-3 Conditional acceptance of bid; work load of bidder exceeding prequalification rating (Repealed)

Sec. 3. (*Repealed by Indiana Department of Administration; Public Works Division; filed Feb 3, 1982, 1:05 pm: 5 IR 523*)

25 IAC 2-7-4 Contract letter; documents required to initiate work

Authority: IC 4-13-2-9; IC 4-13.6-3-1

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

Sec. 4. The Contract shall be transmitted to the Contractor for his execution by a letter stating that the Contractor unless otherwise instructed in writing, should not commence any work or take delivery of noninventory materials until he receives a copy of the fully executed contract signed by all required signatories and all auxiliary documents including but not limited to insurance and bonds are completed and furnished to the state. (*Indiana Department of Administration; Public Works Division Sec G,4; filed Feb 29, 1972, 4:10 pm; Rules and Regs. 1973, p.6; filed Feb 3, 1982, 1:05 pm: 5 IR 513; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

25 IAC 2-7-5 Restriction on meetings between state and contractor; notifying attorney general (Repealed)

Sec. 5. (*Repealed by Indiana Department of Administration; filed Dec 17, 1992, 5:00 p.m.: 16 IR 1366*)

25 IAC 2-7-6 Limitations on contract renewals

Authority: IC 4-13-2-9; IC 4-13.6-3-1

Affected: IC 4-13-2; IC 36-1-12

Sec. 6. For professional contractual services the Commissioner of the Department of Administration may, before expiration of existing contracts and with the consent of both parties, renew the contract annually not to exceed a total period of four years, except in those cases where no competition exists (25 IAC 2-5-1). Contract renewals shall be made at the same price or by reasonable escalations based on an independently published index specified in the contract documents and agreeable to both parties. (*Indiana Department of Administration; Public Works Division; 25 IAC 2-7-6; filed Feb 3, 1982, 1:05 pm: 5 IR 514; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

25 IAC 2-7-7 Contractor provided information

Authority: IC 4-13-2-9; IC 4-13.6-3-1
Affected: IC 4-13.6; IC 5-16-1-1.1; IC 36-1-12

Sec. 7. The prospective contractor shall supply information requested by the state concerning the responsibility of such contractor. If such contractor fails to supply the requested information, the state shall base the determination of responsibility upon any available information or may find the prospective contractor nonresponsible if such failure is unreasonable. (*Indiana Department of Administration; 25 IAC 2-7-7; filed May 4, 1992, 9:30 a.m.: 15 IR 1907; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

Rule 8. Inspection of Construction

25 IAC 2-8-1 Construction inspection duties; designer's rights to approve design changes and interpretation

Authority: IC 4-13-2-9; IC 4-13.6-3-1
Affected: IC 4-13.6

Sec. 1. The Division has the responsibility for the inspection of all construction which has been designed by the Division. The Division shall also make periodic reviews of all construction which has been designed by Contract Designers, however such Designers by their contract are held responsible for the primary inspection. Such periodic inspection by the State does not relieve the Designer of the responsibility for the primary inspection, control and coordination of the project. The inspectors for the Division have for their primary purpose ensuring that such functions are properly carried out by the Contract Designer and secondarily to aid in the resolution of problems arising between the Contract Designer, the Institution personnel and the Contractor. On projects designed by a Contract Designer, the inspectors or institutional employees shall not give instructions to any Contractor or Subcontractor directly, except in an emergency, instead bringing the facts to the attention of the Contract Designer for resolution. Any change in the methods or performing an item of work, substitution of material, revision to schedule, extra work orders, extension of completion time or interpretation of the plans and specifications shall originate with the Designer and be approved by Public Works Division. (*Indiana Department of Administration; Public Works Division Sec H,1; filed Feb 29, 1972, 4:10 pm: Rules and Regs. 1973, p.7; filed Feb 3, 1982, 1:05 pm: 5 IR 514; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

25 IAC 2-8-2 Delegation of duties to other units of government (Repealed)

Sec. 2. (*Repealed by Indiana Department of Administration; Public Works Division; filed Feb 3, 1982, 1:05 pm: 5 IR 523*)

Rule 9. Approval of Partial Payments

25 IAC 2-9-1 Partial pay estimates; submission, review and approval procedure

Authority: IC 4-13-2-9; IC 4-13.6-3-1
Affected: IC 5-16-5-2

Sec. 1. Contractor shall submit partial pay estimates as set out in the respective contract documents, but not more frequently than once a month, using the established forms supplied by the Division. Such estimates shall be submitted to the Designer for his review and approval. Designer must warrant that the work as described in the estimate has been accomplished and materials listed have been received and secured. The estimate shall then be transmitted to the Division for approval and then submitted to the Director and Commissioner for approval of payment. (*Indiana Department of Administration; Public Works Division Sec I, 1; filed Feb 29, 1972, 4:10 pm: Rules and Regs. 1973, p.7; filed Feb 3, 1982, 1:05 pm: 5 IR 515; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

25 IAC 2-9-2 Materials storage and identification for partial payment request

Authority: IC 4-13-2-9; IC 4-13.6-3-1
Affected: IC 5-16-5-2

Sec. 2. In order to be considered for inclusion in a partial payment request, materials must either be stored in a secure manner on the site or be separated and properly identified as being the property of the State and/or its Contractor if remaining in an off-the-site warehouse not considered the place of business of the vendor. (*Indiana Department of Administration; Public Works Division Sec I, 2; filed Feb 29, 1972, 4:10 pm: Rules and Regs. 1973, p.7; filed Feb 3, 1982, 1:05 pm: 5 IR 515; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

25 IAC 2-9-3 Nonpayment of subcontractors; documentation of nonpayment; procedure

Authority: IC 4-13-2-9; IC 4-13.6-3-1

Affected: IC 4-13.6; IC 5-16-5

Sec. 3. Pursuant to IC 5-16-5, as amended, partial payments may be temporarily held up by the Division if it has received a certificate from a subcontractor asserting that his work, having been completed within the past 60 days was billed to the Prime Contractor and not paid. Copies of such certified claim shall be forwarded to the Contractor's bond surety for information and possible action. The partial pay request shall be released for payment upon satisfactory evidence that the Subcontractor has been paid. If it is evident that a disagreement exists as to the billing in question, then the State shall reduce the partial billing by the amount claimed and pass partial on for payment. Copies of all correspondence pertaining to the alleged non-payment to Subcontractors in violation of the contract between the State and the Prime Contractor shall be placed in their respective prequalification file for review by the Certification Board. Information relative to the alleged non-payment of bills due involving a contractor, subcontractor or materialman, shall be released to persons only when reasons for such information are set out in writing, or the one seeking such information appears in person and requests to see such financial records. (*Indiana Department of Administration; Public Works Division Sec I,3; filed Feb 29, 1972, 4:10 pm: Rules and Regs. 1973, p.8; filed Feb 3, 1982, 1:05 pm: 5 IR 515; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

25 IAC 2-9-4 Partial payments administered by highway commission

Authority: IC 4-13-2-9; IC 4-13.6-3-1

Affected: IC 4-13-1-3

Sec. 4. Pursuant to I.C. 4-13-1, the Division has delegated authority to the State Highway Commission to administer the partial payments for both Contract Designers and Contractors. (*Indiana Department of Administration; Public Works Division Sec I,4; filed Feb 29, 1972, 4:10 pm: Rules and Regs. 1973, p. 8; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

Rule 10. Acceptance of Project and Final Payment

25 IAC 2-10-1 Final project inspection; final billing

Authority: IC 4-13-2-9; IC 4-13.6-3-1

Affected: IC 5-16-5

Sec. 1. Whenever the project has progressed to the point of substantial completion, an inspection shall be made by the Contract Designer accompanied by the Contractor, a representative of this Division and a representative of the Operating Department. After all deficiencies have been substantially remedied, the Designer shall recommend to the Director that the construction project be accepted. After the Director has accepted the project in behalf of the State (DAPW 5), 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. (*Indiana Department of Administration; Public Works Division Sec J,1; filed Feb 29, 1972, 4:10 pm: Rules and Regs. 1973, p.8; filed Feb 3, 1982, 1:05 pm: 5 IR 515; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

25 IAC 2-10-2 Approval of bill for payment; deduction for amounts disputed with subcontractors or materialmen

Authority: IC 4-13-2-9; IC 4-13.6-3-1

Affected: IC 5-16-5

Sec. 2. Upon receipt of such final payment request and necessary affidavits, the billing will be passed for payment unless certificates of non-payment as submitted by subcontractors or materialmen have not yet been resolved. In that event, the amounts

alleged to be owed shall be deducted from the contractor billings and the balance passed for payment as a partial payment. (*Indiana Department of Administration; Public Works Division Sec J,2; filed Feb 29, 1972, 4:10 pm: Rules and Regs. 1973, p. 8; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

25 IAC 2-10-3 Final payment billing; preconditions

Authority: IC 4-13-2-9; IC 4-13.6-3-1

Affected: IC 5-16-5; IC 5-16-5.5-6

Sec. 3. Billing for final payment shall not be passed for payment until 60 days after (1) all contractor and subcontractor work has been totally completed including all punch list items, (2) all equipment has been delivered to the site, and (3) all equipment to be installed by contractor, supplier or a subcontractor has been installed and accepted. Final payment can be released only if all punch list items are completed by the contractor. (*Indiana Department of Administration; Public Works Division Sec J,3; filed Feb 29, 1972, 4:10 pm: Rules and Regs. 1973, p.8; filed Feb 3, 1982, 1:05 pm: 5 IR 515; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

25 IAC 2-10-4 Final payment by highway commission (Repealed)

Sec. 4. (*Repealed by Indiana Department of Administration; Public Works Division; filed Feb 3, 1982, 1:05 pm: 5 IR 523*)

Rule 11. Emergencies

25 IAC 2-11-1 Emergency conditions; imminent threat of substantial loss

Authority: IC 4-13-2-9

Affected: IC 5-16-1-1.6

Sec. 1. Prima facie evidence of an emergency exists whenever a substantial loss or service to the State would result if immediate remedial action is not taken. In addition to IC 5-16-1-1.6 and 25 IAC 2-5-4 emergency may include expiration of bids where loss of bids and rebidding would cause substantial loss to the State either by additional cost or lost revenue. (*Indiana Department of Administration; Public Works Division Sec K,1; filed Feb 29, 1972, 4:10 pm: Rules and Regs. 1973, p.9; filed Feb 3, 1982, 1:05 pm: 5 IR 516; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

25 IAC 2-11-2 State as non-occupying lessor; emergency procedures

Authority: IC 4-13-2-9

Affected: IC 5-16-1-1.6

Sec. 2. If state owned property is under lease to others and is in a state of disrepair to an extent that a continuance in this state may cause a default in such contract, and time is not available to pursue the regular procedures for securing the necessary labor, materials and services to remedy the fault, then prima facie evidence of an emergency exists. If, in the opinion of the chief administrative officer of the department having jurisdiction over the property that an emergency exists and a need exists for procuring materials, labor or services outside the normal procurement procedures, he shall inform the Department of Administration and if the Commissioner concurs that an emergency exists, the materials, labor or services can be secured on an emergency basis as set out in IC 5-16-1-1.6 and 25 IAC 2-5-4. (*Indiana Department of Administration; Public Works Division Sec K,2; filed Feb 29, 1972, 4:10 pm: Rules and Regs. 1973, p.9; filed Feb 3, 1982, 1:05 pm: 5 IR 516; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

25 IAC 2-11-3 State as occupant lessor; emergency procedures

Authority: IC 4-13-2-9

Affected: IC 5-16-1-1.6

Sec. 3. If State-owned property under the jurisdiction and control of the State is in a state of disrepair so as to be harmful to the safety of the structure or a hazard to life, then prima facie evidence of an emergency exists. In such instances, the procedure

described in 25 IAC 2-11-2 shall apply. This procedure also applies to property leased by the State wherein the State has the responsibility for the maintenance and upkeep of the building or where terms of the lease dictate contract work procedures. (*Indiana Department of Administration; Public Works Division Sec K,3; filed Feb 29, 1972, 4:10 pm: Rules and Regs. 1973, p.9; filed Feb 3, 1982, 1:05 pm: 5 IR 516; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

25 IAC 2-11-4 Documentation by person requesting emergency declaration

Authority: IC 4-13-2-9
Affected: IC 5-16-1-1.6

Sec. 4. The officer who initiated the emergency request shall set out in writing all pertinent facts involved in the problem as soon as possible, but not longer than one week after the discovery of the emergency with copies for the Director and Department affected by the emergency. All confirming emergency requisitions shall include the name and agency of the person giving the emergency authorization. Justification forms shall be filled out by the agency as required. (*Indiana Department of Administration; Public Works Division Sec K,4; filed Feb 29, 1972; 4:10 pm: Rules and Regs. 1973, p.9; filed Feb 3, 1982, 1:05 pm: 5 IR 516; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

Rule 12. Certification Board; Authority

25 IAC 2-12-1 Certification; construction of article 2

Authority: IC 4-13-2-9; IC 4-13.6-3-1
Affected: IC 4-13.6

Sec. 1. Statutory provisions governing the Certification Board of the Indiana Department of Administration, Public Works Division, may be found in IC 4-13-7 [*Repealed by P.L.24-1985, SECTION 25.*] as amended. Rules and Regulations incorporated herein are additional and supplemental to the Act and its amendments. (*Indiana Department of Administration; Public Works Division Sec L,1; filed Feb 29, 1972, 4:10 pm: Rules and Regs. 1973, p.9; filed Feb 3, 1982, 1:05 pm: 5 IR 516; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

Rule 13. Certification Board; Organization

25 IAC 2-13-1 Members of certification board; file room

Authority: IC 4-13-2-9; IC 4-13.6-3-1
Affected: IC 4-13.6

Sec. 1. The Certification Board, composed of the State Building Commissioner, Examiner or Deputy Examiner of the State Board of Accounts, and the Director of the Public Works Division, no more than two (2) of whom shall be members of the same political party, shall have its files and other administrative materials quartered in space allocated by the Public Works Division. (*Indiana Department of Administration; Public Works Division Sec M,1; filed Feb 29, 1972, 4:10 pm: Rules and Regs. 1973, p. 9; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

25 IAC 2-13-2 Executive secretary of board; administrative duties

Authority: IC 4-13-2-9; IC 4-13.6-3-1
Affected: IC 4-13.6

Sec. 2. An executive secretary, answerable directly to the Board and the Director of Public Works Division, shall handle all administrative functions of the Board; and shall, similarly, be provided office space, clerical and secretarial help by the Public Works Division. (*Indiana Department of Administration; Public Works Division Sec M,2; filed Feb 29, 1972, 4:10 pm: Rules and Regs. 1973, p.9; filed Feb 3, 1982, 1:05 pm: 5 IR 516; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

25 IAC 2-13-3 Election of chairman

Authority: IC 4-13-2-9; IC 4-13.6-3-1
Affected: IC 4-13.6

Sec. 3. The Chairman of the Board shall be nominated and elected from and by the members of the board for a yearly term dating from each January. It is permissible for the Chairman to succeed himself. (*Indiana Department of Administration; Public Works Division Sec M,3; filed Feb 29, 1972, 4:10 pm: Rules and Regs. 1973, p. 10; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

25 IAC 2-13-4 Board meetings

Authority: IC 4-13-2-9; IC 4-13.6-3-1
Affected: IC 4-13.6; IC 5-14-1.5

Sec. 4. Meetings shall be held on the second Wednesday of each month unless circumstances require that another date be set. Rescheduling of meetings may be made upon unanimous consent of the members, but meetings shall never be more than forty-five (45) days apart. Special meetings may be called at any time if all members agree thereto, and if it is deemed that such special meeting will serve the best interests of the State of Indiana. In accordance with the Indiana Open Door Law, (IC 5-14-1.5, Acts of 1977), notice of all meetings will be posted on the bulletin board in the office of Public Works Division and notice given to all news media representatives who annually in writing request such notice be given. The agenda of each meeting will be posted with the time, date and place at least 48 hours prior. (*Indiana Department of Administration; Public Works Division Sec M,4; filed Feb 29, 1972, 4:10 pm: Rules and Regs. 1973, p.10; filed Feb 3, 1982, 1:05 pm: 5 IR 517; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

25 IAC 2-13-5 Quorum; majority

Authority: IC 4-13-2-9; IC 4-13.6-3-1
Affected: IC 4-13.6

Sec. 5. The board may meet with one member absent if it has the consent of the absent member. At least two members must agree if a motion is to be passed whether there be two or three members present. (*Indiana Department of Administration; Public Works Division Sec M,5; filed Feb 29, 1972, 4:10 pm: Rules and Regs. 1973, p. 10; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

Rule 14. Certification Board; Purposes

25 IAC 2-14-1 Purposes of certification board; contractor's prequalification approval

Authority: IC 4-13-2-9; IC 4-13.6-3-1
Affected: IC 4-13.6

Sec. 1. (a) To determine which applicant contractors have the experience, physical capabilities, and financial resources to bid or to subcontract on State construction projects valued in excess of fifty thousand dollars, (\$50,000) which are implemented through the facilities of the Public Works Division and all other agencies so required by statute, and

(b) To determine which applicant designers have the professional capabilities, manpower, and experience necessary to perform architectural, engineering, or related professional work on State projects of the same magnitude likewise implemented through the Public Works Division. (*Indiana Department of Administration; Public Works Division Sec N,1; filed Feb 29, 1972, 4:10 pm: Rules and Regs. 1973, p.10; filed Feb 3, 1982, 1:05 pm: 5 IR 517; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

25 IAC 2-14-2 Board approval; "certificate of qualification"

Authority: IC 4-13-2-9; IC 4-13.6-3-1
Affected: IC 4-13.6

Sec. 2. Those applicant contractors and designers which receive Certification Board approval are prequalified for future State work to the time and classification limits set forth on the annually-renewed "certificate of qualification", (hereinafter called the

certificate). Contractors are, additionally, qualified to perform work up to a dollar limit (maximum qualification rating) indicated on the certificate. (*Indiana Department of Administration; Public Works Division Sec N,2; filed Feb 29, 1972, 4:10 pm: Rules and Regs. 1973, p.10; filed Feb 3, 1982, 1:05 pm: 5 IR 517; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

25 IAC 2-14-3 Prequalification denial; eligibility for projects under \$50,000

Authority: IC 4-13-2-9; IC 4-13.6-3-1

Affected: IC 4-13.6

Sec. 3. Those contractors which apply for, but are denied, prequalification by the Board are still eligible to bid or to sub-contract on all Public Works projects valued at less than fifty thousand dollars (\$50,000), unless otherwise restricted by the Public Works Division. (*Indiana Department of Administration; Public Works Division Sec N,3; filed Feb 29, 1972, 4:10 pm: Rules and Regs. 1973, p.10; filed Feb 3, 1982, 1:05 pm: 5 IR 517; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

Rule 15. Prequalification and Bidding

25 IAC 2-15-1 Prequalification certificate required for project bids over \$50,000

Authority: IC 4-13-2-9; IC 4-13.6-3-1

Affected: IC 4-13.6; IC 5-16-1-2

Sec. 1. If a contractor intends to bid on a Public Work's project valued in excess of fifty thousand dollars (\$50,000), his bid will not be opened unless he currently maintains a valid "certificate of prequalification" indicating that he is prequalified in the field of work for which the bid is being taken. (*Indiana Department of Administration; Public Works Division Sec O,1; filed Feb 29, 1972, 4:10 pm: Rules and Regs. 1973, p.10; filed Feb 3, 1982, 1:05 pm: 5 IR 517; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

25 IAC 2-15-2 Restrictions on prequalified bid acceptance

Authority: IC 4-13-2-9; IC 4-13.6-3-2

Affected: IC 4-13.6; IC 5-16-1-2

Sec. 2. A bid exceeding fifty thousand dollars (\$50,000) by a prequalified contractor will not be considered for contract award on such project unless:

(a) The total dollar volume of his work to be completed on current and pending contracts when coupled with the estimated cost of the Public Works project to be bid amounts to a total less than his "maximum qualification rating" as shown on his current "certificate of qualification," and

(b) A current notarized "Statement of Availability" (DAPW 11) for each bid reporting the dollar volume of work yet to be completed is submitted with the sealed bid.

(*Indiana Department of Administration; Public Works Division Sec O,2; filed Feb 29, 1972, 4:10 pm: Rules and Regs. 1973, p.10; filed Feb 3, 1982, 1:05 pm: 5 IR 518; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

25 IAC 2-15-3 Exception to statement of availability requirement

Authority: IC 4-13-2-9; IC 4-13.6-3-1

Affected: IC 4-13.6; IC 5-16-1-2

Sec. 3. The notarized "Statement of Availability" need not be submitted by those prequalified firms holding an "unlimited maximum qualification rating" (\$100,000,000 or more), but such firms must still be currently qualified in the area of construction concerned. (*Indiana Department of Administration; Public Works Division Sec O,3; filed Feb 29, 1972, 4:10 pm: Rules and Regs. 1973, p.11; filed Feb 3, 1982, 1:05 pm: 5 IR 518; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

25 IAC 2-15-4 Subcontractor's prequalification; qualification rating

Authority: IC 4-13-2-9; IC 4-13.6-3-1

Affected: IC 4-13.6; IC 5-16-1-2

Sec. 4. Subcontractors who intend to perform State work valued in excess of fifty thousand dollars (\$50,000) under a prime contractor to be awarded a State contract, must be prequalified prior to the start of work by the prime. They may also be required to have a "total maximum qualification rating" which exceeds the total value of all their current and pending work combined when coupled with their subcontract amount. (*Indiana Department of Administration; Public Works Division Sec O,4; filed Feb 29, 1972, 4:10 pm; Rules and Regs. 1973, p.11; filed Feb 3, 1982, 1:05 pm: 5 IR 518; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

25 IAC 2-15-5 Conditional bid acceptance; exceptions to ineligibility

Authority: IC 4-13-2-9; IC 4-13.6-3-1

Affected: IC 4-13.6; IC 5-16-1-2

Sec. 5. In those instances in which the Bidder would be precluded from bidding a particular project because the value of his workload at the time of bidding combined with his anticipated bid exceeds his qualification rating, the Bid Officer, with the concurrence of the Director, may conditionally accept his bid and consideration may be given offering him the contract if:

(a) he is the low bidder, and

(b) his "Statement of Availability" is supplemented with an affidavit affirming that he anticipates his outstanding obligations will be reduced to fall within his prequalification rating within sixty (60) days after the bid date. If the Director makes a decision to offer the contract to the apparent low bidder under such circumstances and with such assurances, then he may require the bidder to warrant that, in such interim, he will not further obligate his firm to new work to the extent that the above condition would not be met during the given time period.

(*Indiana Department of Administration; Public Works Division Sec O,5; filed Feb 29, 1972, 4:10 pm; Rules and Regs. 1973, p.11; filed Feb 3, 1982, 1:05 pm: 5 IR 518; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

Rule 16. General Prequalification Procedures and Requirements

25 IAC 2-16-1 Annual prequalification renewal period; grace period

Authority: IC 4-13-2-9; IC 4-13.6-3-1

Affected: IC 4-13.6; IC 5-16-1-2

Sec. 1. Prequalification, specifying those fields in which a firm may engage in contract with the State of Indiana and the dollar limit (maximum qualification rating) to which a contractor may be committed, shall be on an annual basis with a three-month "grace" period dating from the scheduled annual renewal date. This thereby allows for a total of fifteen (15) months of prequalification dating from each renewal date. (*Indiana Department of Administration; Public Works Division Sec P,1; filed Feb 29, 1972, 4:10 pm; Rules and Regs. 1973, p. 11; filed Feb 3, 1982, 1:05 pm: 5 IR 519; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

25 IAC 2-16-2 Temporary prequalification; term

Authority: IC 4-13-2-9; IC 4-13.6-3-1

Affected: IC 4-13.6; IC 5-16-1-2

Sec. 2. The Certification Board may temporarily prequalify an applicant for any period of time from one (1) month to fifteen (15) months if circumstances suggest to the board that a full-term prequalification is not appropriate. (*Indiana Department of Administration; Public Works Division Sec P,2; filed Feb 29, 1972, 4:10 pm; Rules and Regs. 1973, p. 11; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

25 IAC 2-16-3 Prequalification expiration period; 90 day certificate extension

Authority: IC 4-13-2-9; IC 4-13.6-3-1

Affected: IC 4-13.6; IC 5-16-1-2

Sec. 3. If the period of prequalification expires and no acceptable renewal materials are rendered by the expired certificate holder, or if the certificate is revoked or suspended for cause before completion of an awarded contract and no acceptable provisions are made to the contrary, the contract may be cancelled by the Department of Administration.

The certification board may extend a valid certificate for a period of not more than ninety (90) days upon written request from

the certificate holder prior to the original expiration date justifying such extension. The request will be acknowledged in writing and the board so informed at the next scheduled meeting. Only one such extension may be granted for each certificate. (*Indiana Department of Administration; Public Works Division Sec P,3; filed Feb 29, 1972, 4:10 pm: Rules and Regs. 1973, p.11; filed Feb 3, 1982, 1:05 pm: 5 IR 519; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

25 IAC 2-16-4 Initial prequalification application; prequalification booklet

Authority: IC 4-13-2-9; IC 4-13.6-3-1

Affected: IC 4-13.6; IC 5-16-1-2

Sec. 4. Any applicants for initial prequalification shall submit a fully-completed "prequalification booklet" which is available from the Public Works Division upon request. A booklet will be considered incomplete if all applicable information is not supplied, or if that information rendered proves to be false and such incomplete booklet will accordingly not be considered. All applicants for prequalification should allow up to forty-five (45) days for complete review of application materials and consideration by the Certification Board. (*Indiana Department of Administration; Public Works Division Sec P,4; filed Feb 29, 1972, 4:10 pm: Rules and Regs. 1973, p.11; filed Feb 3, 1982, 1:05 pm: 5 IR 519; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

25 IAC 2-16-5 Effect of failure to meet qualifications

Authority: IC 4-13-2-9; IC 4-13.6-3-1

Affected: IC 4-13.6

Sec. 5. Any deviation from requirements set forth in the booklet or in this document will be critically evaluated in the consideration of the application and either a lesser rating or revocation may be expected. (*Indiana Department of Administration; Public Works Division Sec P,5; filed Feb 29, 1972, 4:10 pm: Rules and Regs. 1973, p. 12; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

25 IAC 2-16-6 Board's application review; recommendation

Authority: IC 4-13-2-9; IC 4-13.6-3-1

Affected: IC 4-13.6; IC 5-16-1-2

Sec. 6. Following examination and evaluation of all prequalification materials, the members of the board shall review each application and make their recommendations according to their findings. (*Indiana Department of Administration; Public Works Division Sec P,6; filed Feb 29, 1972, 4:10 pm: Rules and Regs. 1973, p.12; filed Feb 3, 1982, 1:05 pm: 5 IR 519; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

25 IAC 2-16-7 Prequalification suspension; denial, revocation; sanctions; grounds

Authority: IC 4-13-2-9; IC 4-13.6-3-1

Affected: IC 4-13.6; IC 5-16-1-2

Sec. 7. The board may suspend, deny, or revoke the prequalification of those applicants not complying with the stipulations of the act or of these regulations [25 IAC 2-16]. Additionally, verified reports or indications of misfeasance, malfeasance, or other undesirable practices made by any reliable source (including agent or representatives of the Public Works Division as it concerns the Division's projects) or financial statements indicating instability, a precarious financial position or poor business procedures in the eyes of the board shall each be further due cause for denial, revocation, or suspension of prequalification by the board. A certificate of qualification may be revoked if the contractor:

- (a) fails to pay, or satisfactorily settle, all bills due to labor and material on former or existing contracts, or
- (b) is convicted of a violation of a state or federal law in relation to a public contract
- (c) defaults on a previous contract, or
- (d) fails to enter into a Public Works implemented project contract.

Notification of such pending action will be made in writing, setting forth the grounds for the proposed certificate revocation. The action shall become final unless an appeal in writing is filed. Any appeal must be filed as prescribed hereinafter. The period of disqualification shall not exceed two (2) years. (*Indiana Department of Administration; Public Works Division Sec P,7; filed Feb*

29, 1972, 4:10 pm: Rules and Regs. 1973, p.12; filed Feb 3, 1982, 1:05 pm: 5 IR 519; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265)

25 IAC 2-16-8 Prequalification renewal request; board decision; appeals

Authority: IC 4-13-2-9; IC 4-13.6-3-1

Affected: IC 4-13.6; IC 5-16-1-2

Sec. 8. Acceptance or rejection of an applicant's request for initial prequalification or renewal shall be decided at the board's meeting, and the executive secretary shall thereafter carry out the administration of the board's decision including notifying each applicant of the board's action thereon.

Any applicant dissatisfied with the decision of the Board may, within fifteen (15) days after receiving such notification, request in writing a reconsideration of that decision and submit additional written evidence bearing on his qualification. The Certification Board will consider any such request within forty-five (45) days of receipt thereof. If the written evidence supports the contractor and a favorable decision is rendered, a revised certificate or written notice of reinstatement will be issued. (*Indiana Department of Administration; Public Works Division Sec P,8; filed Feb 29, 1972, 4:10 pm: Rules and Regs. 1973, p.12; filed Feb 3, 1982, 1:05 pm: 5 IR 520; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

Rule 17. Application of Contractors and Sub-contractors

25 IAC 2-17-1 Submission of prequalification booklet; annual supplemental documentation

Authority: IC 4-13-2-9; IC 4-13.6-3-1

Affected: IC 4-13.6

Sec. 1. Contractors and subcontractors shall complete and submit a copy of the "prequalification booklet" every third year, but must annually submit, as a minimum a verified financial statement, list of projects under contract, and notice of any organizational changes. Other materials and/or forms may be submitted with the prequalification booklet as supplementary data, but no form may be submitted in lieu of the booklet when it is due. (*Indiana Department of Administration; Public Works Division Sec Q,1; filed Feb 29, 1972, 4:10 pm: Rules and Regs. 1973, p.12; filed Feb 3, 1982, 1:05 pm: 5 IR 520; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

25 IAC 2-17-2 Annual financial statements; form; certificate forfeiture; grounds for application rejection

Authority: IC 4-13-2-9; IC 4-13.6-3-1

Affected: IC 4-1-6; IC 4-13.6; IC 5-16-1-2

Sec. 2. Financial statements submitted annually by contractors and subcontractors with other renewal materials may be in the applicant's standard pamphlet form as prepared by their accountants, or may be transposed to the financial section of the prequalification booklet if that booklet is to be submitted. All statements must be complete and explicit. All financial statements must be verified as to their accuracy and legitimacy by a Certified Public Accountant (C.P.A.) or a licensed Public Accountant (P.A.) not directly affiliated with the applicant. All financial statements will be kept in confidence by the Certification Board and Public Works Division subject to IC 4-1-6.

The Board may, at any time during which a certificate is in effect, demand a new financial statement and if same is not forthcoming within sixty (60) days of the date of the request, the certificate held will be considered forfeited and the party concerned will not be permitted to bid on contracts implemented through Public Works until such a new statement has been received and acted upon by the Board.

If, at any time during the valid period of a certificate of qualification the latest statement on record with the Board ceases to represent fairly and substantially the financial position or the construction equipment of the contractor to whom the certificate was issued, it shall be the responsibility of that contractor to so notify the Board and to refrain from further bidding on Public Works projects until his qualification has been confirmed or revised. Failure to give such notice will constitute a violation of these rules and regulations [25 IAC 2-17].

The Certification Board reserves the right to require a personal interview with any contractor when considering qualification.

If the date of the financial statement is more than six (6) months old when submitted, the Board may request a new statement.

Different organizations controlled by the same owners and/or officers that desire prequalification must use financial statements of a common date. (*Indiana Department of Administration; Public Works Division Sec Q,2; filed Feb 29, 1972, 4:10 pm: Rules and Regs. 1973, p.12; filed Feb 3, 1982, 1:05 pm: 5 IR 520; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

25 IAC 2-17-3 Prequalification limited to field experience areas; data required

Authority: IC 4-13-2-9; IC 4-13.6-3-1

Affected: IC 4-13.6

Sec. 3. Applicant contractors shall be prequalified only in those areas in which their prequalification booklet indicates that they are experienced and investigation indicates satisfactory performance. Experience data given in the booklet, and in the interim renewal application shall specifically show each classification for which the contractor wishes to be qualified. (*Indiana Department of Administration; Public Works Division Sec Q,3; filed Feb 29, 1972, 4:10 pm: Rules and Regs. 1973, p.12; filed Feb 3, 1982, 1:05 pm: 5 IR 521; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

25 IAC 2-17-4 Method for determining base qualification rating; “unlimited” classification defined

Authority: IC 4-13-2-9; IC 4-13.6-3-1

Affected: IC 4-13.6; IC 5-16-1-2

Sec. 4. A standard mathematical formula is described as being:

$10 \times (\text{Current Assets} - \text{Current Liabilities}) + 5 \times (\text{Net Worth} - \text{New Working Capital})$ will be applied to each applicant's financial statement to determine the “Base Qualification Rating”. Those contractors showing a base qualification rating of one hundred million or more (\$100,000,000) shall be classified as “UNLIMITED”. An experience and performance factor reduction of 25% will be made in the case of new applications applied to the base qualification rating, unless otherwise recommended by the State Architect, State Engineer, Deputy Director or Board Member. (*Indiana Department of Administration; Public Works Division Sec Q,4; filed Feb 29, 1972, 4:10 pm: Rules and Regs. 1973, p.13; filed Feb 3, 1982, 1:05 pm: 5 IR 521; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

25 IAC 2-17-5 Method for determining “total maximum qualification rating”; written agenda for meeting supplied

Authority: IC 4-13-2-9; IC 4-13.6-3-1

Affected: IC 4-13.6; IC 5-16-1-2

Sec. 5. The “total maximum qualification rating” is determined by applying a plus or minus percentage, not exceeding 25%, to the base qualification rating. That percentage shall be determined in the investigation of references, past performance, reports filed pertaining to the company (PQ-3), or on the basis of recommendations of the State Architect, State Engineer, Deputy Director, and board members. A copy of the agenda will be given to all of the aforementioned prior to the meeting to allow such recommendations to be made before action is taken by the Board. (*Indiana Department of Administration; Public Works Division Sec Q, 5; filed Feb 29, 1972, 4:10 pm: Rules and Regs. 1973, p.13; filed Feb 3, 1982, 1:05 pm: 5 IR 521; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

25 IAC 2-17-6 Prequalification denial; base qualification rating less than \$50,000

Authority: IC 4-13-2-9; IC 4-13.6-3-1

Affected: IC 4-13.6; IC 5-16-1-2

Sec. 6. Prequalification will not be granted to contractors having current liabilities in excess of current assets or a “Base Qualification Rating” of less than fifty thousand dollars (\$50,000). (*Indiana Department of Administration; Public Works Division Sec Q,6; filed Feb 29, 1972, 4:10 pm: Rules and Regs. 1973, p.13; filed Feb 3, 1982, 1:05 pm: 5 IR 522; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

25 IAC 2-17-7 Supplemental documentation; corporation's signing authority; out-of-state corporations

Authority: IC 4-13-2-9; IC 4-13.6-3-1

Affected: IC 4-13.6; IC 5-16-1-2

Sec. 7. The initial application of a corporation shall be accompanied by a certified copy of the minutes covering the election of current officers and a certified copy of the official action assigning the current authority for individuals' personal signature to contracts of the corporation, such official actions may be either a portion of the original Articles of Incorporation or some subsequent official action of the stockholders or the board of directors. If personnel or authority for individuals' personal signature are changed in any manner, the Board shall be immediately notified and furnished with certified copies of appropriate documents.

An initial application submitted by an out-of-state (foreign) corporation must be accompanied by a copy of the certificate issued by the Indiana Secretary of State admitting them to do business in Indiana. Thereafter, a copy of the certificate will not be required, but current status with the Corporation's Division of the Secretary of State's office will be checked at the time of renewal, and any foreign corporation not in good standing will not be issued a prequalification certificate even though approved by the Board until good standing is verified. (*Indiana Department of Administration; Public Works Division; 25 IAC 2-17-7; filed Feb 3, 1982, 1:05 pm: 5 IR 522; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

Rule 18. Application of Designers

25 IAC 2-18-1 Annual prequalification renewal; prequalification booklet submission

Authority: IC 4-13-2-9; IC 4-13.6-3-1
Affected: IC 4-13.6; IC 5-16-1-2

Sec. 1. Designers must fully complete and annually submit the "Prequalification Booklet" for the purpose of yearly prequalification renewal. The designer applicant is urged to supply any new informational booklets or brochures relating to the capabilities of the applicant whenever such documents become available. However, such supplemental materials are not to be submitted in lieu of the prequalification application. (*Indiana Department of Administration; Public Works Division Sec R,1; filed Feb 29, 1972, 4:10 pm: Rules and Regs. 1973, p.13; filed Feb 3, 1982, 1:05 pm: 5 IR 522; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

25 IAC 2-18-2 Certification in field of architecture; staff requirements

Authority: IC 4-13-2-9; IC 4-13.6-3-1
Affected: IC 4-13.6

Sec. 2. Designers will receive certification in the field of architecture only if a professional architect currently registered as such in Indiana is employed at least thirty (30) hours each week by the applicant firm and is listed in that capacity in the prequalification booklet. The architect on whose qualifications certification is to be granted must also be shown as the architect in charge of at least three (3) projects listed in the experience data portion of the booklet. (*Indiana Department of Administration; Public Works Division Sec R,2; filed Feb 29, 1972, 4:10 pm: Rules and Regs. 1973, p.13; filed Feb 3, 1982, 1:05 pm: 5 IR 522; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

25 IAC 2-18-3 Certification in fields of professional engineering; certification in related nonlicensed fields

Authority: IC 4-13-2-9; IC 4-13.6-3-1
Affected: IC 4-13.6

Sec. 3. Certification will be granted only in those fields of engineering in which the applicant designer indicates that an Indiana Registered Professional (P.E.) is working at least thirty (30) hours a week as an employee of the applicant, and who is shown as the engineer in charge of at least three (3) projects listed in the experience data portion of the booklet.

Resumes or experience data outlines for each Designer will be accepted in lieu of the requirement that each must be listed as the architect or engineer in charge as specified in Section 2 and 3 above (25 IAC 2-18-2) and this section. Such information must show explicitly the specialties for which the applicant firm is requesting certification.

Applicant designers may be certified for more than one classification when classifications are closely related, i.e., Sanitary Engineering and Waste Water Engineering, or when one classification does not require licensing, i.e., Interior Design, or when one classification is Photogrammetry, or when the firm shows overwhelming evidence of the capability to satisfactorily handle classification combinations other than those previously mentioned. (*Indiana Department of Administration; Public Works Division Sec R,3; filed Feb 29, 1972, 4:10 pm: Rules and Regs. 1973, p.13; filed Feb 3, 1982, 1:05 pm: 5 IR 522; readopted filed Nov 20,*

2001, 9:30 a.m.: 25 IR 1265)

25 IAC 2-18-4 Certification of other nonlicensed fields

Authority: IC 4-13-2-9; IC 4-13.6-3-1

Affected: IC 4-13.6

Sec. 4. For those professional areas which are not registered in Indiana, but which are certified by the Board, the applicant designer must show a full time employee in each such field with sufficient training and adequate experience to satisfy the Board that certification should be granted. (*Indiana Department of Administration; Public Works Division Sec R,4; filed Feb 29, 1972, 4:10 pm; Rules and Regs. 1973, p.13; filed Feb 3, 1982, 1:05 pm: 5 IR 523; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

25 IAC 2-18-5 Joint venture application conditions

Authority: IC 4-13-2-9; IC 4-13.6-3-1

Affected: IC 4-13.6

Sec. 5. Joint venture contract applications will be considered when the parties to the joint venture separately hold valid certification. (*Indiana Department of Administration; Public Works Division; 25 IAC 2-18-5; filed Feb 3, 1982, 1:05 pm: 5 IR 523; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

Rule 19. Minority Business Development; State Public Works

25 IAC 2-19-1 Policy

Authority: IC 4-13-1-7; IC 4-13-2-9; IC 4-13.6-3-1

Affected: IC 4-13-16.5; IC 5-16-6.5; IC 22-9-1-10

Sec. 1. (a) It is the policy of the state of Indiana to actively promote, monitor, and enforce its MBE program to ensure that:

- (1) members of racial minority groups are not subject to unlawful discrimination;
- (2) state contracts are not awarded on the basis of bids which are founded upon unlawful discriminatory conduct; and
- (3) the state will meet or exceed its goals for minority participation in its purchases and contracts.

(b) The commissioner of the department, through the minority business development section of the department and in concert with the governor's commission on minority business development, shall be the final authority on all matters pertaining to the maintenance and administration of the MBE program and compliance thereto. (*Indiana Department of Administration; 25 IAC 2-19-1; filed Mar 12, 1993, 5:00 p.m.: 16 IR 1930; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

25 IAC 2-19-2 Definitions

Authority: IC 4-13-1-7; IC 4-13-2-9; IC 4-13.6-3-1

Affected: IC 4-13-16.5; IC 5-16-6.5; IC 22-9-1-10

Sec. 2. (a) The definitions in this section apply throughout this rule.

(b) "Minority" means a person who is a citizen of the United States and who is a member of any of the following racial groups:

- (1) African American (a person with origins in any of the black racial groups of Africa).
- (2) Hispanic American (a person with origins in Mexico, Central America, South America, Cuba, or Puerto Rico).
- (3) Asian American (a person with origins in the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands).
- (4) American Indian (a person with origins in any of the original peoples of North America, including natives of Alaska).
- (5) Other similar racial minority groups.

(c) "Department" means the Indiana department of administration.

(d) "Commission" means the governor's commission on minority business development.

(e) "Commissioner" means the commissioner of the department.

(f) "MBE" means minority business enterprise.

(g) "Program" means the minority business enterprise programs as administered by the department.

(h) "Project goal" means a targeted amount of participation as measured by the desired percentage of involvement by minority

business enterprises.

(i) "Subcontractor" means any person entering into a contract with a contractor to furnish labor or labor and materials used in the actual construction of a public works project.

(j) "MBE subcontractor plan" or "plan" means the document supplied by prime contractors to the state (usually required at the time of most bid submittals) which indicates the means whereby the minority business participation will be attained.

(k) "Application for MBE program waiver" or "application" means the document supplied by prime contractors to the state (usually required at the time of most bid submittals) which requests the contractor's exemption from the project goal and indicates the reasons why the contractor requires the exemption.

(l) "MBE program waiver" or "waiver" means the document supplied by the state to the prime contractor that approves the application for MBE project waiver.

(m) "MBE compliance review committee" means the committee which is responsible for the appeals process of the program. The committee consists of the chairman of the governor's commission on minority business development, the general counsel of the department, and the director of the public works division of the department or their designees.

(n) "Prime contractor" or "contractor" means any business entity with whom the state enters into a binding contract for the provision of construction services to the state.

(o) "Broker" means an intermediary who negotiates contracts of purchase and sale.

(p) "Supplier" means any person supplying materials, but no significant on-site labor, to a contractor or to a subcontractor. (*Indiana Department of Administration; 25 IAC 2-19-2; filed Mar 12, 1993, 5:00 p.m.: 16 IR 1930; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

25 IAC 2-19-3 Eligibility guidelines

Authority: IC 4-13-1-7; IC 4-13-2-9; IC 4-13.6-3-1

Affected: IC 4-13-16.5; IC 5-16-6.5; IC 22-9-1-10

Sec. 3. The following guidelines shall be used in determining the eligibility of MBEs for the purposes of their inclusion in the program:

(1) An MBE shall be eligible for the program upon self-declaration and certification with the department's minority business development section. However, the department is not required to accept all certification applications and may exercise its right to request supporting documentation before final certification is granted. In the event of such circumstances, some or all of the following types of documentation may be requested:

(A) Proof of United States citizenship.

(B) Copies of MBE certificates from other certifying agencies.

(C) Proof of tribal registrations or memberships.

(D) Other types of documentation which may serve to identify, by substantial evidence, a person as a member of a racial minority.

(2) An MBE shall be eligible for the program when the ownership and control of the business by one (1) or more racial minorities is clearly established to be real, substantial, and continuing and shall go beyond the pro forma ownership of the business as reflected in its ownership documents. The owner who is a minority as defined in this rule shall enjoy the customary incidents of ownership and shall share in the risks and profits commensurate with ownership interests, as demonstrated by an examination of the substance rather than the form or appearances of arrangements. Recognition of the business as a separate entity for tax or corporate purposes is not necessarily sufficient for certification as an MBE.

(3) The owner who is a minority shall possess control and the power to direct or cause the direction of the management and policies of the firm to make day-to-day as well as major decisions on matters of management, policy, and operations and shall be active in such matters. The firm will not be subject to any formal or informal restrictions which limit the customary discretion of the owner who is a minority. There shall be no restrictions through, for example, bylaw provisions, partnership agreements, or charter requirements for cumulative voting rights or other provisions that prevent the minority owner, without the cooperation or vote of any owner who is not a minority, from making a business decision of the firm.

(4) If any owner of the firm who is not a minority is disproportionately responsible for the operation of the firm, then the firm shall not be considered to be controlled by a minority and shall not be eligible as an MBE. In cases where the actual management of the firm is contracted out to nonracial minorities, those persons who have the ultimate power to hire and fire the managers can, for the purpose of this program, be considered as controlling the firm and, therefore, the firm cannot be

considered as an MBE.

(5) All securities which constitute ownership or control of a corporation for purposes of establishing it as an MBE must be held directly by a minority. No securities held in trust, or by any guardian for a minor, will be considered as held by a minority in determining the ownership or control of a corporation.

(6) The contributions of capital or expertise by the minority shall be considered in determining the ownership or control of a corporation.

(7) In a case where the MBE is employed or contracted as a broker or as a material supplier, the MBE firm shall be fully responsible for the coordination and execution of the services it is contracted to supply. Arrangements in which the MBE is a broker and does not assume any of the customary risks of the industry, such as the issuance of purchase orders, the scheduling of job site deliveries, and the issuance of invoices shall be eligible for MBE credit only to the extent of the total brokerage fees. The maximum allowable credit shall not exceed one and one-fourth percent (1.25%) of the value of the project.

(8) In a case where the MBE is employed or contracted as a subcontractor, the MBE firm shall be fully responsible for the coordination and execution of the services it is contracted to provide. Arrangements in which the MBE performs no services or adds no value to the contract shall not be eligible for MBE credit.

(9) In determining whether a potential MBE is an independent business or whether an MBE is actually capable or responsible for the work in question, all relevant factors will be considered. Such factors may include the following:

(A) The date that the business was established.

(B) The adequacy of its resources for the contract work to be performed.

(C) The relevant experience of the minority owner.

(D) The degree to which financial, equipment leasing, and other relationships with majority firms vary from standard industry practice.

(10) A joint venture shall be eligible for the program when the MBE partner of the joint venture meets the standards in this section and the MBE shares in at least fifty percent (50%) of the ownership, control, management responsibilities, risks, and profits of the joint venture and when the MBE partner is responsible for a clearly defined portion of the work to be performed.

(11) In a case where a change of ownership or the death of an owner has occurred within the MBE or the MBE joint venture, the department shall reserve the right to review the new ownership structure to determine whether or not continued program eligibility is warranted. Therefore, the MBE or MBE joint venture partner shall notify the minority business development section of the department within thirty (30) days of all ownership changes. Failure to submit this notification may result in suspension of certification status.

(Indiana Department of Administration; 25 IAC 2-19-3; filed Mar 12, 1993, 5:00 p.m.: 16 IR 1931; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265)

25 IAC 2-19-4 Procedure

Authority: IC 4-13-1-7; IC 4-13-2-9; IC 4-13.6-3-1

Affected: IC 4-13-16.5; IC 5-16-6.5; IC 22-9-1-10

Sec. 4. (a) In a case where the bidder has arranged to subcontract five percent (5%) or more of the project value to MBEs, a completed MBE subcontractor plan shall be submitted, along with the other required bid documents, in the sealed bid envelope. All MBEs must be certified or registered as an MBE by the department prior to the award of the contract. The completed plan shall include the following information:

(1) Name of the firm to be employed.

(2) Phone number of the firm.

(3) Name of a contact person employed by the firm.

(4) Work the firm will perform and the approximate date when the MBE's work will commence.

(5) A contract amount for services that will be performed.

Purchases from MBE suppliers are allowed for MBE credit in the program. The maximum allowable credit for such purchases will be limited to two and one-half percent (2.5%) of the project value.

(b) In a case where the bidder has had the MBE subcontractor plan approved, where that bidder has been awarded the contract, and where the awarded contract is one hundred thousand dollars (\$100,000) or more, the bidder shall submit participation reports monthly or at such other intervals as may be requested. The department reserves the right to periodically require progress reports

from the contractor on projects under one hundred thousand dollars (\$100,000) regarding continuing MBE participation.

(c) In a case where the bidder has been unable to arrange to subcontract five percent (5%) of the project value but has been able to arrange to subcontract some of the project value to MBEs, both a completed MBE subcontractor plan and a completed application for MBE program waiver shall be submitted in the sealed bid envelope. All MBEs must be certified or registered as an MBE by the department prior to the award of the bid. All forms are to be completed as described in subsection (a).

(d) In a case where the bidder has been unable to arrange to subcontract five percent (5%) of the project value or in a case where no MBE participation is expected to occur, a completed application for MBE program waiver shall be submitted, along with the other required bid documents, in the sealed bid envelope. The application shall be used to demonstrate the bidder's efforts to employ MBEs on the project. The application shall include the following information:

- (1) Name of the MBE firm that the bidder has contacted or been contacted by.
- (2) Phone number of the firm.
- (3) Type of contract or communication.
- (4) An explanation of the results obtained, such as price not competitive, unable to contact, or no response.

The state reserves the right to verify and seek further clarification of any information submitted.

(e) Compliance with this rule is considered to be a demonstration of the bidder's responsiveness and responsibility. Therefore, all statements shall be complete, legible, true, and correct and shall not omit material facts. Failure to provide complete and accurate MBE subcontractor plans using minority business enterprises certified or registered as MBEs by the department, or failure to provide applications for MBE program waivers, or both, may be the basis for rejection of the bid. (*Indiana Department of Administration; 25 IAC 2-19-4; filed Mar 12, 1993, 5:00 p.m.: 16 IR 1932; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

25 IAC 2-19-5 Compliance monitoring and certification

Authority: IC 4-13-1-7; IC 4-13-2-9; IC 4-13.6-3-1

Affected: IC 4-13-16.5; IC 5-16-6.5; IC 22-9-1-10

Sec. 5. (a) In the management of this program, the department shall exercise its rights to employ all available administrative actions and remedies to ensure that the goals and intent of the program are successfully met. Therefore, the department shall serve as the following:

(1) The final authority in the authentication, acceptance, and certification of MBE firms according to the criteria established in section 3 of this rule. Therefore, the department may, at any time, elect to do the following:

(A) Review all certification applications, ownership documents, articles of incorporation, bylaws, board of director's meeting minutes, or any other instruments and conveyances which may be pertinent or relevant to the ownership and operation of the MBE that comes before the department with a request for certification as an MBE. The department reserves the right to grant or deny reciprocal certification to MBEs with current, in-place certification status with other governmental agencies and departments with recognized certification authority.

(B) Conduct interviews with key personnel, employees, laborers, material suppliers, union stewards, and all other persons whose knowledge of company operations and testimony thereto may be pertinent or relevant to the establishment of authenticity and merit for the subject company's certification as an MBE.

(C) Make on-site visits to company headquarters and job sites with little or no advance notice in its efforts to make accurate judgments about the ownership and control of the subject MBE.

(D) Request, at any time that it deems necessary, further information or clarification of any claims or issues that may lend reasonable doubt to the legitimacy of the subject MBE.

(E) Conduct preliminary audits of accounting records, project files, and any legal documents which may be pertinent or relevant to the establishment of legitimacy of the subject MBE.

(F) Make recommendations to the appropriate agencies and departments based on the findings of all reviews, interviews, site visits, and audits regarding the qualifications and legitimacy of the subject MBE.

(G) Make recommendations to the appropriate agencies for further investigation if misrepresentation is suspected.

(2) The final authority in the review, acceptance, and approval of all MBE affidavits, MBE subcontractor plans, and applications for MBE program waivers which are included in bid packages. In the performance of these duties, the department is hereby empowered to perform functions, including, but not limited to, the following:

(A) Review all MBE affidavits, MBE subcontractor plans, and applications for MBE program waivers, after the bid opening and before the award of the contract, in order to verify the authenticity of the documents and the successful

bidder's adherence to the rules and regulations set forth in the contract documents.

(B) Contact and interview the successful bidder or its listed subcontractors and material suppliers if further information is required to establish authenticity and to issue approval of the submitted documentation.

(C) Conduct audits, as necessary, of the accounting records of the successful bidder and the MBE participants to determine and establish their authenticity for the final acceptance and approval of the documentation.

(D) Issue an official NOTICE OF REJECTION when it has been determined that the successful bidder has not complied with the instructions set forth in the contract documents and this rule. The department may direct the successful bidder to submit revised documentation within five (5) working days or file for an official application for MBE program waiver. The department shall reserve the right to reject any and all bids when the successful bidder fails to respond to the department's request.

(E) Issue an official NOTICE OF CONDITIONAL APPROVAL when it has been determined:

(i) that the successful bidder has demonstrated a good faith effort towards compliance to the program, but when one (1) or more of the MBE firms listed does not conform to the guidelines of section 3 of this rule; or

(ii) when the levels of participation do not reach the goal of the project.

After a review of the situation and circumstances, the successful bidder may be directed to submit a revised MBE subcontractor plan or may be granted an official MBE program waiver, thereby, allowing an exception to the goal for the project or any portion thereof.

(F) Issue an official approval of the MBE subcontractor plan when it has been determined that the successful bidder has achieved compliance with the project goal.

(G) Issue an official MBE program waiver from all or part of the project goal when it has been determined that the successful bidder has employed a good faith effort towards compliance to the program and when it has been determined that the realization of the project goal will not be feasible because of circumstances which are beyond the control of the bidder.

(H) Make recommendations to the appropriate agencies for further investigation if misrepresentation is suspected.

(3) The final authority in the review and acceptance of the successful bidder's MBE program participation reports which must be submitted under section 4(b) of this rule. Therefore, the department reserves the right to do the following:

(A) Receive copies, on a timely basis or upon demand, of all reports for the expressed purpose of their review, acceptance, or rejection. Timeliness of submittal, accuracy, and completeness will be subject to close scrutiny in the execution of this process.

(B) Conduct interviews with the appropriate personnel or designated representatives from the firms, as necessary, to determine and establish authenticity for acceptance of the reports.

(C) Conduct audits of the accounting records of the firms to determine accuracy in reporting and to establish authenticity for acceptance of the reports.

(D) Direct the successful bidder and the MBE participant, or both, to provide, as necessary, additional documentation to establish authenticity for acceptance of the reports.

(E) Make recommendations to the appropriate agencies for further investigation if misrepresentation is suspected.

(b) Because the attainment of the project goal has been established through contractual provisions with the prime contractor, the department shall consider the prime contractor to be the sole source of responsibility for goal attainment and project administration and shall, therefore, be held accountable for the actions of all of its subcontractors, including those subcontractors who have subcontracted work to MBE contractors or who have purchased materials from MBE suppliers.

(c) The department may employ its authority to make determinations of responsiveness and responsibility based on the actions of the subcontractors regarding adherence to Indiana laws and rules. (*Indiana Department of Administration; 25 IAC 2-19-5; filed Mar 12, 1993, 5:00 p.m.: 16 IR 1932; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

25 IAC 2-19-6 Application for relief from project goal

Authority: IC 4-13-1-7; IC 4-13-2-9; IC 4-13.6-3-1

Affected: IC 4-13-16.5; IC 5-16-6.5; IC 22-9-1-10

Sec. 6. (a) In cases where the contractor is unable to meet the project goal, the contractor may petition the department for relief from that goal by filing an application for MBE program waiver. The application for MBE program waiver shall show all reasonable good faith efforts that were made by the contractor for the purpose of fulfilling the project goal. Such reasonable efforts shall

include, but may not be limited to, the following:

(1) Documentation of direct contact or negotiations with MBEs for specific contracting opportunities; the actions taken shall be reported in a manner that will include the following items:

(A) A detailed statement of the efforts made to negotiate with MBEs, including the following:

(i) The names, addresses, and telephone numbers of MBEs contacted.

(ii) A detailed statement of the reason why prospective agreements were not reached.

(B) A detailed statement of the efforts made to select portions of the work proposed to be performed by MBEs in order to increase the likelihood of achieving the stated goal.

(2) Documentation of any advertising that the contractor performed in the search for prospective MBEs for the contract.

(3) Documentation of any notifications that the contractor provided to minority business assistance agencies for the purpose of locating prospective MBEs for the contract.

(4) Documentation of the contractor's efforts to research other possible areas of participation, including, but not limited to, any of the following:

(A) Suppliers.

(B) Shipping or transport firms.

(C) Engineering firms.

(D) Any other role that may contribute to the production and delivery of the product or service specified in the contract.

(5) Documentation regarding the contractor's affirmative action policies or programs as they pertain to the utilization of MBEs. This documentation should also provide an explanation of the methods used to carry out the affirmative action policies.

(6) Documentation relevant to any other efforts the contractor has made to assist MBEs in overcoming the traditional barriers of participation in the industry affected by the contract.

(b) When considering an application for MBE program waiver, the department will consider the following, including, but not limited to:

(1) The methods utilized by the contractor.

(2) The time the contractor has allowed for a meaningful response to its solicitations.

(3) Statements received from MBEs who have been listed as having been contacted by the contractor.

(c) The contractor shall maintain adequate records of all relevant data with respect to the utilization and attempted utilization of MBEs and shall provide full access to these records to the department upon its request to inspect them. (*Indiana Department of Administration; 25 IAC 2-19-6; filed Mar 12, 1993, 5:00 p.m.: 16 IR 1934; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

25 IAC 2-19-7 Grant of waiver from project goal

Authority: IC 4-13-1-7; IC 4-13-2-9; IC 4-13.6-3-1

Affected: IC 4-13-16.5; IC 5-16-6.5; IC 22-9-1-10

Sec. 7. Upon review and analysis of the documentation supplied to the department by the contractor, a determination will be made and the contractor will be promptly notified of the results. Such results may include the following:

(1) Notification that the contractor has been granted a waiver from the project goal and has been authorized to proceed without any MBE participation on the contract.

(2) Notification that the contractor has been granted a partial waiver from the project goal and has been authorized to proceed when MBE participation is greater than zero (0), but less than the project goal.

(3) Notification that further information will be required before a final determination may be made.

(4) Notification that the application for MBE program waiver has not been granted. In such a case, the following action may result:

(A) The contractor may be required to provide further information.

(B) The contractor's bid may be rejected.

(*Indiana Department of Administration; 25 IAC 2-19-7; filed Mar 12, 1993, 5:00 p.m.: 16 IR 1934; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

25 IAC 2-19-8 Appeals process for bid rejection or denial of waiver

Authority: IC 4-13-1-7; IC 4-13-2-9; IC 4-13.6-3-1

Affected: IC 4-13-16.5; IC 5-16-6.5; IC 22-9-1-10

Sec. 8. (a) Upon notification that the application for MBE program waiver has been denied, the contractor may request a hearing with the MBE compliance review committee. The request for the hearing of an appeal shall be directed to:

MBE Compliance Review Committee
c/o Indiana Department of Administration
Indiana Government Center-South
402 West Washington Street
Indianapolis, Indiana 46204

(b) In the appeals process, the committee shall be responsible for the following activities:

(1) Arrange a time and place to hear the contractor's appeal within five (5) working days of the date of the receipt of the contractor's request for the hearing.

(2) Provide the contractor with every opportunity to present the reason for the appeal.

(3) Review and discuss all of the information at hand, including the following:

(A) MBE availability.

(B) The contractor's original efforts towards MBE utilization.

(C) Statements from MBEs listed in the documentation supplied by the contractor.

(D) The arguments offered by the contractor at the hearing.

(4) Arrive at a final determination within five (5) working days after the conclusion of the appeal hearing.

(c) If the contractor is dissatisfied with the decision made by the MBE compliance review committee, the contractor may, within five (5) working days of receiving the committee's determination, request of the commissioner, in writing, a review and reconsideration of the decision and submit additional written material. The commissioner or designee will consider the request and issue a written decision within ten (10) working days after receipt of all material. (*Indiana Department of Administration; 25 IAC 2-19-8; filed Mar 12, 1993, 5:00 p.m.: 16 IR 1935; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

25 IAC 2-19-9 Appeals process for denial of MBE certification

Authority: IC 4-13-1-7; IC 4-13-2-9; IC 4-13.6-3-1

Affected: IC 4-13-16.5; IC 5-16-6.5; IC 22-9-1-10

Sec. 9. (a) Upon notification that the certification application has been denied, or upon notification that a prospective MBE has been denied acceptance as a participant on an MBE subcontractor plan, the prospective MBE may request a hearing before the MBE compliance review committee. The request for the hearing of an appeal shall be directed to:

MBE Compliance Review Committee
c/o Indiana Department of Administration
Indiana Government Center-South
402 West Washington Street
Indianapolis, Indiana 46204

(b) In the appeals process, the committee shall be responsible for the following activities:

(1) Arrange a time and place to hear the prospective MBE's appeal within five (5) working days of the date of the receipt of the prospective MBE's request for the hearing.

(2) Provide the prospective MBE with every opportunity to present the basis for the appeal.

(3) Review and discuss all of the information at hand, including the following:

(A) Preliminary findings.

(B) Other certifications or attempts at certification.

(C) The arguments offered by the prospective MBE at the hearing.

(4) Arrive at a final determination within five (5) working days after the conclusion of the hearing.

(c) If the prospective MBE is dissatisfied with the decision made by the MBE compliance review committee, the prospective MBE may, within five (5) working days of receiving the committee's determination, request of the commissioner, in writing, a review and reconsideration of the decision and submit additional written material. The commissioner or designee will consider the request and issue a written decision within ten (10) working days after receipt of all material.

(d) Prospective MBEs that have been rejected based on fraudulent representations may apply for certification no more than one (1) time per calendar year. (*Indiana Department of Administration; 25 IAC 2-19-9; filed Mar 12, 1993, 5:00 p.m.: 16 IR 1935; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

25 IAC 2-19-10 Sanctions

Authority: IC 4-13-1-7; IC 4-13-2-9; IC 4-13.6-3-1

Affected: IC 4-13-16.5; IC 5-16-6.5; IC 22-9-1-10; IC 35-43-5-9; IC 35-44-2-1

Sec. 10. (a) In the event of a violation of this rule, the department shall notify the contractor of the violations and will seek a course of action to correct them. The selected course of action may include the recommendation for the imposition of sanctions for material breach of contract if any of the following are determined:

- (1) The contractor has not demonstrated a good faith effort to comply with this rule.
- (2) The contractor has failed to cooperate in providing information regarding its good faith efforts to comply with this rule.
- (3) The contractor provides false or misleading information concerning its minority business enterprise contracting activity or in relation to the contractor's good faith efforts to comply with this rule.
- (4) The contractor fails to make prompt payment to a minority business for services, materials, or labor, whether with respect to the present contract or a previous contract between the contractor and the minority business, unless the contractor, in good faith, contests the payment or any part of it. The contractor fails to promptly pay the uncontested part to the minority business in the event the contractor, in good faith, contests part of a payment.
- (5) The business enterprise provides false or misleading information concerning its status as a bona fide entity which is owned and actively controlled by racial minorities.
- (6) The contractor subjects an MBE to unlawful discriminatory conduct.

(b) In the event that it is determined that a violation of this rule has occurred, the department may elect to immediately employ one (1) or more of the following sanctions:

- (1) Withholding payments on the specific contract in which the deficiency is known to exist until such time that satisfactory corrective measures are made.
- (2) Adjustment to payments due or the permanent withholding of retainages of the specific contract in which the deficiency is known to exist.
- (3) Suspension or termination of the specific contract in which the deficiency is known to exist. In the event that this sanction is employed, the contractor will be held liable for any consequential damages arising from the suspension or termination of the contract, including damages caused as a result of the delay or from increased prices incurred in securing the performance of the balance of the work by other contractors.
- (4) Recommendation to the certification board to revoke the contractor's certification status with the public works division of the department. This recommendation may result in the suspension or revocation of the contractor's ability to perform on future state contracts for a period no longer than thirty-six (36) months.
- (5) Suspension, revocation, or denial of the MBE certification and eligibility to participate in the MBE program for a period of not more than thirty-six (36) months.

(c) In the event that sanctions are required, they may be employed immediately; suspension or stay is in the sole discretion of the commissioner.

(d) In the event that the contractor has provided false or misleading information, the department may elect to provide the information to the appropriate investigating agencies for investigation and enforcement of any possible criminal violations or relevant statutes under IC 35-43-5-9 or IC 35-44-2-1.

(e) In the event that the contractor fails to pay the minority business in a timely manner or fails to satisfactorily resolve any outstanding claims, the department may elect to withhold the disputed amount from the payments due to the contractor and may elect to suspend or terminate the contract.

(f) In the event that the minority business enterprise has provided false or misleading information, the department may elect to provide the information to the appropriate investigating agencies for investigation and enforcement of any possible criminal violations of relevant statutes. (*Indiana Department of Administration; 25 IAC 2-19-10; filed Mar 12, 1993, 5:00 p.m.: 16 IR 1936; errata filed May 7, 1993, 1:00 p.m.: 16 IR 2189; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

25 IAC 2-19-11 Appeals process for violations ruling or sanctions imposed

Authority: IC 4-13-1-7; IC 4-13-2-9; IC 4-13.6-3-1

Affected: IC 4-13-16.5; IC 5-16-6.5; IC 22-9-1-10

Sec. 11. (a) Upon notification of the determination of rules violations or sanctions imposed, the contractor may request a

hearing before the MBE compliance review committee. The request for the hearing of an appeal shall be directed to:

MBE Compliance Review Committee
c/o Indiana Department of Administration
Indiana Government Center-South
402 West Washington Street
Indianapolis, Indiana 46204

(b) In the appeals process, the committee shall be responsible for the following activities:

(1) Arrange a time and place to hear the contractor's appeal within five (5) working days of the date of the receipt of the contractor's request for the hearing.

(2) Provide the contractor with every opportunity to present the basis for the appeal.

(3) Review and discuss all of the information at hand and the arguments offered by the contractor at the hearing.

(4) Arrive at a final determination within five (5) working days after the conclusion of the hearing.

(c) If the contractor is dissatisfied with the decision made by the MBE compliance review committee, the contractor may, within five (5) working days of receiving the committee's determination, request of the commissioner, in writing, a review and reconsideration of the decision and submit additional written material. The commissioner or designee will consider the request and issue a written decision within ten (10) working days after receipt of all material. (*Indiana Department of Administration; 25 IAC 2-19-11; filed Mar 12, 1993, 5:00 p.m.: 16 IR 1936; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

Rule 20. Minority Business Development; State Procurement

25 IAC 2-20-1 Policy

Authority: IC 4-13-1-7; IC 4-13-2-9

Affected: IC 4-13-16.5; IC 5-16-6.5; IC 22-9-1-10

Sec. 1. (a) It is the policy of the state of Indiana to actively promote, monitor, and enforce its MBE program to ensure that:

(1) members of racial minority groups are not subject to unlawful discrimination;

(2) state contracts are not awarded on the basis of bids which are founded upon unlawful discriminatory conduct; and

(3) the state will meet or exceed its goals for minority participation in its purchases and contracts.

(b) The commissioner of the department, through the minority business development section of the department and in concert with the governor's commission on minority business development, shall be the final authority on all matters pertaining to the maintenance and administration of the MBE program and compliance thereto.

(c) The rule shall apply to procurements of goods and services over one hundred thousand dollars (\$100,000) or when the director determines a reasonable expectation of minority business participation. (*Indiana Department of Administration; 25 IAC 2-20-1; filed Sep 20, 1993, 9:00 a.m.: 17 IR 166; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

25 IAC 2-20-2 Definitions

Authority: IC 4-13-1-7; IC 4-13-2-9

Affected: IC 4-13-16.5; IC 5-16-6.5; IC 22-9-1-10

Sec. 2. (a) The definitions in this section apply throughout this rule.

(b) "Minority" means a person who is a citizen of the United States and who is a member of any of the following racial groups:

(1) African American (a person with origins in any of the black racial groups of Africa).

(2) Hispanic American (a person with origins in Mexico, Central America, South America, Cuba, or Puerto Rico).

(3) Asian American (a person with origins in the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands).

(4) American Indian (a person with origins in any of the original peoples of North America, including natives of Alaska).

(5) Other similar racial minority groups.

(c) "Department" means the Indiana department of administration.

(d) "Commission" means the governor's commission on minority business development.

(e) "Commissioner" means the commissioner of the department.

(f) "MBE" means minority business enterprise.

(g) "Program" means the minority business enterprise program as administered by the department.

(h) "Contract goal" means a targeted amount of participation as measured by the desired percentage of involvement by minority business enterprises.

(i) "Subcontractor" means any person entering into a contract to directly furnish services or supplies toward the contract.

(j) "MBE subcontractor plan" or "plan" means the document supplied by prime contractors to the state (usually required at the time of most bid submittals) which indicates the means whereby the minority business participation will be attained.

(k) "Application for MBE program waiver" or "application" means the document supplied by prime contractors to the state (usually required at the time of most bid submittals) which requests the contractor's exemption from the contract goal and indicates the reasons why the contractor requires the exemption.

(l) "MBE program waiver" or "waiver" means the document supplied by the state to the prime contractor that approves the application for MBE program waiver.

(m) "MBE compliance review committee" means the committee which is responsible for the appeals process of the program. The committee consists of the chairman of the governor's commission on minority business development, the general counsel of the department, and the director of the procurement division of the department or their designees.

(n) "Offeror" means any business entity which makes an offer to enter into a binding contract for the provision of materials or services to the state.

(o) "Vendor" means any business which has entered into a binding contract for the provision of materials or services to the state.

(p) "Broker" means an intermediary who negotiates contracts of purchase and sale.

(q) "Supplier" means any person supplying materials, but no significant on-site labor, to a vendor. (*Indiana Department of Administration; 25 IAC 2-20-2; filed Sep 20, 1993, 9:00 a.m.: 17 IR 166; errata filed Dec 15, 1993, 5:00 p.m.: 17 IR 1008; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

25 IAC 2-20-3 Eligibility guidelines

Authority: IC 4-13-1-7; IC 4-13-2-9

Affected: IC 4-13-16.5; IC 5-16-6.5; IC 22-9-1-10

Sec. 3. The following guidelines shall be used in determining the eligibility of MBEs for the purposes of their inclusion in the program:

(1) An MBE shall be eligible for the program upon self-declaration and certification with the department's minority business development section. However, the department is not required to accept all certification applications and may exercise its right to request supporting documentation before final certification is granted. In the event of such circumstances, some or all of the following types of documentation may be requested:

(A) Proof of United States citizenship.

(B) Copies of MBE certificates from other certifying agencies.

(C) Proof of tribal registrations or memberships.

(D) Other types of documentation which may serve to identify, by substantial evidence, a person as a member of a racial minority.

(2) An MBE shall be eligible for the program when the ownership and control of the business by one (1) or more racial minorities is clearly established to be real, substantial, and continuing and shall go beyond the pro forma ownership of the business as reflected in its ownership documents. The owner who is a minority as defined in this rule shall enjoy the customary incidents of ownership and shall share in the risks and profits commensurate with ownership interests, as demonstrated by an examination of the substance rather than the form or appearances of arrangements. Recognition of the business as a separate entity for tax or corporate purposes is not necessarily sufficient for certification as an MBE.

(3) The owner who is a minority shall possess control and the power to direct or cause the direction of the management and policies of the firm to make day-to-day as well as major decisions on matters of management, policy, and operations and shall be active in such matters. The firm will not be subject to any formal or informal restrictions which limit the customary discretion of the owner who is a minority. There shall be no restrictions through, for example, bylaw provisions, partnership agreements, or charter requirements for cumulative voting rights or other provisions that prevent the minority owner, without the cooperation or vote of any owner who is not a minority, from making a business decision of the firm.

(4) If any owner of the firm who is not a minority is disproportionately responsible for the operation of the firm, then the firm shall not be considered to be controlled by a minority and shall not be eligible as an MBE. In cases where the actual

management of the firm is contracted out to a nonracial minority, those persons who have the ultimate power to hire and fire the managers can, for the purpose of this program, be considered as controlling the firm and, therefore, the firm cannot be considered as an MBE.

(5) All securities which constitute ownership or control of a corporation for purposes of establishing it as an MBE must be held directly by a minority. No securities held in trust, or by any guardian for a minor, will be considered as held by a minority in determining the ownership or control of a corporation.

(6) The contributions of capital or expertise by the minority shall be considered in determining the ownership or control of a corporation.

(7) In a case where the MBE is employed or contracted as a broker or as a material supplier, the MBE firm shall be fully responsible for the coordination and execution of the services it is contracted to supply. Arrangements in which the MBE is a broker and does not assume any of the customary risks of the industry, such as the issuance of purchase orders, the scheduling of job site deliveries, and the issuance of invoices shall be eligible for MBE credit only to the extent of the total brokerage fees. The maximum allowable credit shall not exceed one and one-fourth percent (1.25%) of the value of the project.

(8) In a case where the MBE is employed or contracted as a subcontractor, the MBE firm shall be fully responsible for the coordination and execution of the services it is contracted to provide. Arrangements in which the MBE performs no services or adds no value to the contract shall not be eligible for MBE credit.

(9) In determining whether a potential MBE is an independent business or whether an MBE is actually capable or responsible for the work in question, all relevant factors will be considered. Such factors may include the following:

- (A) The date that the business was established.
- (B) The adequacy of its resources for the contract work to be performed.
- (C) The relevant experience of the minority owner.
- (D) The degree to which financial, equipment leasing, and other relationships with majority firms vary from standard industry practice.

(10) A joint venture shall be eligible for the program when the MBE partner of the joint venture meets the standards set forth in this section and the MBE shares in at least fifty percent (50%) of the ownership, control, management responsibilities, risks, and profits of the joint venture and when the MBE partner is responsible for a clearly defined portion of the work to be performed.

(11) In a case where a change of ownership or the death of an owner has occurred within the MBE or the MBE joint venture, the department shall reserve the right to review the new ownership structure to determine whether or not continued program eligibility is warranted. Therefore, the MBE or MBE joint venture partner shall notify the minority business development section of the department within thirty (30) days of all ownership changes. Failure to submit this notification may result in suspension of certification status.

(Indiana Department of Administration; 25 IAC 2-20-3; filed Sep 20, 1993, 9:00 a.m.: 17 IR 167; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265)

25 IAC 2-20-4 Procedure

Authority: IC 4-13-1-7; IC 4-13-2-9

Affected: IC 4-13-16.5; IC 5-16-6.5; IC 22-9-1-10

Sec. 4. (a) In a case where the offeror has arranged to subcontract five percent (5%) or more of the contract value to an MBE, a completed MBE subcontractor plan shall be submitted, along with the other required documents in accordance with the instructions. All MBEs must be certified or registered as an MBE by the department prior to the award of the contract. The completed plan shall include the following information:

- (1) Name of the firm to be employed.
- (2) Phone number of the firm.
- (3) Name of a contact person employed by the firm.
- (4) Work the firm will perform and the approximate date when the MBE's work will commence.
- (5) A contract amount for services that will be performed. Purchases from MBE suppliers are allowed for MBE credit in the program. The maximum allowable credit for such purchases will be limited to two and one-half percent (2.5%) of the project value.

(b) In a case where the offeror has had the MBE subcontractor plan approved, where that offeror has been awarded the contract, and where the director determines a necessity for reports, the vendor shall submit participation reports monthly or at such other intervals as may be requested. The department reserves the right to periodically require progress reports from the vendor regarding continuing MBE participation.

(c) In a case where the offeror has been unable to arrange to subcontract five percent (5%) of the contract value but has been able to arrange to subcontract some of the contract value to MBEs, both a completed MBE subcontractor plan and a completed application for MBE program waiver shall be submitted with the other required documents. All MBEs must be certified or registered as an MBE by the department prior to the award of the contract. All forms are to be completed as described in subsection (a).

(d) In a case where the offeror has been unable to arrange to subcontract five percent (5%) of the contract value or in a case where no MBE participation is expected to occur, a completed application for MBE program waiver shall be submitted, along with the other required documents. The application shall be used to demonstrate the offeror's efforts to employ MBEs on the contract. The application shall include the following information:

- (1) Name of the MBE firm that the offeror has contacted or been contacted by.
- (2) Phone number of the firm.
- (3) Type of contact or communication.
- (4) An explanation of the results obtained, such as price not competitive, unable to contact, or no response.

The state reserves the right to verify and seek further clarification of any information submitted.

(e) Compliance with this rule is considered to be a demonstration of the offeror's responsiveness and responsibility. Therefore, all statements shall be complete, legible, true, and correct and shall not omit material facts. Failure to provide complete and accurate MBE subcontractor plans using minority business enterprises certified or registered as MBEs by the department, or failure to provide applications for MBE program waivers, or both, may be the basis for rejection of the bid. (*Indiana Department of Administration; 25 IAC 2-20-4; filed Sep 20, 1993, 9:00 a.m.: 17 IR 168; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

25 IAC 2-20-5 Compliance monitoring and certification

Authority: IC 4-13-1-7; IC 4-13-2-9

Affected: IC 4-13-16.5; IC 5-16-6.5; IC 22-9-1-10

Sec. 5. (a) In the management of this program, the department shall exercise its rights to employ all available administrative actions and remedies to ensure that the goals and intent of the program are successfully met. Therefore, the department shall serve as the following:

(1) The final authority in the authentication, acceptance, and certification of MBE firms according to the criteria established in section 3 of this rule. Therefore, the department may, at any time, elect to do the following:

(A) Review all certification applications, ownership documents, articles of incorporation, bylaws, board of director's meeting minutes, or any other instruments and conveyances which may be pertinent or relevant to the ownership and operation of the MBE that comes before the department with a request for certification as an MBE. The department reserves the right to grant or deny reciprocal certification to MBEs with current, in-place certification status with other governmental agencies and departments with recognized certification authority.

(B) Conduct interviews with key personnel, employees, laborers, material suppliers, union stewards, and all other persons whose knowledge of company operations and testimony thereto may be pertinent or relevant to the establishment of authenticity and merit for the subject company's certification as an MBE.

(C) Make on-site visits to company headquarters and job sites with little or no advance notice in its efforts to make accurate judgments about the ownership and control of the subject MBE.

(D) Request, at any time that it deems necessary, further information or clarification of any claims or issues that may lend reasonable doubt to the legitimacy of the subject MBE.

(E) Conduct preliminary audits of accounting records, project files, and any legal documents which may be pertinent or relevant to the establishment of legitimacy of the subject MBE.

(F) Make recommendations to the appropriate agencies and departments based on the findings of all reviews, interviews, site visits, and audits regarding the qualifications and legitimacy of the subject MBE.

(G) Make recommendations to the appropriate agencies for further investigation if misrepresentation is suspected.

(2) The final authority in the review, acceptance, and approval of all MBE affidavits, MBE subcontractor plans, and applications for MBE program waivers which are included in bid packages. In the performance of these duties, the department

is hereby empowered to perform the following functions, including, but not limited to, the following:

(A) Review all MBE affidavits, MBE subcontractor plans, and applications for MBE program waivers, after the opening of the offer and before the award of the contract, in order to verify the authenticity of the documents and the successful offeror's adherence to the rules and regulations set forth in the instructions.

(B) Contact and interview the successful offeror or its listed subcontractors and material suppliers if further information is required to establish authenticity and to issue approval of the submitted documentation.

(C) Conduct audits, as necessary, of the accounting records of the successful offeror and the MBE participants to determine and establish their authenticity for the final acceptance and approval of the documentation.

(D) Issue an official NOTICE OF REJECTION when it has been determined that the successful offeror has not complied with the instructions set forth in the contract documents and this rule. The department may direct the successful offeror to submit revised documentation within five (5) working days or file an official application for MBE program waiver. The department shall reserve the right to reject any and all offers when the successful offeror fails to respond to the department's request.

(E) Issue an official NOTICE OF CONDITIONAL APPROVAL when it has been determined:

(i) the successful offeror has demonstrated a good faith effort toward compliance to the program, but when one

(1) or more of the MBE firms listed does not conform to the guidelines of section 3 of this rule; or

(ii) when the levels of participation do not reach the goal of the contract.

After a review of the situation and circumstances, the successful offeror may be directed to submit a revised MBE subcontractor plan or an application for an official MBE program waiver, thereby, allowing an exception to the goal for the contract or any portion thereof.

(F) Issue an official approval of the MBE subcontractor plan when it has been determined that the successful offeror has achieved compliance with the contract goal.

(G) Issue an official MBE program waiver from all or part of the contract goal when it has been determined that the successful offeror has employed good faith efforts towards compliance to the program and when it has been determined that the realization of the contract goal will not be feasible because of circumstances which are beyond the control of the offeror.

(H) Make recommendations to the appropriate agencies for further investigation if misrepresentation is suspected.

(3) The final authority in the review and acceptance of the successful offeror's MBE program participation reports which must be submitted under section 4(b) of this rule. Therefore, the department reserves the right to do the following:

(A) Receive copies, on a timely basis or upon demand, of all reports for the expressed purpose of their review, acceptance, or rejection. Timeliness of submittal, accuracy, and completeness will be subject to close scrutiny in the execution of this process.

(B) Conduct interviews with the appropriate personnel or designated representatives from the firms, as necessary, to determine and establish authenticity for acceptance of the reports.

(C) Conduct audits of the accounting records of the firms to determine accuracy in reporting and to establish authenticity for acceptance of the reports.

(D) Direct the successful offeror and the MBE participant, or both, to provide, as necessary, additional documentation to establish authenticity for acceptance of the reports.

(E) Make recommendations to the appropriate agencies for further investigation if misrepresentation is suspected.

(b) Because the attainment of the contract goal has been established through contractual provisions with the prime vendor, the department shall consider the vendor to be the sole source of responsibility for goal attainment and contract administration and shall, therefore, be held accountable for the actions of all of its subcontractors, including those subcontractors who have subcontracted work to MBEs or who have purchased materials from MBE suppliers.

(c) The department may employ its authority to make determinations of responsiveness and responsibility based on the actions of the subcontractors regarding adherence to Indiana laws and rules. (*Indiana Department of Administration; 25 IAC 2-20-5; filed Sep 20, 1993, 9:00 a.m.: 17 IR 168; errata filed Dec 15, 1993, 5:00 p.m.: 17 IR 1008; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

25 IAC 2-20-6 Application for relief from contract goal

Authority: IC 4-13-1-7; IC 4-13-2-9

Affected: IC 4-13-16.5; IC 5-16-6.5; IC 22-9-1-10

Sec. 6. (a) In cases where the offeror does not subcontract or is unable to meet the contract goal, the offeror may petition the department for relief from that goal by filing an application for MBE program waiver. The application for MBE program waiver shall show all reasonable good faith efforts that were made by the offeror for the purpose of fulfilling the contract goal. Such reasonable efforts shall include, but may not be limited to, the following:

(1) Documentation of direct contact or negotiations with MBEs for specific contracting opportunities; the actions taken shall be reported in a manner that will include the following items:

(A) A detailed statement of the efforts made to negotiate with MBEs, including the following:

(i) The names, addresses, and telephone numbers of MBEs contacted.

(ii) A detailed statement of the reason why prospective agreements were not reached.

(B) A detailed statement of the efforts made to select portions of the work proposed to be performed by MBEs in order to increase the likelihood of achieving the stated goal.

(2) Documentation of any advertising that the offeror performed in the search for prospective MBEs for the contract.

(3) Documentation of any notifications that the offeror provided to minority business assistance agencies for the purpose of locating prospective MBEs for the contract.

(4) Documentation of the offeror's efforts to research other possible areas of participation, including, but not limited to, any of the following:

(A) Suppliers.

(B) Shipping or transport firms.

(C) Engineering firms.

(D) Any other role that may contribute to the production and delivery of the product or service specified in the contract.

(5) Documentation regarding the offeror's affirmative action policies or programs as they pertain to the utilization of MBEs. This documentation should also provide an explanation of the methods used to carry out the affirmative action policies.

(6) Documentation relevant to any other efforts the offeror has made to assist MBEs in overcoming the traditional barriers of participation in the industry affected by the contract.

(b) When considering an application for MBE program waiver, the department will consider the following, including, but not limited to:

(1) The methods utilized by the offeror.

(2) The time the offeror has allowed for a meaningful response to its solicitations.

(3) Statements received from MBEs who have been listed as having been contacted by the offeror.

(c) The offeror shall maintain adequate records of all relevant data with respect to the utilization and attempted utilization of MBEs and shall provide full access to these records to the department upon its request to inspect them. (*Indiana Department of Administration; 25 IAC 2-20-6; filed Sep 20, 1993, 9:00 a.m.: 17 IR 170; errata filed Dec 15, 1993, 5:00 p.m.: 17 IR 1008; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

25 IAC 2-20-7 Grant of waiver from contract goal

Authority: IC 4-13-1-7; IC 4-13-2-9

Affected: IC 4-13-16.5; IC 5-16-6.5; IC 22-9-1-10

Sec. 7. Upon review and analysis of the documentation supplied to the department by the offeror, a determination will be made and the offeror will be promptly notified of the results. Such results may include the following:

(1) Notification that the offeror has been granted a waiver from the contract goal and has been authorized to proceed without any MBE participation on the contract.

(2) Notification that the offeror has been granted a partial waiver from the contract goal and has been authorized to proceed when MBE participation is greater than zero (0), but less than the contract goal.

(3) Notification that further information will be required before a final determination may be made.

(4) Notification that the application for MBE program waiver has not been granted. In such a case, the following action may result:

(A) The offeror may be required to provide further information.

(B) The offeror's proposal may be rejected.

(*Indiana Department of Administration; 25 IAC 2-20-7; filed Sep 20, 1993, 9:00 a.m.: 17 IR 170; errata filed Dec 15, 1993, 5:00 p.m.: 17 IR 1008; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

25 IAC 2-20-8 Appeals process for bid rejection or denial of waiver

Authority: IC 4-13-1-7; IC 4-13-2-9

Affected: IC 4-13-16.5; IC 5-16-6.5; IC 22-9-1-10

Sec. 8. (a) Upon notification that the application for MBE program waiver has been denied, the offeror may request a hearing with the MBE compliance review committee. The request for the hearing of an appeal shall be directed to:

MBE Compliance Review Committee
c/o Indiana Department of Administration
Indiana Government Center-South
402 West Washington Street
Indianapolis, Indiana 46204

(b) In the appeals process, the committee shall be responsible for the following activities:

(1) Arrange a time and place to hear the offeror's appeal within five (5) working days of the date of receipt of the offeror's request for the hearing.

(2) Provide the offeror with every opportunity to present the basis for the appeal.

(3) Review and discuss all of the information at hand, including the following:

(A) MBE availability.

(B) The offeror's original efforts towards MBE utilization.

(C) Statements from MBEs listed in the documentation supplied by the offeror.

(D) The arguments presented by the offeror at the hearing.

(4) Arrive at a final determination within five (5) working days after the conclusion of the appeal hearing.

(c) If the offeror is dissatisfied with the decision made by the MBE compliance review committee, the offeror may, within five (5) working days of receiving the committee's determination, request of the commissioner, in writing, a review and reconsideration of the decision and submit additional written material. The commissioner or designee will consider the request and issue a written decision within ten (10) working days after receipt of all material. (*Indiana Department of Administration: 25 IAC 2-20-8; filed Sep 20, 1993, 9:00 a.m.: 17 IR 171; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

25 IAC 2-20-9 Appeals process for denial of MBE certification

Authority: IC 4-13-1-7; IC 4-13-2-9

Affected: IC 4-13-16.5; IC 5-16-6.5; IC 22-9-1-10

Sec. 9. (a) Upon notification that the certification application has been denied, or upon notification that a prospective MBE has been denied acceptance as a participant on an MBE subcontractor plan, the prospective MBE may request a hearing before the MBE compliance review committee. The request for the hearing of an appeal shall be directed to:

MBE Compliance Review Committee
c/o Indiana Department of Administration
Indiana Government Center-South
402 West Washington Street
Indianapolis, Indiana 46204

(b) In the appeals process, the committee shall be responsible for the following activities:

(1) Arrange a time and place to hear the prospective MBE's appeal within five (5) working days of the date of receipt of the prospective MBE's request for the hearing.

(2) Provide the prospective MBE with every opportunity to present the basis for the appeal.

(3) Review and discuss all of the information at hand, including the following:

(A) Preliminary findings.

(B) Other certifications or attempts at certification.

(C) The arguments presented by the prospective MBE at the hearing.

(4) Arrive at a final determination within five (5) working days after the conclusion of the hearing.

(c) If the prospective MBE is dissatisfied with the decision made by the MBE compliance review committee, the prospective MBE may, within five (5) working days of receiving the committee's determination, request of the commissioner, in writing, a review and reconsideration of the decision and submit additional written material. The commissioner or designee will consider the

request and issue a written decision within ten (10) working days after receipt of all material.

(d) Prospective MBEs that have been rejected based on fraudulent representations may apply for certification no more than one (1) time per calendar year. (*Indiana Department of Administration; 25 IAC 2-20-9; filed Sep 20, 1993, 9:00 a.m.: 17 IR 171; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

25 IAC 2-20-10 Sanctions

Authority: IC 4-13-1-7; IC 4-13-2-9

Affected: IC 4-13-16.5; IC 5-16-6.5; IC 22-9-1-10; IC 35-43-5-9; IC 35-44-2-1

Sec. 10. (a) In the event of a violation of this rule, the department shall notify the offeror of the violation and will seek a course of action to correct it. The selected course of action may include the recommendation for the imposition of sanctions for material breach of contract if any of the following are determined:

(1) The offeror has not demonstrated a good faith effort to comply with this rule.

(2) The offeror has failed to cooperate in providing information regarding its good faith efforts to comply with this rule.

(3) The offeror provides false or misleading information concerning its minority business enterprise contracting activity or in relation to the offeror's good faith efforts to comply with this rule.

(4) The offeror fails to make prompt payment to a minority business for services, materials, or labor on governmental contracts, whether with respect to the present governmental contract or a previous governmental contract between the offeror and the minority business, unless the offeror, in good faith, contests the payment or any part of it. The offeror fails to promptly pay the uncontested part to the minority business in the event the offeror, in good faith, contests part of a payment.

(5) The business enterprise provides false or misleading information concerning its status as a bona fide entity which is owned and actively controlled by racial minorities.

(6) The offeror subjects an MBE to unlawful discriminatory conduct.

(b) In the event that it is determined that a violation of this rule has occurred, the department may elect to immediately employ one (1) or more of the following sanctions:

(1) Withholding payments on the specific contract in which the deficiency is known to exist until such time that satisfactory corrective measures are made.

(2) Adjustment to payments due on the specific contract in which the deficiency is known to exist.

(3) Suspension or termination of the specific contract in which the deficiency is known to exist. In the event that this sanction is employed, the offeror will be held liable for any consequential damages arising from the suspension or termination of the contract, including damages caused as a result of the delay or from increased prices incurred in securing the performance of the balance of the work by other vendors.

(4) Determination of the offeror as nonresponsible and the conveyance of that determination to the director of procurement for prospective consideration.

(5) Suspension, revocation, or denial of the MBE certification and eligibility to participate in the MBE program for a period of not more than thirty-six (36) months.

(c) In the event that sanctions are required, they may be employed immediately; suspension or stay is in the sole discretion of the commissioner.

(d) In the event that the vendor has provided false or misleading information, the department may elect to provide the information to the appropriate investigating agencies for investigation and enforcement of any possible criminal violations or relevant statutes under IC 35-43-5-9 or IC 35-44-2-1.

(e) In the event that the vendor fails to pay the minority business in a timely manner or fails to satisfactorily resolve any outstanding claims, the department may elect to withhold the disputed amount from the payments due to the vendor and may elect to suspend or terminate the contract.

(f) In the event that the minority business enterprise has provided false or misleading information, the department may elect to provide the information to the appropriate investigating agencies for investigation and enforcement of any possible criminal violations of relevant statutes. (*Indiana Department of Administration; 25 IAC 2-20-10; filed Sep 20, 1993, 9:00 a.m.: 17 IR 172; errata filed Dec 15, 1993, 5:00 p.m.: 17 IR 1008; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

25 IAC 2-20-11 Appeals process for violations ruling or sanctions imposed

Authority: IC 4-13-1-7; IC 4-13-2-9

Affected: IC 4-13-16.5; IC 5-16-6.5; IC 22-9-1-10

Sec. 11. (a) Upon notification of the determination of rules violations or sanctions imposed, the offeror may request a hearing before the MBE compliance review committee. The request for the hearing of an appeal shall be directed to:

MBE Compliance Review Committee
c/o Indiana Department of Administration
Indiana Government Center-South
402 West Washington Street
Indianapolis, Indiana 46204

(b) In the appeals process, the committee shall be responsible for the following activities:

(1) Arrange a time and place to hear the offeror's appeal within five (5) working days of the date of receipt of the request for the hearing.

(2) Provide the offeror with every opportunity to present the basis for the appeal.

(3) Review and discuss all of the information at hand and the arguments presented by the offeror at the hearing.

(4) Arrive at a final determination within five (5) working days after the conclusion of the hearing.

(c) If the offeror is dissatisfied with the decision made by the MBE compliance review committee, the offeror may, within five (5) working days of receiving the committee's determination, request of the commissioner, in writing, a review and reconsideration of the decision and submit additional written material. The commissioner or designee will consider the request and issue a written decision within ten (10) working days after receipt of all material. (*Indiana Department of Administration; 25 IAC 2-20-11; filed Sep 20, 1993, 9:00 a.m.: 17 IR 172; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

ARTICLE 3. STATE PERSONNEL DIVISION – NON-MERIT EMPLOYEES (TRANSFERRED)

NOTE: Transferred from the Indiana department of administration (25 IAC 3) to the state personnel department (31 IAC 1) by Acts 1981, P.L.30, SECTION 3 (IC 4-15-1.8-8). Effective July 1, 1981.

ARTICLE 4. OPERATION OF MOTOR VEHICLES

Rule 1. Limitation on Operation of Motor Vehicles

25 IAC 4-1-1 Prohibition of the operation of state vehicles while under the influence of alcohol or controlled substance

Authority: IC 4-13-1-4; IC 4-13-1-7

Affected: IC 4-13-1-4; IC 7.1-1-3-5; IC 35-48-1-9

Sec. 1. (a) All state employees, with the exception of law enforcement officers carrying out authorized undercover operations, are prohibited from operating state vehicles at any time with any measurable amount of alcohol from alcoholic beverages as defined in IC 7.1-1-3-5 or controlled substances as defined in IC 35-48-1-9 in their bodies.

(b) Alcohol or controlled substance detection may be accomplished by any of the following methods:

(1) blood test;

(2) breathalyzer; or

(3) urinalysis.

(c) Any other reasonable method may also be used for detection of alcohol or controlled substances.

(d) The violation of this section shall result in appropriate actions being taken by the Indiana department of administration concerning operation of state vehicles, up to permanent revocation of an employee's authorization to operate a state vehicle.

(e) The Indiana department of administration will also refer the matter to the agency which employs the individual, for such actions that agency deems appropriate under the administrative policies and procedures implemented by the state personnel department or that agency.

(f) These sanctions in no way limit what actions could be undertaken through appropriate civil or criminal statutes. (*Indiana Department of Administration; 25 IAC 4-1-1; filed Mar 12, 1991, 3:35 p.m.: 14 IR 1610; readopted filed Nov 20, 2001, 9:30 a.m.:*

25 IR 1265)

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