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STATE BOARD OF ACCOUNTS



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IASBO PURCHASING SEMINAR

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PUBLIC WORKS



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 WORKS PROJECTS

Small Projects

Under \$50,000

Quotes Process

\$50,000 to \$300,000

Bid Process

\$300,000+

○○○ **SMALL PROJECTS – IC 36-1-12-5**

- Public works projects estimated to cost less than \$50,000
- Board shall invite quotes from at least 3 persons known to deal in the class of work proposed by either:
 - (1) Mailing them a notice stating that plans and specifications are on file in a separate office
 - Notice must be mailed not less than 7 days before the time fixed for receiving quotes
 - Board may not give a deadline for quotes before the time of the meeting
 - (2) Soliciting at least 3 quotes via telephone, fax, or email
 - 7-day period does NOT apply to this option – quotes shall be reported to the board during the public meeting





SMALL PROJECTS – IC 36-1-12-5 (CONT.)

- Meeting for receiving quotes must be open to the public
 - All quotes received shall be opened publicly and read aloud at the designated place and time – not before!
 - All quotes received by phone, fax, or email should be reported including the name of the person(s) submitting the quote and the amount of the quote
- Board shall award the contract to the lowest responsible and responsive quoter
- The board may reject all quotes submitted
 - Board may then negotiate and enter into agreements for the work in the open market without inviting or receiving quotes if the board establishes reason for rejection in writing





SMALL PROJECTS – IC 36-1-12-5 (CONT.)

- Board can purchase or lease supplies in accordance with IC 5-22 and perform the public work 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 \$50K AND \$300K – IC 36-1-12-4.7**

- Board shall invite 3 quotes from 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
 - Notice must be mailed not less than 7 days before time fixed for receiving quotes
 - No telephone, email, or fax option as there is for small projects
- Board may not set a deadline for submitting quotes that is before the meeting for receiving quotes
 - Meeting must be a public meeting
 - All quotes received shall be opened publicly and read aloud at the time and place designated and not before

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PROJECTS BETWEEN \$50K AND \$300K – IC 36-1-12-4.7 (CONT.)

- The board shall award the contract for the public work to the lowest responsible and responsive quoter
- The board may reject all quotes submitted
 - Statute does not provide an option to enter into agreements in the open market as they can for small projects

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ALTERNATE PROCEDURES FOR ROUTINE PUBLIC WORKS – IC 36-1-12-4.9

- Applies to public works at a school corporation that are:
 - Estimated to cost under \$300,000; and
 - The public work is for the routine operation, routine repair, or routine maintenance of existing structures, buildings, or real property
- May award a contract for public work in accordance with IC 5-22 (Public Purchasing Guidelines)



○○○ *PROJECTS OVER \$300,000*

- Board shall prepare general plans and specifications describing the kind of public work required
 - Must avoid specifications that might unduly limit competition
 - These must be filed in a place reasonably accessible to the public
- Board shall publish notice in accordance with IC 5-3-1 for sealed bids
 - Must specify time and place for receiving bids, and where plans and specifications are on file
 - If project is under \$25M, period between date of 1st publication and opening of bids may not be more than 6 weeks
 - If project is \$25M+, period between date of 1st publication and opening of bids may not be more than 10 weeks



PROJECTS OVER \$300,000 (CONT.)

- Items required from bidders:
 - Financial Statement
 - Statement of Experience
 - A proposed plan or plans for performing the public work
 - Equipment bidder has available for the performance of a public work
 - 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; or
 - To induce a person to refrain from bidding
 - Made their bid without reference to any other bid



○○○ *PROJECTS OVER \$300,000 (CONT.)*

- Board cannot set deadline for bids before the meeting at which bids are to be received
 - Meeting must be open to the public
 - All bids shall be opened publicly and read aloud at the time and place designated, not before
 - Notwithstanding other laws, bids may be opened after the time designated if both:
 - The board makes a written determination that it is in the best interest of the board to delay
 - The day, time, and place of the rescheduled opening are announced at the day, time, and place of the originally scheduled opening
- The Board shall award the contract for the public work to the lowest responsible and responsive bidder
 - Board can reject all bids
 - Any award not to the lowest bidder has to be justified in minutes or memoranda available to the public





RESPONSIVE AND RESPONSIBLE

- Responsive
 - Has the bidder submitted a bid that conforms in all material respects to the specifications?
 - Has the bidder submitted a bid that complies with the invitation to bid and the instructions provided?
 - Has the bidder complied with all applicable statutes, ordinances, resolutions, or rules pertaining to the award of a public contract?
- Responsible
 - Does the bidder have the ability and capacity to perform the work?
 - Does the bidder have integrity and character? What is the reputation of the bidder?
 - Does the bidder have the competence and experience to perform the work?





BOND/CERTIFIED CHECK – IC 36-1-12-4.5

- Bond or certified check must be filed with each bid if estimated cost of public work is over \$200,000
- Bond or certified check may be filed with each bid if estimated cost of public work is under \$200,000
- Amount is set by the board and may not be set at more than 10% of the contract price
 - Payable to the school corporation
- Checks of unsuccessful bidders shall be returned to them by the board upon selection of successful bidder
- Checks of successful bidders are to be held until the delivery of the performance bond



○○○○ **CONTRACT AWARD AND NOTICE TO PROCEED – IC 36-1-12-6**

- Standard rule – Board shall award the contract and provide the successful bidder written notice to proceed within 60 days after which bids are opened
- If GO Bonds are 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
- Failure to award and execute contract allows successful bidder to reject contract and withdraw bid or to extend the time to award contract and provide notice to proceed at an agreed later date
 - Election to reject contract and withdraw bid requires notice within 15 days of expiration date

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PUBLIC WORKS CONSIDERATIONS

- Were specifications for the project appropriately prepared?
- Was the bid sought through proper advertisement?
- Was the bid Form 96 used?
- Was the 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 intact?
- Was a performance bond properly included with the bid documents?
- Was a non-collusion affidavit properly provided with the bid documents?
- Were there any change orders approved? Did they exceed greater than 20% of the original contract?



STATE PURCHASING REQUIREMENTS

○○○ *PROCUREMENT THRESHOLDS – FEDERAL VS. STATE*

- Small Purchase Threshold
 - Federal - \$10,000
 - State - \$50,000
- Simplified Acquisition Threshold (Bids)
 - Federal - \$250,000
 - State - \$150,000

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○○○ ***PURCHASE 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” – 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.



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PURCHASE OF SUPPLIES – COMPETITIVE BIDDING

- IC 5-22-2-38
 - “Supplies” – any property, including equipment, goods, and materials
 - Does NOT include an interest in real property
- IC 5-22-7-1
 - A purchasing agent shall follow the procedure described in IC 5-22-7 in awarding a contract for supplies unless another purchasing method is required or authorized within IC 5-22





INVITATION FOR BIDS

- IC 5-22-7-2 requires the purchasing agent to issue an invitation for bids that includes:
 - A purchase description
 - All contractual terms and conditions
 - A statement of the evaluation criteria that will be used, including inspection, testing, quality, workmanship, delivery, and suitability for a purpose.
 - Criteria must be measurable
 - The time and place for opening the bids
 - A statement concerning whether bids must be accompanied by a certified check or other evidence of financial responsibility that may be imposed in accordance with rules or polices of the governing body
 - Conditions under which a bid may be canceled or rejected as specified by IC 5-22-18-2





ADVERTISING FOR/RECEIVING BIDS

- IC 5-22-7-5 – Purchasing agency shall give notice of the invitation for bids as required by IC 5-3-1
 - Published twice, at least a week apart, with the 2nd publication at least 7 days before the meeting where bids will be received
- 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





AWARDING THE CONTRACT

- 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
 - Other information required by IC 5-22 and rules adopted under IC 5-22
- Information required to be maintained in IC 5-22-7-9 is subject to public inspection after each contract award





OTHER PURCHASING PROCEDURES

- IC 5-22-18-1
 - The purchasing agent may give additional notices if they determine it will increase competition
 - Latest publication must be at least 7 days before the final date for submitting offers
- IC 5-22-18-2
 - If the purchasing agent determines it is in the best interest of the governmental unit, they can cancel a solicitation, or reject all offers in whole or in part
 - Reasons for cancellation or rejection must be documented in the contract file
- IC 5-22-18-3
 - Board may make written determination that it is in the best interest to delay the opening
 - Must announce at the original scheduled opening the rescheduled day, time, and place





SMALL PURCHASES – UNDER \$50,000

- IC 5-22-8-2
 - Applies to purchases estimated to cost less than \$50,000
 - Purchasing agent may make the purchase in accordance with policies established by the purchasing agency or rules adopted by the governing body



○○○○ **SMALL PURCHASES - \$50K TO \$150K**

- IC 5-22-8-3
 - Applies to purchases estimated to be at least \$50,000 but under \$150,000
 - Purchasing agent must invite quotes from at least 3 persons known to be in the field
 - Invitation to quote must be mailed 7 days before the time fixed for receiving quotes
 - If satisfactory quote received, contract awarded to lowest responsible and responsive quoter
 - Purchasing agent may reject all quotes
 - If quote is not received from a responsible and responsive quoter, the purchasing agent may purchase the supplies under IC 5-22-10-10





SPECIAL PURCHASING METHODS

- IC 5-22-10-1
 - Purchasing agent may make a purchase under IC 5-22-10 without soliciting bids or proposals
- Examples of Special Purchasing Methods:
 - Emergency Conditions
 - Savings to Governmental Body
 - Data Processing Contracts or License Agreements
 - Compatibility of Equipment, Accessories, or Replacement Parts
 - No Offer Received Under Other Purchasing Methods
 - Governmental Discounts
 - Single Source for Supply





SPECIAL PURCHASING METHODS (CONT.)

- IC 5-22-10-3
 - Purchasing agent must keep contract records separate file if they are going to make a special purchase
 - Contract file must include determination for the basis of the special purchase and the basis of selecting the contractor
 - Records must be maintained for a minimum of 5 years and include:
 - Each contractor's name
 - The amount and type of contract
 - 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 over \$25,000
- Board must pass a resolution that it is interested in purchasing a specified land or structure
- Appoint 2 appraisers to appraise the fair market value (FMV) 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
- Purchasing agent may not purchase any land or structure for a price greater than the average of the 2 appraisals



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)
 - Must use one of three methods when an acquisition exceeds the simplified acquisition threshold
 - Sealed Bid method (2 CFR 200.320(b)(1))
 - Competitive Proposals method (2 CFR 200.320(b)(2))
 - Noncompetitive Proposals method (2 CFR 200.320(c))



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FEDERAL GRANT PROCUREMENT REQUIREMENTS (CONT.)

- Uniform Guidance Grants (cont.)
 - 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 and 200.327
 - Federal Simplified Acquisition Threshold - \$250,000
 - Micro-Purchase Threshold - \$10,000



○○○ **PROCUREMENT STANDARDS**

- 2 CFR 200.317
 - If local policy or State requirements are more restrictive than Federal requirements, must follow the more restrictive policy/requirement
- 2 CFR 200.318(a)
 - School Corporation 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 standards within 2 CFR 200
- 2 CFR 200.318(b)
 - School Corporation must maintain oversight to ensure contractors perform in accordance with contracts and specifications



○○○ **PROCUREMENT STANDARDS (CONT.)**

- 2 CFR 200.318(c)
 - School Corporation must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in selection, award, and administration of contracts
 - No employee, officer, or agent may participate in the selection, award, or administration of a contract if they have a real or apparent 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.
- School Corporations may set standards for situations in which the financial interest is not substantial or the gift is of nominal value
 - Must provide for disciplinary actions for violations of the standards



○○○ **PROCUREMENT STANDARDS (CONT.)**

- 2 CFR 200.318(d)
 - Must avoid acquisition of unnecessary or duplicate items
 - Consideration should be given to consolidating or breaking out procurement to obtain a more economical purchase
 - Schools are encouraged to enter into state and local intergovernmental agreements for procurement or use of common or shared goods and services
 - Schools are encouraged to use Federal excess and surplus property in lieu of new equipment or property





COMPETITION

- 2 CFR 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
 - Unnecessary experience and excessive bonding requirements
 - Noncompetitive contracts to consultants that are on retainer
 - Organizational conflicts of interest
 - Specifying a “brand name” instead of allowing for “an equal” product consideration
 - Arbitrary actions
 - Unreasonable qualification requirements





○○○○ ***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 amongst qualified suppliers
- Micro-purchases may be awarded without soliciting competitive quotes if the entity considers the price to be reasonable





SMÅLL PURCHASES BELOW SIMPLIFIED ACQUISITION THRESHOLD

- Small purchases between \$10,000* and \$250,000 require price and rate quotes from a number of qualified sources – no cost/price analysis required in simplified acquisition procedures
- Sealed bid method
- Competitive proposal method



○○○ ***PURCHASES ABOVE THE SIMPLIFIED ACQUISITION THRESHOLD (SAT)***

- Required to use either sealed bid method or proposal method in 2 CFR 200.320(b)
- Sealed bid method is feasible under the following conditions:
 - A complete, adequate, and realistic specification or purchase description is available
 - 2 willing and able responsible bidders identified that will compete effectively for business
 - Procurement lends itself to a firm-fixed-price contract, and selection can be made principally on price
- Proposal method is to be used when conditions are not appropriate for using sealed bids
 - May result in either fixed-price or cost-reimbursement contract



○○○ ***PURCHASES ABOVE THE SIMPLIFIED ACQUISITION THRESHOLD (SAT) (CONT.)***

- Sealed bid requirements
 - Bids solicited from adequate number of qualified sources with sufficient response time provided
 - Invitation to bid must define items or services and specifications for bidder to properly respond
 - Bids to be publicly opened at time and place prescribed in the invitation for bids
 - Firm-fixed-price contract awarded in writing to the lowest responsible and responsive bidder
 - School Corporation must document and provide a justification for all bids it rejects



○○○ ***PURCHASES ABOVE THE SIMPLIFIED ACQUISITION THRESHOLD (SAT) (CONT.)***

- Proposal Method requirements:
 - RFPs require public notice, and all evaluation factors and their relative importance must be identified
 - School Corporation must have written procedures for technical evaluations and making selections
 - Contracts must be awarded to most advantageous offeror considering price and other factors
 - School may use competitive proposal procedures for qualifications-based procurement of architectural/engineering professional services where the offeror's qualifications are evaluated, and the most qualified offeror is selected, subject to negotiation of fair and reasonable compensation
 - ONLY for architectural/engineering professional services





NONCOMPETITIVE PROCUREMENT

- 2 CFR 200.321(c) – specific circumstances in which the school corporation may use a noncompetitive procurement method
 - Aggregate amount of the procurement transaction does not exceed the micro-purchase threshold
 - Procurement transaction can only be fulfilled by a single source
 - Public emergency for the requirement will not permit a delay from providing public notice of a competitive solicitation
 - School Corporation requests in writing to use a noncompetitive procurement method, and the Federal agency/pass-through provides written approval
 - After soliciting several sources, competition is determined inadequate.





ADDITIONAL CONTRACTING RULES

- 2 CFR 200.321 – when possible, School Corporations should ensure that small businesses, minority businesses, women's business enterprises, veteran-owned business, and labor surplus area firms are considered, meaning:
 - Inclusion on solicitation lists
 - Solicited whenever they are deemed eligible as potential sources
 - Dividing procurement transactions to permit maximum participation by these business types
 - Establishing delivery schedules that encourage participation by these business types
 - Utilizing organizations such as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce
 - Requiring a contractor under a Federal award to apply 2 CFR 200.321 to subcontracts





SELF-CERTIFICATION OF MICRO-PURCHASE THRESHOLD

- 2 CFR 200.320(a)(1)(iv) provides that school corporations may establish a threshold higher than the \$10,000 in accordance with the section.
 - May self-certify a threshold up to \$50,000 on an annual basis
 - Must maintain documentation to be made available to the Federal agency or pass-through entity and auditors in accordance with 2 CFR 200.334
 - To increase the threshold above \$50,000, School Corporation must obtain approval from the cognizant agency



○○○ **SELF-CERTIFICATION OF MICRO-PURCHASE THRESHOLD (CONT.)**

- School Corporation must include a justification, clear indication of the threshold, and supporting documentation of any of the following:
 - Qualification as a low-risk auditee – *cannot qualify as a low-risk auditee if audited on biennial basis*
 - Annual internal institutional risk assessment to identify, mitigate, and manage financial risks
 - For public institutions, a higher threshold consistent with State law
- Local units of government cannot apply the updates to procurement regulations retroactively
- Written procurement policies would have to be updated and procurements going forward would be affected
- Threshold would be changed entity-wide – i.e. cannot use different thresholds for different programs





SEGREGATION OF DUTIES

- Fundamental Premise
 - 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
 - Reconciling





ADDITIONAL RESOURCES

- [SBOA Schools Webpage](#)
 - Prescribed Forms
 - Manuals
 - Bulletins
 - Previous Training Presentations
 - Indiana Code References and more
- [IGA Website - Indiana Code](#)
- [Code of Federal Regulations](#)





THANK YOU

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