

The background features a large, faint watermark of the Seal of the State Board of Accounts of Indiana. The seal is circular and contains a central torch, surrounded by a ring of stars. The text "STATE BOARD OF ACCOUNTS" is written around the perimeter, and "INDIANA" is written across the top. The seal is rendered in a light gray color.

I-ASBO Purchasing Seminar

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Public Works Law
IC 36-1-12



- “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.”

Public Work Projects



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

Small Project < \$50,000
IC 36-1-12-5



- Board must invite quotes from at least 3 persons known to deal in the class of work proposed.
 - Must mail a notice stating the plans and specifications are on file in a specified office at least 7 days before receiving quotes.
- Meeting to receive quotes must be open to the public and read aloud.
 - Cannot require quotes to be submitted before meeting.

Small Project < \$50,000
IC 36-1-12-5



- Solicit at least 3 quotes by telephone, fax, or electronic mail
 - 7 day waiting period does not apply to this clause
 - Quotes 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

Small Project < \$50,000
IC 36-1-12-5



- Board shall award the contract for the public work to the lowest responsible and responsive bidder
- Board may reject all quotes

Small Project < \$50,000
IC 36-1-12-5



- If board rejects all quotes
 - May negotiate and enter into agreements for the work on the open market without inviting or receiving quotes
 - The board must establish in writing the reasons for rejecting the quotes

Small Projects < \$50,000
IC 36-1-12-5



- 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

Projects between \$50,000 & \$150,000
IC 36-1-12-4.5



- Board must invite quotes from at least 3 persons known to deal in the class of work proposed.
 - Must mail a notice stating plans and specifications are on file in a specified office at least 7 days before time fixed for receiving quotes.
- Meeting to receive quotes must be open to the public and read aloud.
 - Cannot require quotes to be submitted before meeting.
- Must award to lower responsible and responsive bidder.
 - **May reject all quotes if documented reasons for rejecting.**

Alternative Procedures
IC 36-1-12-4.9



- 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 that may limit competition.
 - Plans must be filed in a public location.
- Public notice of sealed bids.
 - Must state time and place.
 - If < \$25,000,000 notice **must be at least 6 weeks** before opening.
 - If > \$25,000,000 notice **must be at least 10 weeks** before opening.
- **Items required** from submitters:
 - Financial Statements, statement of experience, proposed plan, equipment available for use.
 - Affidavit that bidder has not agreed to prevent/set/induce bid

Public Works – Miscellaneous items IC 36-1-12-4.5



- Bond or certified check must be filed with each bid if cost of public work is > \$200,000
 - Amount to be set by the board with a 10% maximum
- Bond or certified check may be filed with each bid if cost of public work is < \$200,000
- All checks of unsuccessful bidders shall be returned to them by the board upon selection of successful bidders
- Checks of successful bidders shall be held until delivery of the performance bond

Public Works – Miscellaneous items
IC 36-1-12-6



- Shall award the contract and provide successful bidder with written “Notice to Proceed” within 60 days after the date on which bids are opened
- If GO Bonds are to be sold to finance the construction the board shall allow the bidder 90 days
- If revenue bonds are to be issued to finance the construction the board shall allow the bidder 150 days

Public Works – Miscellaneous items



- Factors to consider in determining whether a bidder has submitted a **responsive** bid – Ind. Code 36-1-12-4(b)(10)
 - Does bid or quote conform in all material respects to the specifications
 - Does bid comply specifically with the invitation to bid and instructions to bidders
 - Does bid comply with all applicable statutes, ordinances, resolutions or rules
- Factors to consider in determining whether a bidder is “**responsible**” – Ind. Code 36-1-12-4(b)(11)
 - Ability and capacity of the bidder to perform the work
 - Integrity, character and reputation of the bidder
 - Competence and experience of bidder

What will auditors be looking for?



- Were Specifications for the project appropriately prepared?
- Was the bid sought through the proper advertisement?
- Was the bid Form 96 used?
- Was contract awarded pursuant to IC 36-1-12?
- Were financial statements provided with the bid? Escrow contract for retainage per IC 36-1-12-14 is intact?
- A performance bond was included with the bid documents?
- A non-collusion affidavit was provided with the bid documents?
- Any change orders were approved and not greater than 20 percent of the original contract amount?



State Purchasing Requirements

SBOA Website Resource Library
Indiana Code Summaries



- <https://www.in.gov/sboa/library/indiana-code-sections/>

Procurement Thresholds*



	<u>Federal \$ amount</u>	<u>State \$ amount</u>
• Small purchase threshold	less than \$10,000	less than \$50,000
• Requirement for Quotes	\$10,000 - \$250,000	\$50,000 - \$150,000
• Requirement for Bid Process	over \$250,000	over \$150,000

Purchases of Services



- IC 5-22-6-1: “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.**”
- IC 5-22-2-30: “Services” means 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.”

Purchase of Supplies – Competitive Bidding



- IC 5-22-2-38: “(a) “**Supplies**” means any property. (b) The term includes equipment, goods, and materials. The term does not include an interest in real property.”
- IC 5-22-7-1: “A purchasing agent **shall follow the procedure described in this chapter** in awarding a contract for supplies, unless another purchasing method is required or authorized by this article.”

Invitation for Bids



- IC 5-22-7-2 Purchasing agent shall issue an invitation for bids.
 - Invitation for bids must include:
 - **A description.**
 - **All contractual terms** and conditions.
 - A statement of the **bid evaluation criteria** including any of the following: Inspection, Testing, Quality, Workmanship, Delivery, Suitability for a purpose. **Criteria must be measurable.**
 - **Time and place** bids will be opened.
 - A statement whether bids must be accompanied by a **certified check other evidence of financial responsibility** that may be imposed in accordance with policies of the governmental body.
 - Conditions under which a bid may be canceled or rejected as specified by IC 5-22-18-2.
- IC 5-22-7-5: “The purchasing agency shall give notice of the invitation for bids in the manner required by IC 5-3-1.”
 - Published two times at least one week apart with the second publication at least seven days prior to the meeting bids will be received.

Receiving bids



- IC 5-22-7-6
 - Bids must be opened publicly at the time and place designated on the invitation for bids.
- IC 5-22-7-7
 - Bids must be accepted without alteration and evaluated based on the requirements provided in the invitation for bids.
- IC 5-22-7-8
 - Contract must be awarded by written notice to the **lowest responsible and responsive bidder**.
- IC 5-22-7-9
 - Purchasing agency **must maintain: the name of each bidder, the amount of each bid, and other information** required by this article and any rules adopted under this article. Information is subject to public inspection after the contract is awarded.

Other Procedures



- 5-22-18-1
 - The purchasing agent may give additional notices if they determine it will increase competition, but the latest publication has to be at least seven days from the deadlines.
- IC 5-22-18-2
 - If the purchasing agent determines it is in the best interest of the governmental unit, then they can cancel a solicitation or reject all offers in whole or in part.
 - The **reasons for the cancellation or rejection must be documented** in the contract file.
- IC 5-22-18-3
 - The governmental body may make a written determination that it is in the best interest to delay the opening.
 - They are required to announce at the original scheduled opening the rescheduled day, time and place.

Small Purchases – Exceptions to Competitive bidding requirements



- IC 5-22-8-2
 - For purchases less than \$50,000 the purchasing agent should follow policies established by the purchasing agency or rules adopted by the governmental body.
- IC 5-22-8-3
 - For purchases of \$50,000 to \$150,000 the purchasing agent should invite three quotes from businesses known to be in the field.
 - The invitation to quote must be mailed at least seven days before the deadline for receiving quotes.
 - The purchasing agent shall award a contract to the lowest and responsive offeror.
 - If the purchasing agent does not receive a quote from a responsible and responsive offeror, then they may proceed under the requirements of IC 5-22-10-10.

Special Purchasing Methods



- IC 5-22-10-1
 - A purchasing agent may make a purchase under this chapter without soliciting bids.
- Some types of specific methods:
 - Emergency Conditions
 - Savings to governmental body
 - Data processing contract or license agreements
 - Compatibility of equipment, accessories, or replacement parts
 - No offer received under other purchasing methods
 - Governmental discounts available
 - Single source for supply

Special Purchasing Methods continued



- IC 5-22-10-3
 - Purchasing agent must keep contract records in a **separate file if they are going to make a special purchase.**
 - Contract file must include the determination for the basis of the special purchase and the basis of selecting the contractor.
 - Records must be maintained for a minimum of five years and include: each contractor's name, the amount and type of contract, and the description of supplies purchased.

Purchase of Land or Structures IC 36-1-10.5



- Applies to the purchase of real property having a total price > \$25,000
- Board shall pass a resolution that it is interested in making a purchase of specified land or a structure
- Appoint 2 appraisers to appraise the fair market value of the land or structure
- Appraisers must return their separate appraisals within 30 days of their appointment
- Copies of both appraisals shall be given to the board

Purchase of Land or Structures
IC 36-1-10.5-6



- Limitation on purchase price
- Purchase price may not be greater than the average of the 2 appraisals received



Federal Purchasing Requirements

Federal Grant Procurement Requirements



- **Uniform Guidance Grants:**

- Must use their own documented procurement procedures
- Must meet the general procurement standards in 2 CFR 200.318
- Must conduct all procurement transactions in a manner providing full and open competition
- Must use the micro-purchase and small purchase methods only for procurements that meet the applicable criteria under 2 CFR 200.320(a) and(b)
- Must use one of three methods when an acquisition exceeds the simplified acquisition threshold
 - Sealed bid method - 2 CFR 200.320(c)
 - Competitive proposals method - 2 CFR 200.320(d)
 - Noncompetitive proposals method - 2 CFR 200.320(e)
- Must perform a cost or price analysis with every procurement in excess of the simplified acquisition threshold, including contract modifications
- Must ensure that every purchase order or other contract includes applicable provisions required by 2 CFR 200.326

Procurement Standard 200.317



- If local policy or State requirements are more restrictive than Federal requirements → **must follow the most restrictive requirements.**

Procurement Standard 200.318(a-b)



- Must use its own documented procurement procedures which reflect applicable State and local laws and regulations provided that procurements conform to applicable Federal law and the standards identified in this part.
- Must maintain oversight to ensure contractors perform in accordance with contracts and specs.

Procurement Standard 200.318



- **Must maintain written standards of conduct covering conflicts of interest** and governing the actions of its employees engaged in the selection, award and administration of contracts.
- No employee, officer or agent may participate in the selection, award, or administration of a contract if there is a conflict of interest.
- No employee, officer or agent may either solicit or accept gratuities, favors or **anything of monetary value** from contractors or parties to subcontractors. Standards may be set.

Procurement Standard 200.318



- Must avoid acquisition of unnecessary or duplicate items.
- Consideration should be given to consolidating or breaking out procurement to obtain a more **economical purchase**.
- Encouraged to enter into state and local intergovernmental agreements for procurement or use of common or shared goods and services.
- Encouraged to use Federal excess and surplus property in lieu of new equipment or property.

Competition 200.319



- All procurements must be conducted in a manner that provides **full and open competition**.
- Examples of situations considered to be restrictive of competition.
 - Requiring unnecessary experience and excessive bonding requirements
 - Noncompetitive contracts to consultants that are on retainer
 - Organization conflicts of interest
 - Specifying a “brand name” instead of allowing for “an equal” product consideration.
 - Arbitrary actions

Micro-purchases



- Procurements without competition:
 - Micro-purchases, \$10,000* or less, do not require competition or a cost/price analysis but **must be distributed equitably amount qualified suppliers.**
 - Micro-purchases may be awarded without soliciting competitive quotations if the entity considers the price to be reasonable.

Small purchases below the Simplified Acquisition Threshold



- Procurements requiring competition or cost-price analysis:
- Small purchases below the Simplified Acquisition Threshold, (\$10,000-\$250,000*), require price and rate quotes be obtained from a number of qualified sources.
 - Note: No cost/price analysis is required.
- Sealed proposals, using firm fixed price contract, require formal advertising, two or more bidders are willing and able to respond, and there is public opening of the bids. (sealed bid method is preferred for procuring construction)
- Competitive proposals, used when sealed bids are not appropriate, require advertising, includes a written method for conducting the technical evaluation, responses must be solicited from an adequate number of qualified sources, normally has more than one source submitting an offer and the award is either fixed price or cost reimbursable.

Purchases above the Simplified Acquisition Threshold



- Every procurement in excess of the Simplified Acquisition Threshold (\$250,000*) **must have a cost or price analysis performed.**
- Profit must be negotiated as a separate element of the price for each contract in which there is no price competition and, in all cases, where cost analysis is performed.
- Cost or prices based on estimated cost for the contracts are allowable if they are allowable under Federal cost principles.
- Cost plus a percentage of cost must not be used.

Single Source 200.320 (f)



- Procurement by noncompetitive proposal is used when the items are only available from a **single source**. One or more of the following must apply:
 - Available only through a single source
 - Public emergency will not permit delay required for competition.
 - Awarding agency has expressly authorized a noncompetitive process
 - After solicitation of a number of sources, competition is deemed inadequate

Procurement and Affirmative Action
200.321



- Small and Minority Businesses, Women-Owned, and Labor Surplus Area Firms
- Organizations must take the following affirmative steps to ensure these firms are used:
 - Place on solicitation list
 - Divide total requirement, when economically feasible, into smaller tasks
 - Use service and assistance from various organizations
 - Require prime contractors to take the same affirmative steps

Code of Federal Regulations (Website)



<https://www.ecfr.gov/>

Self-Certification of Micro Purchase Threshold above \$50,000



- USDA notified schools that they may self-certify a micro-purchase threshold up to \$50,000.
- To increase the threshold above \$50,000 you must obtain approval from the cognizant agency.
- You must include a justification, clear indication of the threshold, and supporting documentation of any the following (2 CFR 200.320(a)(1)(IV))
 1. Qualification as a low-risk auditee. **If audited on a biennial basis cannot qualify as a low-risk auditee per 2 CFR 200.520(a)**
 2. Annual internal institutional risk assessment to identify, mitigate, and manage financial risks
 3. For public institutions, a higher threshold consistent with State law.

Segregation of Duties



- The fundamental premise of segregation of duties is that an individual or small group of individuals should not be in a position to initiate, approve, undertake, and review the same action.
- Duties that “should” be separated: Ordering, Receiving, Claim Creation/Approval, Payment, and Reconciling functions.

SBOA Prescribed Forms



- Requisition - Form 500
- Purchase Order - Form 98
- Accounts Payable Voucher - Form 523
- Contractor's Bond for Construction - Form 86A
- Contractor's General Bid for Public Work - Form 86
- https://www.in.gov/sboa/files/chsch2012_part002.pdf



Questions?