

## **IC 4-13.6-2**

### **Chapter 2. General Provisions**

#### **IC 4-13.6-2-1**

##### **Purposes and policies of article**

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

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

*As added by P.L.24-1985, SEC.7.*

#### **IC 4-13.6-2-2**

##### **Application of article**

Sec. 2. (a) This article applies only to public works contracts solicited after June 30, 1985.

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

(c) This article does not apply to work or improvements made to real property that is being or will be leased by the state from another person where the state has no interest in the real property after expiration of the lease. However, a lease between the lessor and the state may provide that any of the provisions of this article will apply to any work or improvements to be made in the leased real property.

(d) This article applies to any public works project performed on real property that is not owned by the state if:

- (1) federal or state law or court order requires that a governmental body perform the work on that real property; and
- (2) the commissioner requires compliance with this article.

*As added by P.L.24-1985, SEC.7. Amended by P.L.33-1995, SEC.8; P.L.49-1997, SEC.19.*

#### **IC 4-13.6-2-3**

##### **Application of article to public works projects; exceptions**

Sec. 3. (a) This article applies to every expenditure of public funds, regardless of their source, including federal assistance money, by any governmental body for any public works project.

(b) This article does not apply to the following:

- (1) The Indiana commission for higher education.
- (2) State educational institutions.
- (3) Military officers and military and armory boards of the state.
- (4) The state fair commission.
- (5) Any entity established by the general assembly as a body corporate and politic having authority and power to issue bonds to be secured and repaid solely by revenues pledged for that purpose. However, such an entity shall comply with this article if the law creating the entity requires it to do so.
- (6) The Indiana department of transportation, except to the extent that the Indiana department of transportation uses the services provided by the department under this article.

*As added by P.L.24-1985, SEC.7. Amended by P.L.18-1990, SEC.6; P.L.20-1990, SEC.4; P.L.2-2007, SEC.41.*

#### **IC 4-13.6-2-4**

##### **Compliance by division with certain statutes**

Sec. 4. The division shall comply with this article and the following statutes in the administration of public works contracts:

- (1) IC 5-16-3.
- (2) IC 5-16-6.
- (3) IC 5-16-7, if the estimated cost of the public works project is at least twenty-five thousand dollars (\$25,000).
- (4) IC 5-16-8.
- (5) IC 5-16-9.

*As added by P.L.24-1985, SEC.7. Amended by P.L.26-1989, SEC.9.*

#### **IC 4-13.6-2-5**

##### **Certain statutes not applicable**

Sec. 5. The following statutes do not apply to public works, public works contracts, or professional service contracts covered under this article:

- (1) IC 5-16-1.
- (2) IC 5-16-2.
- (3) IC 5-16-5.
- (4) IC 5-16-5.5.

*As added by P.L.24-1985, SEC.7.*

#### **IC 4-13.6-2-6**

##### **Good faith**

Sec. 6. All parties involved in the negotiation, performance, or administration of contracts covered by this article shall act in good faith.

*As added by P.L.24-1985, SEC.7.*

#### **IC 4-13.6-2-7**

##### **Grants, gifts, bequests, or cooperative agreements**

Sec. 7. Notwithstanding this article, the department shall comply with the terms and conditions of any grant, gift, bequest, or

cooperative agreement involving a governmental body if noncompliance with those terms and conditions would invalidate the grant, gift, bequest, or cooperative agreement.

*As added by P.L.24-1985, SEC.7.*

#### **IC 4-13.6-2-8**

##### **Retention of written determinations**

Sec. 8. The division shall retain written determinations required by this article in the appropriate official contract file of the division.

*As added by P.L.24-1985, SEC.7.*

#### **IC 4-13.6-2-9**

##### **Public records; inspection**

Sec. 9. (a) As used in this section, "contract" includes a contract for professional services.

(b) Except as provided in subsection (c) or by another law, records of the division are public records subject to public inspection under IC 5-14-3.

(c) An officer or employee of the state may not:

(1) convey or permit public access to any information concerning a bid, a quotation, or other response received to a solicitation for the award of a contract other than the information made available at a public opening of bids, quotations, or other responses; or

(2) permit inspection or copying under IC 5-14-3 of bid documents, quotation documents, or documents relating to other responses received to a solicitation for the award of a contract; until a contract has been awarded or the solicitation has been canceled. However, after a public opening of bids, quotations, or other responses received to a solicitation for the award of a contract, an officer or employee may provide information that a person could have learned by attending the opening.

*As added by P.L.24-1985, SEC.7. Amended by P.L.18-1991, SEC.14.*

#### **IC 4-13.6-2-10**

##### **Electronic bids or offers**

Sec. 10. The department may receive electronic bids or offers if both of the following apply:

(1) The solicitation indicates the procedure for transmitting the electronic bid or offer to the department.

(2) The department receives the bid or offer on a facsimile (fax) machine or system with a security feature that protects the content of an electronic bid or offer with the same degree of protection as the content of a bid or an offer that is not transmitted by a fax machine.

*As added by P.L.33-1995, SEC.7.*

#### **IC 4-13.6-2-11**

##### **Designation of public works project as small business set-aside; rules**

Sec. 11. (a) The division may designate a public works project as a small business set-aside under rules adopted by the department under IC 4-22-2.

(b) The following apply to rules adopted by the department governing small business set-asides for public works projects:

(1) The rules are subject to the criteria for determining whether a business is a small business under IC 5-22-14-3.

(2) The rules must establish procedures for administering a small business set-aside program for public works projects that are substantially the same as the procedures described in IC 5-22-14.

*As added by P.L.49-1997, SEC.20.*

#### **IC 4-13.6-2-12**

##### **Instruction to small businesses, minority business enterprises, and women's business enterprises**

Sec. 12. The department shall offer instruction at least annually to:

(1) small businesses (as defined in IC 5-22-14-1);

(2) minority business enterprises (as defined in IC 4-13-16.5-1);  
and

(3) women's business enterprises (as defined in IC 4-13-16.5-1.3);

with regard to bonding requirements and working with the surety industry to secure bonding for public works projects.

*As added by P.L.133-2007, SEC.1.*