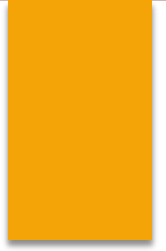




# ALL YOU NEED TO KNOW ABOUT PUBLIC PURCHASES AND PUBLIC WORKS PROJECTS

ITA ANNUAL MEETING  
INDIANAPOLIS, IN  
SEPTEMBER 20, 2016

# Public Purchases



# Public Purchases

- ▶ Applicability –
  - ▶ IC 5-22-1-1 says except the purchases specifically mentioned in this chapter, the article applies to every expenditure of public funds by a governmental body.
  - ▶ Exceptions – IC 5-22-3 provides the purchases that do not have to meet public purchase requirements. Such as: Public Works Projects, Contracts between governmental bodies, Collective bargaining agreements, Labor contracts with employees, Investments of public funds, etc.
- ▶ Definitions –
  - ▶ “Purchase” – includes buy, procure, rent, lease, or otherwise acquire.
  - ▶ “Purchasing agency” – a governmental body that is authorized to enter into contracts by this article, rules adopted under this article, or by another law.
  - ▶ “Purchasing agent” – an individual authorized by a purchasing agency to act as an agent for the purchasing agency in the administration of the duties of the purchasing agency.

# Public Purchases (continued)

- ▶ IC 5-22-3-3 says that a governmental body can create rules that regulate purchases of the governmental body. However, it can't be inconsistent with other statutory requirements. Rules can be written to apply for all purchases generally or to specific purchases.
- ▶ The Uniform Guidance now requires local governmental units to have written purchasing procurement policies for the expenditure of federal grants.

# Public Purchases (continued)

- ▶ IC 5-22-6-1 says a purchasing agency may purchase services using any procedure that the governmental body considers appropriate.
- ▶ IC 5-22-2-30 defines “Services” as the furnishing of labor, time, or effort by a person, not involving the delivery of specific supplies other than printed documents or other items that are merely incidental to the required performance.
  - ▶ Examples would include: fire protection and cemetery care (mowing).

# Public Purchases (continued)

- ▶ Purchases below \$50,000:
  - ▶ IC 5-22-8-2 says that the purchase agency may establish purchasing policies for small purchases.
- ▶ Purchases between \$50,000 and \$150,000
  - ▶ IC 5-22-8-3 says that a purchasing agent has to invite at least three quotes from persons known to deal in the line of supplies to be purchased.
  - ▶ Invitation for quotes must be mailed at least seven days before the time fixed to receive quotes
  - ▶ Contract must be awarded to the lowest responsible an responsive quoter or can reject all quotes.

# Public Purchases (continued)

- ▶ Purchases that exceed \$150,000:
  - ▶ IC 5-22-7-2 requires an invitation for bids. Bids must include a description, all contractual terms and conditions, a statement of bid evaluation criteria; time and place the bids will be opened; a statement concerning whether the bid must be accompanied by a certified check or other evidence of financial stability; and a statement in concerning the conditions in which a bid may be rejected.
  - ▶ IC 5-22-7-5 requires a notice to be published in accordance with IC 5-3-1. Two times at least one week apart, with the second publication at least seven days before the bids will be received.
  - ▶ IC 5-22-7-6 requires bids to be opened publicly in the presence of one or more witnesses at the time and place published in the notice.

# Public Purchases (continued)

- ▶ Purchases that exceed \$150,000: (continued)
  - ▶ IC 5-22-7-7 says bids must be accepted without alteration and evaluated based on the requirements stated in the invitation.
  - ▶ IC 5-22-7-8 says that a contract must be awarded to the lowest and responsive bidder.
  - ▶ IC 5-22-7-9 requires the Township to maintain the following: name of each bidder; amount of each bid; any other information required by 5-22. It also says that all the required information is subject to public inspection after the contract is awarded.



# Public Purchases (continued)

19-27

## SAMPLE SUGGESTED FORMAT

### Checklist for Invitation for Bids

Type of Supply \_\_\_\_\_

Requesting Agency \_\_\_\_\_

\_\_\_\_\_ Purchase Description

\_\_\_\_\_ Evaluation Criteria to Be Used (Circle Selections)

Inspection  
Testing  
Quality  
Workmanship  
Delivery  
Requirements Imposed on Trusts

\_\_\_\_\_ Applicable Contract Terms and Conditions

\_\_\_\_\_ Time and Place for Opening Bid

\_\_\_\_\_ Evidence of Financial Responsibility Required? (Circle Selection)

Certified Check  
Bid Bond  
Other \_\_\_\_\_ (specify)

\_\_\_\_\_ Performance Bond Required?

\_\_\_\_\_ Statement of Conditions Under Which Invitation May Be Canceled

\_\_\_\_\_ Statement of Conditions Under Which Bid May Be Rejected in Whole or in  
Part

\_\_\_\_\_ Notice of Invitation for Bids Published

First Date of Publication \_\_\_\_\_  
Second Date of Publication \_\_\_\_\_

\_\_\_\_\_ Form of Non-Collusion Affidavit

Source: IC 5-22-7-2

# Public Purchases (continued)

- ▶ Special Purchasing Methods:
  - ▶ IC 5-22-10-1 says a purchasing agent may make a purchase under this chapter without soliciting bids or proposals.
  - ▶ IC 5-22-10-2 says that special purchases must be made with as much competition as practicable.
  - ▶ IC 5-22-10-3 says that the Township must maintain a file with a written determination of the basis for the special purchase; and the selection of the specific contractor. Also, records must be kept for a minimum of 5 years that detail the contractor's name, the amount and type of each contract, and a description of the supplies purchased.

# Public Purchases (continued)

## ▶ Special Purchasing Methods: (continued)

- ▶ IC 5-22-10-4: there exists under emergency conditions, a threat to public health, welfare, or safety.
- ▶ IC 5-22-10-5: when there exists a unique opportunity to get substantial savings.
- ▶ IC 5-22-10-6: at an auction.
- ▶ IC 5-22-10-8: necessary to purchase specific compatible equipment or there is only one source that meets reasonable equipment requirements.
- ▶ IC 5-22-10-10: when Township hasn't received a responsive offer under other required purchasing methods.
- ▶ IC 5-22-10-13: when there is a written determination that there is only a single source of the supply.
- ▶ IC 5-22-10-17: acceptance of a gift of supplies.

# Public Purchases (continued)

► Special Purchasing Methods: (continued)

19-30

**SAMPLE  
SUGGESTED FORMAT**

**SPECIAL PURCHASE CONTRACT FILE LIST**

Contract No.	Date of Contract	Contractor Name	Contract Amount	Type of Contract	Description of Supplies	IC Reference Basis for Special Purchase	Basis of Selection of Contractor

Source: IC 5-22-10-3

# Disposal of Surplus Personal Property

- ▶ Surplus Property with estimated value under \$1,000 or Group under \$5,000:
  - ▶ IC 5-22-22-6 says that Township can sell at a public or private sale without advertising.
- ▶ Surplus Property with estimated value over \$1,000 or Group under \$5,000:
  - ▶ IC 5-22-22-4: may engage an auctioneer; advertising must include detailed description of property sold.
  - ▶ IC 5-22-22-4.5: may use Internet auction site approved by the office of technology and linked to the electronic gateway; posting must include a detailed description of property sold.
  - ▶ IC 5-22-22-5: may sell at a public sale or by sealed bids; advertise in accordance with IC 5-3-1; sales must be made to the highest responsible bidder.
- ▶ Worthless Property:
  - ▶ IC 5-22-22-8: worthless property may be demolished or junked; property considered worthless if the value is less than the estimated cost of sale or transportation.

# Disposal of Surplus Personal Property

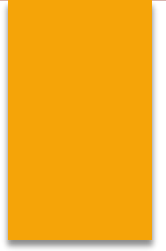
(continued)

- ▶ Exchange of property between governmental units:
  - ▶ IC 5-22-22-10: may sell or transfer property with a governmental body upon terms negotiated between the governmental bodies and adopting identical resolutions.
- ▶ Disposal of Fire Trucks, Emergency service vehicles, and Firefighting or emergency services equipment:
  - ▶ IC 5-22-22-12: Township may transfer title to fire departments for cash, gift, or another arrangement; A fire department located in the same county as the Township has the right of first refusal. If refused the Township can transfer to any fire department.
- ▶ Proceeds generated by the sale or rental of property should be receipted into the fund which originally purchased the property unless otherwise provided by statute. (Township Manual Ch. 22)

# Purchase of Land or Structures

- ▶ Purchases of land and structures with a total price that exceeds \$25,000
  - ▶ IC 36-1-10.5-5 requires the following:
    - ▶ The Township Board to pass a resolution that it is interested in purchasing the land.
    - ▶ The purchasing agent must appoint two appraisers to determine the fair market value.
    - ▶ Appraisals are returned within thirty days and they are kept on record for at least five years.
    - ▶ Purchasing agent must present the appraisals to the Township Board.
  - ▶ IC 36-1-10.5-6 says that the purchase price can not be greater than the average of the two appraisals received.

# Public Works





# Public Works Law

- ▶ Indiana Code 3-1-12

# Definitions

- ▶ Board
  - ▶ Township Board
- ▶ Contractor
  - ▶ Person who is a party to a public work contract with the Board
- ▶ Subcontractor
  - ▶ Person who is a party to a contract with the contractor and furnishes or performs labor on the public work project
- ▶ Property
  - ▶ All personal property, fixtures, furnishings, inventory, equipment, and real property

# Public Works

- ▶ Defined:
  - ▶ Construction, reconstruction, alteration, or renovation of:
    - ▶ Public building
    - ▶ Other structure that is paid for out of a public fund
  - ▶ Includes any public work leased by a Township under a lease containing an option to purchase

# Public Work Projects

- ▶ Small Projects = < \$50,000
- ▶ Quotes for between \$50,000 & \$150,000
- ▶ Bid = >\$150,000

# Small Projects < \$50,000

- ▶ Cost estimated to be less than \$50,000
- ▶ Board must invite quotes from at least 3 persons known to deal in the class of work proposed
  - ▶ Mailing a notice
    - ▶ Stating that plans and specifications are on file
    - ▶ Not less than 7 days before the time fixed for receiving quotes
  - ▶ Board can't required submission of quotes prior to meeting
  - ▶ Meeting for receiving quotes must be open to the public and all quotes must be opened and read aloud
  - ▶ Board must award to lowest responsible and responsive quotes
  - ▶ Board may reject all quotes
    - ▶ May then negotiate and enter into agreements for work on the open market if the reasons for rejecting the quotes are established in writing

# Small Projects < \$50,000 (continued)

- ▶ Board can purchase or lease supplies in accordance with IC 5-22 and perform the public works using its own workforce
  - ▶ Must have a group of employees on staff who are capable of performing the construction, maintenance, and repair of all applicable work
  
- ▶ For purchases that are less than \$25,000, you may solicit quotes by phone or fax and the 7 day waiting period does not apply

# Projects between \$50,000 & \$150,000

- ▶ Cost estimated to between \$50,000 & \$150,000
- ▶ Board must invite quotes from at least 3 persons known to deal in the class of work proposed
  - ▶ Mailing a notice
    - ▶ Stating that plans and specifications are on file
    - ▶ Not less than 7 days before the time fixed for receiving quotes
  - ▶ Board can't required submission of quotes prior to meeting
  - ▶ Meeting for receiving quotes must be open to the public and all quotes must be opened and read aloud
  - ▶ Board must award to lowest responsible and responsive quotes
  - ▶ Board may reject all quotes

# Alternate Procedures

- ▶ Alternate Procedures for Projects costing less than \$150,000
  - ▶ Applies to a public work for the routine operation, repair, or maintenance of existing structures, buildings, or real property
  - ▶ May award a contact for public work in accordance with IC 5-22



# Projects > \$150,000

- ▶ Board must prepare general plans and specifications
  - ▶ Must avoid specifications which might unduly limit competition
- ▶ Board must file the plans and specifications in a place reasonably accessible to the public
- ▶ Board must public notice in accordance with IC 5-3-1 calling for sealed proposals
  - ▶ Notice must state the time and place fixed for receiving bids
  - ▶ If less than \$25,000,000, then notice must be at least 6 weeks prior to opening
  - ▶ If more than \$25,000,000, notice must be at least 10 weeks prior to opening

# Projects > \$150,000 (continued)

- ▶ Board shall require from the submitters:
  - ▶ Financial Statement
  - ▶ Statement of Experience
  - ▶ Proposed plan for performing the public work
  - ▶ Equipment bidder has available
- ▶ Board can't require bid before meeting
  - ▶ Board can delay the opening if:
    - ▶ They make a determination in writing that it is in their best interest
    - ▶ They announce at the originally assigned meeting the new time and place
- ▶ Bid opening meeting has to be a public meeting
  - ▶ Bids must be opened and read aloud

# Projects > \$150,000 (continued)

- ▶ Board must award bid to lowest responsible and responsive bidder
  - ▶ If not awarded to lowest bid, board must state in the minutes at the time the award is made the factors used to determine which bidder is the lowest responsive and responsible bidder and to justify the award
- ▶ Board can reject all bids

# Projects > \$150,000 (continued)

- ▶ In determining if a bidder is responsive, Board may consider the following:
  - ▶ Whether the bid submitted conforms in all material respects to the specifications
  - ▶ Whether the bid submitted complied specifically with the invitation to bid and the instructions to bidders
  - ▶ Whether the bidder has complied with all applicable statutes, ordinances, resolutions, and rules pertaining to the award of a public contract

# Projects > \$150,000 (continued)

- ▶ In determining if a bidder is responsible, Board may consider the following:
  - ▶ The ability and capacity of the bidder to perform the work
  - ▶ The integrity, character, and reputation of the bidder
  - ▶ The competence and experience of the bidder

# Projects > \$150,000 (continued)

- ▶ Board shall required the bidder to submit an affidavit:
  - ▶ That the bidder has not entered into a combination or agreement
    - ▶ Relative to the price to be bid by a person
    - ▶ To prevent a person from bidding
    - ▶ To induce a person to refrain from bidding
  - ▶ That the bidder's bid is made without reference to any other bid

# Projects > \$150,000 (continued)

- ▶ A bond or certified check must be filed with each bid in the amount determined and specified by the board if the cost is estimated to exceed \$200,000
  - ▶ If it is less than \$200,000, a bond or certified check can be required if added to the plans and specifications by the board
- ▶ Amount may not be set at more than 10% of the contract price
- ▶ Must be made payable to the Township
- ▶ Checks of unsuccessful bidders shall be returned to them by the board
- ▶ Checks of the successful bidder must be held until delivery of the performance bond

# Miscellaneous Notes

- ▶ When Board awards contract, they must provide the successful bidder a Notice to Proceed within 60 days
  - ▶ EXCEPTION: If bonds are being issued in conjunction with the project, this 60 day limit is increased
  - ▶ If the Board fails to do this, the bidder may reject the contract and withdraw their bid (they must do this within 15 days after the 60 day limit)
- ▶ Public Work performed or contracted for on a public building which is more than \$100,000, may be undertaken by the board only in accordance with plans and specifications approved by an architect or engineer



# Miscellaneous Notes (continued)

- ▶ All plans and specifications for public buildings must be approved by the state department of health, the division of fire and building safety, and other state agencies designated by statute
- ▶ Within 60 days after completion, a complete set of final record drawings must be filed by the Board with the division of fire and building safety for project on public buildings in excess of \$100,000

# Emergencies

- ▶ Upon declaration of Emergency (which must be declared in the minutes of the board), the Board may contract for a public work project without advertising for bids if bids or quotes are invited from at least 2 persons known to deal in the public work required. Minutes must show the names of the persons invited to bid or quote.

# Public Work by own Workforce

- ▶ If:
  - ▶ Less than \$250,000
    - ▶ Includes:
      - ▶ Actual costs of materials, labor, equipment, and rental
      - ▶ Reasonable rate for use of trucks and heavy equipment owned
      - ▶ All other expenses incidental to the performance of the project
    - ▶ Township has its own workforce who are capable of performing the:
      - ▶ Construction
      - ▶ Maintenance
      - ▶ Repair
- ▶ Then the Township can perform the public work with their own workforce, without going through the bidding/quoting process