

STATE BOARD OF ACCOUNTS
302 West Washington Street
Room E418
INDIANAPOLIS, INDIANA 46204-2769

SUPPLEMENTAL COMPLIANCE REPORT

OF

CITY OF BICKNELL

KNOX COUNTY, INDIANA

January 1, 2018 to December 31, 2021



FILED
02/27/2023

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SCHEDULE OF OFFICIALS

<u>Office</u>	<u>Official</u>	<u>Term</u>
Clerk-Treasurer	Rebecca L. McGlone Rebecca L. Nickless	01-01-18 to 12-31-19 01-01-20 to 12-31-22
Mayor	Thomas L. Estabrook	01-01-18 to 12-31-22
President of the Board of Public Works	Thomas L. Estabrook	01-01-18 to 12-31-22
President Pro Tempore of the Common Council	Richard R. Byrer	01-01-18 to 12-31-22
Superintendent of Water Utility	Earl E. Horst	01-01-18 to 12-31-22
Superintendent of Wastewater Utility	William E. Soltwedel	01-01-18 to 12-31-22



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TO: THE OFFICIALS OF THE CITY OF BICKNELL, KNOX COUNTY, INDIANA

This report is supplemental to our audit report of the City of Bicknell (City), for the period from January 1, 2018 to December 31, 2021. It has been provided as a separate report so that the reader may easily identify any Audit Results and Comments that pertain to the City. It should be read in conjunction with our Financial Statements Audit Report of the City, which provides our opinions on the City's financial statements. This report may be found at www.in.gov/sboa/.

As authorized under Indiana Code 5-11-1, we performed procedures to determine compliance with applicable Indiana laws and uniform compliance guidelines established by the Indiana State Board of Accounts. The Audit Result and Comment contained herein describes the identified reportable instance of noncompliance found as a result of these procedures. Our tests were not designed to identify all instances of noncompliance; therefore, noncompliance may exist that is unidentified.

Any Official Response to the Audit Result and Comment, incorporated within this report, was not verified for accuracy.

Beth Kelley, CPA, CFE
Deputy State Examiner

December 1, 2022

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BOARD OF PUBLIC WORKS
CITY OF BICKNELL

BOARD OF PUBLIC WORKS
CITY OF BICKNELL
AUDIT RESULT AND COMMENT

PROCUREMENT AND CONTRACTS

Condition and Context

Under the City's purchasing policy, all department purchases over \$1,000 are to be presented to the Board of Public Works (BOW) for approval. However, the City has also adopted a policy relating to the unsafe building law that would allow the Mayor to approve purchases up to \$10,000 without the BOW approval.

According to the City's records, they incurred the following expenses for demolition totaling \$52,500 in 2018, \$53,600 in 2019, \$41,500 in 2020, and \$69,500 in 2021 all pursuant to the unsafe building law (Expenditures Group #1). The list of projects for demolition were approved by the BOW at its monthly meetings. However, the City did not obtain any bids or quotes for these projects, nor did they enter into any contract with the vendor to evidence the scope of work to be performed.

In addition, the City made payments to the same vendor during the audit period for brush pile clean up, purchase of rock, etc. No bids, quotes, or contracts for these expenditures were presented for audit (Expenditures Group #2). Additionally, these expenditures totaled over the City's \$1,000 purchasing policy threshold and were not presented to the BOW for approval.

The City asserts all of the previous expenditures were made pursuant to the Unsafe building law, and, therefore, it was permissible to not obtain bids, quotes, or contracts. We disagree.

Specifically, as it relates to Expenditures Group #1, if the unsafe building law applies, the City did not follow any of the procurement procedures listed in Indiana Code 36-7-9-11. Specifically, they did not do any of the following: use their own workforce, let out a public bid to contract, or have the work performed by someone who has been awarded a base bid contract. Therefore, we have found the expenditures of these funds non-compliant not only with SBOA Uniform Compliance Standards, but the required Indiana Code provisions.

We were unable to determine, from the information presented, if Expenditures in Group #2 were related to any other on-going project under the unsafe building law. Therefore, these expenditures are not only non-compliant with Uniform Compliance Guidelines and Indiana Code, but also with City policy as they were over \$1,000 and did not go to the BOW for approval.

Criteria

Indiana Code 5-22-1-1 states: "Except as provided in this chapter, this article applies to every expenditure of public funds by a governmental body."

Indiana Code 5-22-1-3 states:

"(a) Except as provided in subsection (b), this article does not apply to the following types of activities:

- (1) A contract between governmental bodies except for a contract authorized under this article.
- (2) A public works project.
- (3) A collective bargaining agreement between a governmental body and its employees.

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(Continued)

- (4) The employment relationship between a governmental body and an employee of the governmental body.
 - (5) An investment of public funds.
 - (6) A contract between a governmental body and a body corporate and politic.
 - (7) A contract for social services.
 - (8) A contract with a body corporate and politic."
- (b) [IC 5-22-3-7](#) applies to any:
- (1) contract;
 - (2) project;
 - (3) agreement;
 - (4) employment relationship; or
 - (5) investment;

described in subsection (a)."

Indiana Code 5-22-6-1 states: "The purchasing agency of a governmental body may purchase services using any procedure the governmental body or the purchasing agency of the governmental body considers appropriate."

Indiana Code 5-22-6-1 states: "The purchasing agency of a governmental body may purchase services using any procedure the governmental body or the purchasing agency of the governmental body considers appropriate."

Indiana Code 5-22-6-2 states:

"(a) A governmental body may adopt rules governing the purchase of services for the governmental body.

(b) The purchasing agency of a governmental body may establish policies regarding the purchase of services for the governmental body."

Indiana Code 36-1-12-1 states:

"(a) Except as provided in this section, this chapter applies to all public work performed or contracted for by:

- (1) political subdivisions; and
- (2) their agencies; regardless of whether it is performed on property owned or leased by the political subdivision or agency.

BOARD OF PUBLIC WORKS
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AUDIT RESULT AND COMMENT
(Continued)

(b) This chapter does not apply to an officer or agent who, on behalf of a municipal utility or a conservancy district described in [IC 14-33-1-1\(a\)\(4\)](#) or [IC 14-33-1-1\(a\)\(5\)](#), maintains, extends, and installs services of the utility or district if the necessary work is done by the employees of the utility or district.

(c) This chapter does not apply to hospitals organized or operated under [IC 16-22-1](#) through [IC 16-22-5](#) or [IC 16-23-1](#), unless the public work is financed in whole or in part with cumulative building fund revenue.

(d) This chapter does not apply to tax exempt Indiana nonprofit corporations leasing and operating a city market owned by a political subdivision.

(e) As an alternative to this chapter, the governing body of a political subdivision or its agencies may do the following:

- (1) Enter into a design-build contract as permitted under [IC 5-30](#).
- (2) Participate in a utility efficiency program or enter into a guaranteed savings contract as permitted under [IC 36-1-12.5](#).

(f) This chapter does not apply to a person that has entered into an operating agreement with a political subdivision or an agency of a political subdivision under [IC 5-23](#).

(g) This chapter does not apply to the extension or installation of utility infrastructure by a private developer of land if all the following apply:

- (1) A municipality will acquire for the municipality's municipally owned utility all of the utility infrastructure that is to be extended or installed.
- (2) Not more than fifty percent (50%) of the total construction costs for the utility infrastructure to be extended or installed, including any increased costs that result from any construction specifications that:
 - (A) are required by the municipality; and
 - (B) specify a greater service capacity for the utility infrastructure than would otherwise be provided for by the private developer;

will be paid for out of a public fund or out of a special assessment.

- (3) The private developer agrees to comply with all local ordinances and engineering standards applicable to the construction, extension, or installation of the utility infrastructure."

Indiana Code 36-1-12-1.2 states:

"The following definitions apply throughout this chapter:

- (1) 'Board' means the board or officer of a political subdivision or an agency having the power to award contracts for public work.

BOARD OF PUBLIC WORKS
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AUDIT RESULT AND COMMENT
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- (2) 'Contractor' means a person who is a party to a public work contract with the board.
- (3) 'Subcontractor' means a person who is a party to a contract with the contractor and furnishes and performs labor on the public work project. The term includes material men who supply contractors or subcontractors.
- (4) 'Escrowed income' means the value of all property held in an escrow account over the escrowed principal in the account.
- (5) 'Escrowed principal' means the value of all cash and securities or other property placed in an escrow account.
- (6) 'Operating agreement' has the meaning set forth in [IC 5-23-2-7](#).
- (7) 'Person' means any association, corporation, limited liability company, fiduciary, individual, joint venture, partnership, sole proprietorship, or any other legal entity.
- (8) 'Property' means all:
 - (A) personal property, fixtures, furnishings, inventory, and equipment; and
 - (B) real property.
- (9) 'Public fund' means all funds that are:
 - (A) derived from the established revenue sources of a political subdivision or an agency of a political subdivision; and
 - (B) deposited in a general or special fund of a municipal corporation, or another political subdivision or agency of a political subdivision.

The term does not include funds received by a person under a duly authorized public-private agreement under [IC 5-23](#) or proceeds of bonds payable exclusively by a private entity.
- (10) 'Retainage' means the amount to be withheld from a payment to the contractor or subcontractor until the occurrence of a specified event.
- (11) 'Specifications' means a description of the physical characteristics, functional characteristics, extent, or nature of any public work required by the board.
- (12) 'Substantial completion' refers to the date when the construction of a structure is sufficiently completed, in accordance with the plans and specifications, as modified by any complete change orders agreed to by the parties, so that it can be occupied for the use for which it was intended."

BOARD OF PUBLIC WORKS
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AUDIT RESULT AND COMMENT
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Indiana Code 36-1-12-2 states:

"(a) As used in this chapter, 'public work' means the construction, reconstruction, alteration, or renovation of a public building, airport facility, or other structure that is paid for out of a public fund or out of a special assessment. The term includes the construction, alteration, or repair of a highway, street, alley, bridge, sewer, drain, or other improvement that is paid for out of a public fund or out of a special assessment. The term also includes any public work leased by a political subdivision under a lease containing an option to purchase.

(b) The term does not include work involved in an extension or installation of utility infrastructure described in section 1(g) of this chapter."

Indiana Code 36-1-12-4.7 states:

"(a) This section applies whenever a public work project is estimated to cost at least fifty thousand dollars (\$50,000) and less than one hundred fifty thousand dollars (\$150,000).

(b) The board must proceed under the following provisions:

- (1) The board shall invite quotes from at least three (3) persons known to deal in the class of work proposed to be done by mailing them a notice stating that plans and specifications are on file in a specified office. The notice must be mailed not less than seven (7) days before the time fixed for receiving quotes.
- (2) The board may not require a person to submit a quote before the meeting at which quotes are to be received. The meeting for receiving quotes must be open to the public. All quotes received shall be opened publicly and read aloud at the time and place designated and not before.
- (3) The board shall award the contract for the public work to the lowest responsible and responsive quoter.
- (4) The board may reject all quotes submitted."

Indiana Code 36-1-12-4.9 states:

"(a) This section applies to a public work for the routine operation, routine repair, or routine maintenance of existing structures, buildings, or real property if the cost of the public work is estimated to be less than one hundred fifty thousand dollars (\$150,000).

(b) The board may award a contract for public work described in subsection (a) in the manner provided in [IC 5-22](#)."

Indiana Code 36-1-12-5 states:

"(a) This section applies whenever a public work project is estimated to cost less than fifty thousand dollars (\$50,000). Except as provided in subsection (g) for local boards of aviation commissioners and local airport authorities, if a contract is to be awarded, the board may proceed under section 4 of this chapter or under subsection (b) or (c).

BOARD OF PUBLIC WORKS
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- (b) The board must proceed under the following provisions:
- (1) The board shall invite quotes from at least three (3) persons known to deal in the class of work proposed to be done by either of the following:
 - (A) Mailing them a notice stating that plans and specifications are on file in a specified office. The notice must be mailed not less than seven (7) days before the time fixed for receiving quotes. The board may not require a person to submit a quote before the meeting at which quotes are to be received. The meeting for receiving quotes must be open to the public. All quotes received shall be opened publicly and read aloud at the time and place designated and not before.
 - (B) Soliciting at least three (3) quotes by telephone, facsimile transmission, or electronic mail. The seven (7) day waiting period required by clause (A) does not apply to quotes solicited under this clause. A quote received under this clause shall be reported to the board during the public meeting at which the contract is considered. The name of each person submitting a quote, and the amount of each quote, shall be read aloud at the public meeting.
 - (2) The board shall award the contract for the public work to the lowest responsible and responsive quoter.
 - (3) The board may reject all quotes submitted.
 - (4) If the board rejects all quotes under subdivision (3), the board may negotiate and enter into agreements for the work in the open market without inviting or receiving quotes if the board establishes in writing the reasons for rejecting the quotes.
- (c) The board may not proceed under subsection (b) for the resurfacing (as defined in [IC 8-14-2-1](#)) of a road, street, or bridge, unless:
- (1) the weight or volume of the materials in the project is capable of accurate measurement and verification; and
 - (2) the specifications define the geographic points at which the project begins and ends.
- (d) For the purposes of this section, if contiguous sections of a road, street, or bridge are to be resurfaced in a calendar year, all of the work shall be considered to comprise a single public work project.
- (e) The board may purchase or lease supplies in the manner provided in [IC 5-22](#) and perform the public work by means of its own workforce without awarding a public work contract.
- (f) Before the board may perform any work under this section by means of its own workforce, the political subdivision or agency must have a group of employees on its staff who are capable of performing the construction, maintenance, and repair applicable to that work.

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(g) This subsection applies to local boards of aviation commissioners operating under [IC 8-22-2](#) and local airport authorities operating under [IC 8-22-3](#). If the contract is to be awarded by a board to which this subsection applies, or to a designee of the board under subsection (h), the board or its designee may proceed under section 4 of this chapter or under the following provisions. The board or its designee may invite quotes from at least three (3) persons known to deal in the class of work proposed to be done by mailing the persons a copy of the plans and specifications for the work not less than seven (7) days before the time fixed for receiving quotes. If the board or its designee receives a satisfactory quote, the board or its designee shall award the contract to the lowest responsible and responsive quoter for the class of work required. The board or its designee may reject all quotes submitted and, if no valid quotes are received for the class of work, contract for the work without further invitations for quotes.

(h) The board may delegate its authority to award a contract for a public works project that is estimated to cost less than fifty thousand dollars (\$50,000) to the airport personnel in charge of airport public works projects."

Indiana Code 36-7-9-11 states in part:

"(a) The work required by an order of the enforcement authority may be performed in the following manner:

- (1) If the work is being performed under an order other than an order under section 5(a)(2), 5(a)(3), or 5(a)(4) of this chapter, and if the cost of this work is estimated to be less than ten thousand dollars (\$10,000), the department, acting through the unit's enforcement authority or other agent, may perform the work by means of the unit's own workers and equipment owned or leased by the unit. Notice that this work is to be performed must be given to all persons with a known or recorded substantial property interest, in the manner prescribed in subsection (c), at least ten (10) days before the date of performance of the work by the enforcement authority. This notice must include a statement that an amount representing a reasonable estimate of the cost incurred by the enforcement authority in processing the matter and performing the work may, if not paid, be recorded after a hearing as a lien against all persons having a fee interest, life estate interest, or equitable interest of a contract purchaser in the unsafe premises.
- (2) If the work is being performed under an order other than an order under section 5(a)(2), 5(a)(3), or 5(a)(4) of this chapter, and if the estimated cost of this work is ten thousand dollars (\$10,000) or more, this work must be let at public bid to a contractor licensed and qualified under law. The obligation to pay costs imposed by section 12 of this chapter is based on the condition of the unsafe premises at the time the public bid was accepted. Changes occurring in the condition of the unsafe premises after the public bid was accepted do not eliminate or diminish this obligation.

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- (3) If the work is being performed under an order issued under section 5(a)(2), 5(a)(3), or 5(a)(4) of this chapter, the work may be performed by a contractor who has been awarded a base bid contract to perform the work for the enforcement authority, or by the department, acting through the unit's enforcement authority or other governmental agency and using the unit's own workers and equipment owned or leased by the unit. Work performed under an order issued under section 5(a)(2), 5(a)(3), or 5(a)(4) of this chapter may be performed without further notice to the persons holding a fee interest, life estate interest, or equitable interest of a contract purchaser, and these persons are liable for the costs incurred by the enforcement authority in processing the matter and performing the work, as provided by section 12 of this chapter. . . ."

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SBOA
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February 23, 2023

Re: City of Bicknell's Second Official Response

To Whom It Concerns:

I am in receipt of SBOA's Draft City of Bicknell Audit Result and Comment-Procurement and Contracts. That document is enclosed. The City's response to that document dated December 5, 2022, is also enclosed. Finally, on February 16, 2023, the City received a Revised Draft Report from SBOA. This correspondence is the City's reply to that Revised Draft Report.

The SBOA's Revised Draft Report contains multiple factual inaccuracies and incorrect and incomplete analysis of the law. This response will address each.

In the Revised Draft Report's first paragraph, the Report contains one sentence that is unclear and a second that is incorrect. First the report states, "Under the City's purchasing policy all department purchases over \$1,000 are to be presented to the Board of Public Works for approval." This sentence fails to mention that the Board of Public Works approves every purchase of any amount before that purchase is paid.

The second sentence in the Revised Draft Report's first paragraph states, "However, the City has also adopted a policy relating to the unsafe building law that would allow the Mayor to approve purchases up to \$10,000 without BOW approval." This sentence is absolutely incorrect. No orders for demolition, not even emergency orders, are given without BOW approval. No

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payments for demolition, for any amount, are made without BOW approval.

In the Revised Draft Report's second paragraph, the SBOA fails to clarify that the dollar amounts mentioned for the respective years represent the total amounts spent over the entire year for demolition. These houses were not part of a single demolition project. Each is addressed individually by the BOW with its own hearing and order. The City has no way to know which houses over the course of a year will be repaired to some satisfactory level by the owner, which will catch fire and need emergency action to remove for public safety, and which will deteriorate to a level that will require demolition. For example, eight structures were demolished in 2020. One structure was demolished January 31 for \$5,000, one demolished March 4 for \$3,000, one demolished June 19 for \$7,000, one demolished August 17 for \$7,000, one demolished August 29 for \$7,000, one demolished September 28 for \$4,000, one demolished October 8 for \$2,000, and one demolished November 30 for \$6,500.

In this same paragraph, the SBOA states, "However, the City did not obtain any bids or quotes for these projects, nor did they enter into any contract with the vendor to evidence the scope of work to be performed." This statement ignores the Unsafe Building Law. IC 36-7-9-11(a)(2) only requires bids or quotes if the cost for the demolition of the structure is \$10,000 or more. The statute does not dictate a procedure for a demolition that costs less than \$10,000.

In the Revised Draft Report's third paragraph, the SBOA discusses an annual brush pile clean up that cost \$8,000 per year and the periodic purchase of rock (four to ten times per year at a per occurrence cost of \$500 to \$900 per time). These are two different kinds of purchases- and both were approved by the BOW before payment was made. The brush pile clean up was a service, not the purchase of a supply. As a service, it has no procedure requirement and is governed by IC 5-22-6-1 and Stuller v. Daniels, 869 N.E.2d 1199 (Ind. App. 2007), where the

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Court of Appeals found no requirement for bidding despite that the services in question were valued at more than \$95 million. Regarding the purchases of rock mentioned in that paragraph, these dollar amounts are well under IC 5-22-8's small purchase threshold and does not require a quote or bid process.

The Revised Draft Report's fourth paragraph is untrue. The City has never asserted that the City's annual removal of a brush pile or any purchase of rock was made pursuant to the Unsafe Building Law.

The Revised Draft Report's fifth paragraph is an incorrect reading of the statute and a misapplication of the statute. IC 36-7-9-11 does not say a City "shall" use its own workforce, let out a bid, or have the work performed by someone who has been awarded a base bid contract. IC 36-7-9-11 says only a City "may" use those methods. The only time a procedure is dictated by that statute is when the cost to demolish the structure is \$10,000 or more.

The Revised Draft Report's sixth paragraph is untrue in that it alleges any payments were ever made for any amount without specific BOW approval. Bicknell has not paid for any service or supply without specific BOW approval.

The remainder of the Revised Draft Report includes various sections of the Indiana Code that I fear the SBOA little understands and clearly has misapplied in its above analysis.

At long last, the SBOA identifies IC 5-22-6-1, that states, "The purchasing agency of a governmental body may purchase services using any procedure the governmental body or the purchasing agency of the governmental body considers appropriate." The City agrees with SBOA that this statute is applicable and questions why the SBOA has not used this statute in its flawed above analysis.

As it did in its first draft audit result sent to the City months ago, the SBOA again incorrectly identifies IC 36-1-12 as an applicable statute. And again, this position is as wrong

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as it was two months ago. IC 36-1-12 applies only to “public works.” The demolition of unsafe structures, the annual removal of a city brush pile, and the occasional purchase of rock are not a “public work.” The SBOA included IC 36-1-12-2 in its Revised Draft Report but clearly did not read it. IC 36-1-12-2 defines a “public work” as

“the construction, reconstruction, alteration, or renovation of a public building, airport facility, or other structure that is paid for out of a public fund or out of a special assessment. The term includes the construction, alteration, or repair of a highway, street, alley, bridge, sewer, drain, or other improvement that is paid for out of a public fund or out of a special assessment. The term also includes any public work leased by a political subdivision under a lease containing an option to purchase.”

Finally, the Revised Draft Report includes excerpts from IC 36-7-9-11, the Unsafe Building Law. As discussed above regarding the Revised Draft Report’s sixth paragraph, IC 36-7-9-11 does not state that a City “shall” use its own workforce, let out a bid, or have the work performed by someone who has been awarded a base bid contract.

IC 36-7-9-11(a) says only a City “may” use those methods. The only time a procedure is dictated by that statute is when the cost to demolish the structure is \$10,000 or more as noted in IC 36-7-9-11(a)(2), which the SBOA did cite in its Revised Draft Report but apparently did not read. Thank you for your attention to these matters.

/s/ Michael D. Edwards
Bicknell City Attorney

BOARD OF PUBLIC WORKS
CITY OF BICKNELL
EXIT CONFERENCE

The contents of this report were discussed on December 1, 2022, with Rebecca L. Nickless, Clerk-Treasurer; Thomas L. Estabrook, Mayor; Ruth DeCoursey, Utility Clerk; and Timothy R. Miller, Common Council member.