

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

### Chapter 5. Bidding Requirements

#### **IC 4-13.6-5-0.1**

##### **Application of certain amendments to chapter**

Sec. 0.1. The addition of section 10.5 of this chapter by P.L.20-1991 applies to public works contracts for which notices calling for sealed proposals for the work are published after June 30, 1991.

*As added by P.L.220-2011, SEC.36.*

#### **IC 4-13.6-5-1**

##### **Method of awarding contracts; approval of contract documents**

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

(b) A duly licensed architect or engineer must approve the contract documents for a public works project.

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

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

##### **Dollar thresholds for bidding; bidding procedure; records**

Sec. 2. (a) Except as provided by this chapter and IC 16-33-4-10, if the estimated cost of a public works project is at least one hundred fifty thousand dollars (\$150,000), the division shall award a contract for the project based on competitive bids.

(b) If the estimated cost of a public works project is at least one hundred fifty thousand dollars (\$150,000), the division shall develop contract documents for a public works contract and keep the contract documents on file in its offices so that they may be inspected by contractors and members of the public.

(c) The division shall advertise for bids under section 8 of this chapter. The director shall award a contract under IC 4-13.6-6.

(d) A contractor shall submit under oath a financial statement as a part of the bid. The director may waive filing of the financial statement.

(e) After bids are opened but before a contract is awarded, the director may require a contractor to submit a statement of the contractor's experience, a proposed plan of performing the work, and a listing of the equipment that is available to the contractor for performance of the work.

(f) The statements required by this section shall be submitted on forms approved by the state board of accounts. The forms shall be based, so far as applicable, on standard questionnaires and financial statements for contractors used in investigating the qualifications of contractors on public construction work.

(g) The division shall reject the bid of a contractor if:

- (1) the estimated cost of the public works project is one hundred fifty thousand dollars (\$150,000) or more and the contractor is not qualified under chapter 4 of this article;

- (2) the estimated cost of the public works project is less than one hundred fifty thousand dollars (\$150,000) and the director makes a written determination, based upon information provided under subsections (d) and (e), that the contractor is not qualified to perform the public works contract;
- (3) the contractor has failed to perform a previous contract with the state satisfactorily and has submitted the bid during a period of suspension imposed by the director (the failure of the contractor to perform a contract satisfactorily must be based upon a written determination by the director);
- (4) the contractor has not complied with a rule adopted under this article and the rule specifies that failure to comply with it is a ground for rejection of a bid; or
- (5) the contractor has not complied with any requirement under section 2.5 of this chapter.

(h) The division shall keep a record of all bids. The state board of accounts shall approve the form of this record, and the record must include at least the following information:

- (1) The name of each contractor.
- (2) The amount bid by each contractor.
- (3) The name of the contractor making the lowest bid.
- (4) The name of the contractor to whom the contract was awarded.
- (5) The reason the contract was awarded to a contractor other than the lowest bidder, if applicable.
- (6) Purchase order numbers.

*As added by P.L.24-1985, SEC.7. Amended by P.L.14-1986, SEC.8; P.L.26-1989, SEC.10; P.L.336-1989(ss), SEC.9; P.L.2-1992, SEC.34; P.L.2-1993, SEC.35; P.L.12-2002, SEC.3; P.L.172-2011, SEC.4.*

#### **IC 4-13.6-5-2.5**

##### **Application of section; sealed bid or quotation submitted by trust**

Sec. 2.5. (a) This section applies whenever a contract is awarded by competitive sealed bidding or acceptance of quotations.

(b) A bid or quotation submitted by a trust (as defined in IC 30-4-1-1(a)) must identify each:

- (1) beneficiary of the trust; and
- (2) settlor empowered to revoke or modify the trust.

*As added by P.L.336-1989(ss), SEC.10.*

#### **IC 4-13.6-5-3**

##### **Projects costing less than \$150,000; quotations from contractors; awards**

Sec. 3. (a) If the estimated cost of a public works project is less than one hundred fifty thousand dollars (\$150,000), the division may award a public works contract either under section 2 of this chapter or under this section, at the discretion of the director.

(b) If the director awards a contract under this section, the division shall invite quotations from at least three (3) contractors

known to the division to deal in the work required to be done. However, if fewer than three (3) contractors are known to the division to be qualified to perform the work, the division shall invite quotations from as many contractors as are known to be qualified to perform the work. Failure to receive three (3) quotations shall not prevent an award from being made.

(c) The division may authorize the governmental body for which the public work is to be performed to invite quotations, but award of a contract based upon those quotations is the responsibility of the division.

(d) Quotations given by a contractor under this section must be in writing and sealed in an envelope, shall be considered firm, and may be the basis upon which the division awards a public works contract.

(e) The division shall award a contract to the lowest responsible and responsive contractor and in accordance with any requirement imposed under section 2.5 of this chapter.

*As added by P.L.24-1985, SEC.7. Amended by P.L.26-1989, SEC.11; P.L.336-1989(ss), SEC.11; P.L.12-2002, SEC.4; P.L.172-2011, SEC.5.*

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

##### **Performance of public works by division or certain state departments**

Sec. 4. (a) If the estimated cost of a public works project is less than one hundred fifty thousand dollars (\$150,000), the division may perform the public work without awarding a public works contract under section 2 of this chapter. In performing the public work, the division may authorize use of equipment owned, rented, or leased by the state, may authorize purchase of materials in the manner provided by law, and may authorize performance of the public work using employees of the state.

(b) The workforce of a state agency may perform a public work described in subsection (a) only if:

(1) the workforce, through demonstrated skills, training, or expertise, is capable of performing the public work; and

(2) for a public works project under subsection (a) whose cost is estimated to be more than one hundred thousand dollars (\$100,000), the agency:

(A) publishes a notice under IC 5-3-1 that:

(i) describes the public work that the agency intends to perform with its own workforce; and

(ii) sets forth the projected cost of each component of the public work as described in subsection (a); and

(B) determines at a public meeting that it is in the public interest to perform the public work with the agency's own workforce.

A public works project performed by an agency's own workforce must be inspected and accepted as complete in the same manner as a public works project performed under a contract awarded after receiving bids.

(c) If a public works project involves a structure, an improvement, or a facility under the control of an agency, the agency may not artificially divide the project to bring any part of the project under this section.

(d) If a public works project involves a structure, improvement, or facility under the control of the department of natural resources, the department of natural resources may purchase materials for the project in the manner provided by law and without a contract being awarded, and may use its employees to perform the labor and supervision, if:

- (1) the department of natural resources uses equipment owned or leased by it; and
- (2) the division of engineering of the department of natural resources estimates the cost of the public works project will be less than one hundred fifty thousand dollars (\$150,000).

(e) If a public works project involves a structure, improvement, or facility under the control of the department of correction, the department of correction may purchase materials for the project in the manner provided by law and use inmates in the custody of the department of correction to perform the labor and use its own employees for supervisory purposes, without awarding a contract, if:

- (1) the department of correction uses equipment owned or leased by it; and
- (2) the estimated cost of the public works project using employee or inmate labor is less than the greater of:
  - (A) fifty thousand dollars (\$50,000); or
  - (B) the project cost limitation set by IC 4-13-2-11.1.

All public works projects covered by this subsection must comply with the remaining provisions of this article, and all plans and specifications for the public works project must be approved by a licensed architect or engineer.

*As added by P.L.24-1985, SEC.7. Amended by P.L.12-2002, SEC.5; P.L.34-2005, SEC.1; P.L.172-2011, SEC.6.*

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

##### **Emergency conditions; quotations from contractors; awards**

Sec. 5. (a) When the commissioner makes a written determination that an emergency condition exists due to fire, flood, windstorm, casualty, or other condition (including mechanical failure of any part of a building or structure), and the emergency condition endangers the health, safety, or welfare of the public or necessary governmental operations, the division may act to repair any damage caused by the emergency condition without awarding a public works contract under section 2 of this chapter.

(b) In the case of an emergency described in subsection (a), the division shall invite quotations from at least three (3) contractors known to the division to deal in the work required to be done if the division can do so without jeopardizing successful repair. However, if fewer than three (3) contractors are known to the division to be qualified to perform the work, the division shall invite quotations

from as many contractors as are known to be qualified to perform the work. Failure to receive three (3) quotations shall not prevent an award from being made.

(c) The division shall keep a copy of the commissioner's determination and the names of the contractors from whom quotations were invited in the division's files.

(d) The division shall award a contract to the lowest responsible and responsive contractor. However, the division may award a contract to a contractor not qualified under IC 4-13.6-4, if necessary to remedy the emergency condition.

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

#### **IC 4-13.6-5-6**

##### **Maintenance services contracts**

Sec. 6. The division may award a contract for maintenance services for a system that is part of a public building, improvement, or other structure without inviting bids under section 2 of this chapter. The division may award a contract for those services to the manufacturer of the system or to a person recommended by the manufacturer of the system. A contract may be awarded under this section only upon a written determination by the commissioner that:

- (1) the manufacturer of the system, or the person recommended by the manufacturer, has knowledge of the system unlikely to be shared by other persons potentially able to bid to provide the maintenance services; and
- (2) the savings to the state that might be obtained by inviting bids for the maintenance services do not outweigh the benefits that the state would gain by awarding a contract to the manufacturer of the system or to a person recommended by the manufacturer of the system.

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

#### **IC 4-13.6-5-7**

##### **Land acquisition; professional services**

Sec. 7. (a) Competitive bids are not required for the acquisition of land or for professional services relating to public works projects. In awarding contracts for professional services relating to public works projects, the director shall submit a recommendation to the commissioner, who shall award a contract.

(b) In making a recommendation to the commissioner, the director shall consider only the competence and the qualifications of the persons offering to perform the professional services in relation to the type of services to be performed. The department shall negotiate compensation for performance of the professional services that the commissioner determines is reasonable.

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

#### **IC 4-13.6-5-8**

##### **Solicitation of sealed bids; public notice**

Sec. 8. (a) This section applies only to public works contracts bid

under section 2 of this chapter.

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

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

The commissioner shall designate the newspapers for these publications. The commissioner may designate different newspapers according to the nature of the project and may direct that additional notices be published.

(c) The division shall also solicit sealed bids for public works projects by:

- (1) sending notices by mail to prospective contractors known to the division;
- (2) posting notices on a public bulletin board in its office; and
- (3) providing electronic access to notices through the computer gateway administered by the office of technology established by IC 4-13.1-2-1;

at least seven (7) days before the final date for submitting bids for the public works project.

*As added by P.L.24-1985, SEC.7. Amended by P.L.26-1989, SEC.12; P.L.251-1999, SEC.2; P.L.177-2005, SEC.10.*

#### **IC 4-13.6-5-9**

##### **Copies of bids or quotations; files; public records**

Sec. 9. (a) In order to preserve the integrity of bids or quotations, the division shall make a copy of each bid or quotation as soon as possible after the bids or quotations are opened and before they may be inspected and copied by the public under IC 5-14-3. In making these copies, the division is required to copy only those portions of the bids or quotations which, if altered, would affect the integrity of the bid or quotation. The division may make these copies by means of microfilm or by any other means that the commissioner may specify.

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

(c) The copies required by subsection (a) and the files required by subsection (b) are public records under IC 5-14-3. The division shall retain these copies and files according to retention schedules established for these records under IC 5-15-5.1.

(d) This section is subject to IC 4-13.6-2-9.

*As added by P.L.24-1985, SEC.7. Amended by P.L.18-1991, SEC.15.*

#### **IC 4-13.6-5-10**

##### **Commencement of warranty period**

Sec. 10. Each public works contract must require that all warranty

periods applying to work performed under the contract commence no later than the date that work under the contract is substantially completed.

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

#### **IC 4-13.6-5-10.5**

##### **Plumbing installations; proof of licensure**

Sec. 10.5. A person who submits a bid for a public works contract under this chapter that involves the installation of plumbing must submit evidence that the person is a licensed plumbing contractor under IC 25-28.5-1.

*As added by P.L.20-1991, SEC.1.*

#### **IC 4-13.6-5-11**

##### **Void contracts**

Sec. 11. All public works contracts not let in conformity with this chapter are void.

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

#### **IC 4-13.6-5-12**

##### **Trench safety systems; cost recovery**

Sec. 12. (a) This section applies to a public works project that may require creation of a trench of at least five (5) feet in depth.

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

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

- (1) as a separate pay item; or
- (2) in the pay item of the principal work with which the safety systems are associated.

*As added by P.L.26-1989, SEC.14.*