CHAPTER XIX

PUBLIC PURCHASES, PURCHASE OF LAND OR STRUCTURES AND INVENTORY OF CAPITAL ASSETS

The "Public Purchasing Law" applies to every expenditure of public funds by a governmental body, unless specifically exempted in IC 5-22. [IC 5-22-1-1]

GENERAL PROVISIONS

Definitions

IC 5-22-2 contains definitions applicable to the public purchasing statutes. Selected definitions are presented in this section and throughout this chapter.

"**Policy**" refers to a governmental body's or purchasing agency's written statement of purchasing procedure or substantive purchasing purposes that does not have the force and effect of law. [IC 5-22-2-21]

"**Public Funds**" means money derived from the revenue sources of the governmental body and deposited into the general or a special fund of the governmental body. [IC 5-22-2-23(a)]

"**Purchase**" includes buy, procure, rent, lease, or otherwise acquire. The term includes the following activities: description of requirements; solicitation or selection of sources; preparation and award of contract; all phases of contract administration; and all functions that pertain to purchasing. [IC 5-22-2-24]

"**Purchasing Agency**" means a governmental body that is authorized to enter into contracts by this article, rules adopted under this article, or by another law. [IC 5-22-2-25]

"**Purchasing Agent**" means 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. [IC 5-22-2-26]

"**Rule**" refers to an order, an ordinance, a resolution, or another procedure by which the governmental body is authorized by law to adopt a policy that has the force and effect of law. [IC 5-22-2-29]

"**Supplies**" means any property. The term includes equipment, goods, and materials. The term does not include an interest in real property. [IC 5-22-2-38]

Rules and Written Policies

A governmental body may adopt rules to regulate purchases of the governmental body which may supplement IC 5-22 and not be inconsistent with IC 5-22.

The purchasing agency of a governmental body may establish written policies for purchases made by the purchasing agency. The written policies may apply to all purchases generally or to a specific purchase as stated in the solicitation for the purchase. A written policy may supplement this article or a rule adopted by the purchasing agency's governmental body and not be inconsistent with this article or a rule adopted by the purchasing agency's governmental body. [IC 5-22-3-3]

COMPETITIVE BIDDING

A purchasing agent shall follow competitive bidding procedures in awarding a contract for supplies, unless another purchasing method is required or authorized by IC 5-22. [IC 5-22-7-1]

Invitation for Bids

A purchasing agent shall issue an invitation for bids, as defined in IC 5-22-2-14. Pursuant to IC 5-22-7-2, an invitation for bids must include the following:

1. A purchase description. IC 5-22-2-27 defines a "purchase description" as the words used in a solicitation to describe the supplies or services to be purchased. The term includes specifications attached to, or made a part of, the solicitation.

2. All contractual terms and conditions that apply to the purchase.

3. A statement of the evaluation criteria that will be used, including any of the following: inspection; testing; quality; workmanship; delivery; suitability for a particular purpose; and the requirement imposed under IC 5-22-3-5 regarding offers submitted by trusts.

   Evaluation criteria that will affect the bid price and be considered in the evaluation for an award must be objectively measurable. [IC 5-22-7-3]

   Only criteria specified in the invitation for bids may be used in bid evaluation. [IC 5-22-7-4]

4. The time and place for opening the bids.

5. A statement concerning whether the bid must be accompanied by a certified check or other evidence of financial responsibility that may be imposed in accordance with the rules or policies of the governmental body.

6. A statement concerning the conditions under which a bid may be canceled or rejected in whole or in part as specified under IC 5-22-18-2.

Notice of Invitation for Bids

The purchasing agency shall give notice of the invitation for bids in a manner required by IC 5-3-1. [IC 5-22-7-5(a)]

The purchasing agency for a political subdivision may also provide electronic access to the notice through the electronic gateway administered by the Indiana Office of Technology or any other electronic means available to the political subdivision. [IC 5-22-7-5(c)]

Public Opening of Bids

The purchasing agency shall open bids publicly in the presence of one or more witnesses at the time and place designated in the invitation for bids. [IC 5-22-7-6]

Acceptance and Evaluation of Bids

Bids must be unconditionally accepted without alteration or correction, except as provided in IC 5-22-7-11 through IC 5-22-7-13 and evaluated based on the requirements provided in the invitation for bids. [IC 5-22-7-7]

Change in Bid Prices. A purchasing agency may not permit changes in bid prices or other provisions of bids prejudicial to the interest of the governmental body or fair competition after bid opening. [IC 5-22-7-11]

Additional Terms or Items. If a bidder inserts contract terms or bids on items not specified in the invitation for bids, the purchasing agent shall treat the additional material as a proposal for addition to the contract and may do any of the following:

1. Declare the bidder nonresponsive.

2. Permit the bidder to withdraw the proposed additions to the contract in order to meet the requirements and criteria provided in the invitation for bids.

3. Accept any of the proposed additions to the contract, subject to IC 5-22-7-13. [IC 5-22-7-12]

Contract Additions. The purchasing agent may not accept proposed additions to the contract that are prejudicial to the interest of the governmental body or fair competition. [IC 5-22-7-13]

Invitation for Bid Requirements. A decision of the purchasing agent to permit a change to the requirements of the invitation for bids must be supported by a written determination by the purchasing agency. [IC 5-22-7-13]

Awarding of Contract

A contract must be awarded with reasonable promptness by written notice to the lowest responsible and responsive bidder. [IC 5-22-7-8]

Erroneous Bid or Mistake

The governmental body may adopt rules or establish policies to allow any of the following:

1. Correction or withdrawal of inadvertently erroneous bids before or after award.

2. Cancellation of awards or contracts based on a mistake described in subdivision (1).

Except as provided in rule or policy, a purchasing agency must make a written decision to permit the correction or withdrawal of a bid or cancel awards or contracts based on bid mistakes. [IC 5-22-7-10]

Maintenance of Information by Purchasing Agency

The purchasing agency shall maintain the following information:

1. The name of each bidder.

2. The amount of each bid.

3. Other information required by this article and rules adopted under this article.

This information is subject to public inspection after each contract award. [IC 5-22-7-9]

SPECIFICATIONS

General Provisions

Economy. A specification must promote overall economy for the purposes intended and encourage competition in satisfying the governmental body's needs. [IC 5-22-5-3]

Rules and Policies. A governmental body may adopt rules or establish policies for the preparation, maintenance, and content of specifications. Rules or policies may include a description of requirements for inspecting, testing, or preparing an item for delivery. [IC 5-22-5-1]

Purchasing Agent Responsibility. A purchasing agent shall prepare, issue, revise, maintain, and monitor the use of specifications. [IC 5-22-5-2]

File of Specifications. The purchasing agency shall maintain an indexed file of specifications prepared by or under the authority of its purchasing agents. [IC 5-22-5-4]

Request for Specifications

A request for specifications may be issued if the purchasing agent makes a written determination that the development of specifications by the governmental body is not feasible and the executive of the governmental body approves the use of a request for specifications under IC 5-22-5-5. [IC 5-22-5-5]

A request for specifications must include the following:

1. Factors or criteria that will be used in evaluating the specifications.

2. A statement concerning the relative importance of evaluation factors.

3. A statement concerning whether discussions may be conducted with persons proposing specifications to clarify the specification requirements. [IC 5-22-5-5]

Notice

The purchasing agent shall give notice of the request for specifications under IC 5-3-1. [IC 5-22-5-5]

Discussion and Revision of Specifications

As provided in the request for specifications, the purchasing agent may discuss proposed specifications with persons proposing specifications to clarify specification requirements. Persons proposing specifications must be accorded fair and equal treatment with respect to any opportunity for discussion and revisions of proposed specifications. [IC 5-22-5-5]

REQUEST FOR PROPOSALS

Subject to the policies of the purchasing agency, a purchasing agent may award a contract using the procedure provided by this chapter. [IC 5-22-9-1]

Rules and Policies

The governmental body may provide by rule or policy that it is either not practicable or not advantageous to the governmental body to purchase specified types of supplies by competitive sealed bidding and receiving proposals is the preferred method for purchase of that type of supply. [IC 5-22-9-8]

Content of Request for Proposals

The purchasing agent shall solicit proposals through a request for proposals, which must include the following:

1. The factors or criteria that will be used in evaluating the proposals.

2. A statement concerning the relative importance of price and the other evaluation factors.

3. A statement concerning whether the proposal must be accompanied by a certified check or other evidence of financial responsibility, which may be imposed in accordance with the rules of the governmental body.

4. A statement concerning whether discussions may be conducted with responsible offerors, who submit proposals determined to be reasonably susceptible of being selected for award. [IC 5-22-9-2]

The only factors or criteria that may be used in the evaluation of proposals are those specified in the request for proposals. [IC 5-22-9-10]

Notice

The purchasing agency shall give public notice of the request for proposals in the manner required by IC 5-3-1. [IC 5-22-9-3(c)]

The purchasing agency for a political subdivision may also provide electronic access to the notice through the electronic gateway administered by the Indiana Office of Technology. [IC 5-22-9-3 (c)]

Opening of Proposals

Proposals must be opened so as to avoid disclosure of contents to competing offerors during the process of negotiation. [IC 5-22-9-4]

Discussion and Revision of Proposals

As provided in the request for proposals or under the rules or policies of the governmental body, discussions may be conducted with, and best and final offers obtained from, responsible offerors who submit proposals determined to be reasonably susceptible of being selected for award. [IC 5-22-9-6]

Offerors must be accorded fair and equal treatment with respect to any opportunity for discussion and revisions of proposals. In conducting discussions with an offeror, information derived from proposals submitted by competing offerors may not be disclosed. [IC 5-22-9-9]

Award

Award shall be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to the governmental body, taking into consideration price and the other evaluation factors set forth in the request for proposals. [IC 5-22-9-7]

If provided in the request for proposals, award may be made to more than one offeror whose proposals are determined in writing to be advantageous to the governmental body, taking into consideration price and other evaluation factors set forth in the request for proposals. [IC 5-22-9-7]

Register of Proposals

A register of proposals must be prepared and open for public inspection after contract award. The register of proposals must contain the following:

1. A copy of the request for proposals.
2. A list of all persons to whom copies of the request for proposals were given.
3. A list of all proposals received, which must include all the following:
    a. The names and addresses of all offerors.
    b. The dollar amount of each offer.
    c. The name of the successful offeror and the dollar amount of that offeror' s offer.
4. The basis on which the award was made.
5. The entire contents of the contract file except for proprietary information included with an offer, such as trade secrets, manufacturing processes, and financial information that was not required to be made available for public inspection by the terms of the request for proposals. [IC 5-22-9-5]

SMALL PURCHASES

General Provisions

The small purchase chapter, IC 5-22-8, applies only to a purchase expected by the purchasing agent to be less than $150,000. [IC 5-22-8-1]

Purchase requirements may not be artificially divided so as to constitute a small purchase under IC 5-22-8. [IC 5-22-8-1]

Quotes

Solicitation of Quotes. If the purchasing agent expects the purchase to be at least $50,000 and not more than $150,000, the purchasing agent may purchase supplies by inviting quotes from at least three persons known to deal in the lines or classes of supplies to be purchased. [IC 5-22-8-3]

The purchasing agent shall mail an invitation to quote at least seven days before the time fixed for receiving quotes. [IC 5-22-8-3]

Award of Contract. If the purchasing agent receives a satisfactory quote, the purchasing agent shall award a contract to the lowest responsible and responsive offeror for each line or class of supplies required. [IC 5-22-8-3]

Rejection of Quotes. The purchasing agent may reject all quotes. [IC 5-22-8-3]

No Satisfactory Quote Received. If the purchasing agent does not receive a quote from a responsible and responsive offeror, the purchasing agent may purchase the supplies under IC 5-22-10-10. [IC 5-22-8-3]

Small Purchase Policies

If the purchasing agent expects the purchase to be less than $50,000, the purchasing agent may make a purchase under small purchase policies established by the purchasing agency or under rules adopted by the governmental body. [IC 5-22-8-2]

SPECIAL PURCHASING METHODS

Notwithstanding any other provision of IC 5-22, a purchasing agent may make a purchase under IC 5-22-10 without soliciting bids or proposals. [IC 5-22-10-1]

Administrative Requirements

Listing of Contracts. A governmental body shall maintain a record listing all contracts made under IC 5-22-10 for a minimum of five years. The record must contain the following information:

1. Each contractor's name.

2. The amount and type of each contract.

3. A description of the supplies purchased under each contract. [IC 5-22-10-3]

Contract Files. A purchasing agent shall maintain the contract records for a special purchase in a separate file. A purchasing agent shall include in the contract file a written determination of the basis for the special purchase and the selection of a particular contractor. The contract records for a special purchase are subject to annual audit by the State Board of Accounts. [IC 5-22-10-3]

Competition. A special purchase must be made with competition as is practicable under the circumstances. [IC 5-22-10-2]

Emergency Conditions

A purchasing agent may make a special purchase when there exists, under emergency conditions, a threat to public health, welfare, or safety. [IC 5-22-10-4]

Savings to Governmental Body

A purchasing agent may make a special purchase when there exists a unique opportunity to obtain supplies or services at a substantial savings to the governmental body. [IC 5-22-10-5]

Auctions

A purchasing agent may make a special purchase at an auction. [IC 5-22-10-6]

Data Processing Contract or License Agreements

A purchasing agent may make a special purchase of data processing contracts or license agreements for software programs or supplies or services when only one source meets the using agency's reasonable requirements. [IC 5-22-10-7]

Compatibility of Equipment, Accessories, or Replacement Parts

A purchasing agent may make a special purchase when the compatibility of equipment, accessories, or replacement parts is a substantial consideration in the purchase and only one source meets the using agency's reasonable requirements. [IC 5-22-10-8]

Purchasing Method Impairs Functioning of Agency

A purchasing agent may make a special purchase when purchase of the required supplies or services under another purchasing method under this article would seriously impair the functioning of the using agency. [IC 5-22-10-9]

No Offer Received Under Other Purchasing Method

A purchasing agent may make a special purchase when the purchasing agency has solicited for a purchase under another purchasing method described in IC 5-22 and has not received a responsive offer. [IC 5-22-10-10]

Evaluation of Supplies or System Containing Supplies

A purchasing agent may make a special purchase for the evaluation of supplies or a system containing supplies for any of the following reasons:

A. To obtain functional information or comparative data.

B. For a purpose that in the judgment of the purchasing agent may advance the long term competitive position of the governmental body. [IC 5-22-10-11]

Governmental Discount Available

A purchasing agent may make a special purchase when the market structure is based on price but the governmental body is able to receive a dollar or percentage discount of the established price. [IC 5-22-10-12]

Single Source for Supply

Subject to IC 5-22-10-14 and IC 5-22-10-15, a purchasing agent may award a contract for a supply when there is only one source for the supply and the purchasing agent determines in writing that there is only one source for the supply. [IC 5-22-10-13]

Efficiency and Economic Advantages

A purchasing agent may make a purchase from a person when the purchasing agent determines in writing that supplies can be purchased from the person or the person's authorized representative at prices equal to or less than the prices stipulated in current federal supply service schedules established by the federal General Services Administration; and it is advantageous to the governmental body's interest in efficiency and economy. [IC 5-22-10-14]

Contract With a Federal Agency

A purchasing agent may purchase supplies if the purchase is made from a person who has a contract with a federal agency and the person's contract with the federal agency requires the person to make the supplies available to the state or political subdivisions. [IC 5-22-10-15]

Contract With a State Agency

A purchasing agent for a political subdivision may purchase supplies if the purchase is made from a person who has a contract with a state agency and the person's contract with the state requires the person to make the supplies or services available to political subdivisions. [IC 5-22-10-15]

Transfer From Federal Government

A purchasing agent may acquire supplies if the purchasing agent determines that the governmental body can obtain the transfer of the supplies from the federal government under IC 4-13-1.7 at a cost less than would be obtained from purchase of the supplies by soliciting for bids or proposals. [IC 5-22-10-16]

Appropriation. A governmental body may not make a purchase under this section if title to the property will be transferred to the governmental body before a sufficient appropriation to pay the costs of the purchase is appropriated. However, if the supplies will be transferred to the governmental body upon conditional sale or under a lease, a lease with option to purchase or a contract for the use of the supplies, the governmental body may make the purchase under this section if there are sufficient funds to pay the consideration required for one year of the agreement. [IC 5-22-10-16]

Notice. A purchasing agent who purchases or leases surplus federal materials shall, at the time of the purchase or lease, or immediately thereafter, give public notice in accordance with IC 5-3-1. [IC 5-22-10-16]

Acceptance of Gift

A purchasing agent may acquire supplies by accepting a gift for the purchasing agent's governmental body. [IC 5-22-10-17]

Purchase From a Public Utility

A purchasing agent may make a special purchase from a public utility if the purchase or lease price is a negotiated price that considers the results of an independent appraisal that the purchasing agency obtains and an independent appraisal that the public utility obtains. [IC 5-22-10-19]

PURCHASES FROM THE DEPARTMENT OF CORRECTION

Subject to IC 5-22-11-2, a governmental body shall purchase from the department of correction supplies and services produced or manufactured by the department under IC 11-10-6 as listed in the department's printed catalog unless the supplies and services cannot be furnished in a timely manner. [IC 5-22-11-1]

Supplies and services purchased under this chapter must meet the specifications and needs of the purchasing governmental body and be purchased at a fair market value. [IC 5-22-11-2]

PURCHASE OF REHABILITATION CENTER PRODUCTS

Definitions

"Bureau" refers to the Rehabilitation Services Bureau of the Division of Disability and Rehabilitative Services established under IC 12-12-1-1. [IC 5-22-12-2]

"Rehabilitation Center" refers to the Rehabilitation Center established under IC 12-12-3-1. [IC 5-22-12-3]

General Provisions

A governmental body shall purchase articles produced by the Rehabilitation Center under the same conditions as articles produced by the Department of Correction under IC 5-22-11, unless similar articles are produced by the governmental body. [IC 5-22-12-4]

Whenever a governmental body needs an article listed in the catalog published by the Bureau, the governmental body:

1. shall give the Bureau a reasonable time to produce or supply the article; and

2. except for an article produced by the Department of Correction, may not elsewhere contract for, purchase or pay a bill for an article described in the catalog unless the article cannot be furnished by the Bureau. [IC 5-22-12-6]

A governmental body may contract elsewhere for purchase of an article described in the catalog if the Bureau gives a written statement that the Bureau cannot furnish the article. [IC 5-22-12-6]

Supplies purchased under this chapter must meet the specifications and needs of the purchasing governmental body and be purchased at a fair market price. [IC 5-22-12-7]

PURCHASES FROM QUALIFIED NONPROFIT AGENCIES
FOR PERSONS WITH SEVERE DISABILITIES

The governmental body of a political subdivision may purchase supplies and services without advertising or calling for bids from a qualified agency under the same conditions as supplies produced by the Department of Correction are purchased under IC 5-22-11. [IC 5-22-13-2]

Supplies and services purchased under this chapter must meet the specifications and needs of the purchasing governmental body and be purchased at a fair market price. [IC 5-22-13-5]

SMALL BUSINESS SET-ASIDE PURCHASES

Definitions

"Small business" means a business that is independently owned and operated, is not dominant in its field of operation, and satisfies the criteria in the rules adopted under IC 5-22-14-3. [IC 5-22-14-1]

"Small business set-aside" means a purchase in which the solicitation states that offers will be accepted only by small businesses. [IC 5-22-14-2]

Rules

A governmental body may adopt rules to implement IC 5-22-14. The rules must establish criteria for determining qualifications as a small business. IC 5-22-14-3 contains criteria which must be included in the rules. The governmental body may also receive assistance **from** the Indiana Economic Development Corporation to establish criteria or to implement the rules. [IC 5-22-14-3]

A purchase from a small business under IC 5-22-14 is subject to all other provisions of IC 5-22 and the rules of the governmental body. [IC 5-22-14-10]

Designation as a Small Business Set-Aside

1. A small business designation must be made before the solicitation for the purchase is issued and the public notice of the purchase must state that the purchase is a small business set-aside. [IC 5-22-14-4]

2. If a purchase is designated as a small business set-aside, the solicitation must be confined to small businesses. [IC 5-22-14-6]

3. A governmental body that has adopted rules under IC 5-22-14 may identify as a small business set-aside specific supplies for which purchase has been requested under IC 5-22. [IC 5-22-14-4]

4. A governmental body may not designate a purchase as a small business set-aside unless there is a reasonable expectation that offers will be obtained from at least two small businesses capable of furnishing the desired supplies or service at a fair and reasonable price. [IC 5-22-14-5]

Award of Contract

A contract shall be awarded to the lowest responsible and responsive offeror among the small businesses in accordance with the rules of the governmental body. [IC 5-22-14-7]

Rejection of Offers

If the purchasing agent determines that acceptance of the lowest responsible and responsive offer will result in the payment of an unreasonable price, the purchasing agent shall reject all offers and may withdraw designation of the purchase as a small business set-aside.

Assistance From Indiana Economic Development Corporation

The Indiana Economic Development Corporation may assist a governmental body in doing any of the following:

1. Compiling and maintaining a comprehensive list of small businesses.

2. Assisting small businesses in complying with the procedures for bidding on governmental contracts.

3. Examining requests from governmental bodies for the purchase of supplies to help determine which purchases are to be designated small business set-asides.

4. Simplifying specifications and contract terms to increase the opportunities for small business participation in governmental contracts.

5. Investigations by a governmental body to determine the responsibility of offerors on small business set-asides. [IC 5-22-14-9]

PETROLEUM PRODUCTS

A purchasing agent may award a contract for petroleum products to the lowest responsible and responsive offeror or all responsible and responsive offerors. The contract may allow for the escalation or de-escalation of price.

The purchasing agent must purchase the petroleum products from the lowest of the responsible and responsive bidders. The contract must provide that the bidder from whom petroleum products are being purchased shall provide five business days written notice of any change in price. Upon receipt of written notice, the purchasing agent shall request current price quotes in writing based upon terms and conditions of the original offer (as awarded) from all successful responsible and responsive offerors. The purchasing agent shall record the quotes in minutes or memoranda. The purchasing agent shall purchase the petroleum products from the lowest responsible and responsive offeror, taking into account the price change of the current supplier and the price quotes of the other responsible and responsive offerors. [IC 5-22-17-10]

SERVICES

Definitions

"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. [IC 5-22-2-30]

General Provisions

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 5-22-6-1]

Payments made or received for contractual services should be supported by a written contract. Each governmental unit is responsible for complying with the provisions of its contracts.

Rules and Policies

A governmental body may adopt rules governing the purchase of services for the governmental body. The purchasing agency of a governmental body may establish policies regarding the purchase of services for the governmental body. [IC 5-22-6-2]

Contracts for Collection Services

A unit of local government or an agency of a unit of local government may contract with a collection agency to collect amounts due and authorize the collection agency to collect from the debtor a collection fee. [IC 5-22-6.5-3]

The governmental body shall award a contract for collection services using any procedure authorized by statute. [IC 5-22-6.5-4]

QUALIFICATIONS AND DUTIES OF OFFERORS

Responsibility of Offeror

Written Determination. If the purchasing agent determines that an offeror is not responsible, that determination must be made in writing by the purchasing agent. [IC 5-22-16-1]

Factors. In determining whether an offeror is responsible, a purchasing agent may consider the following factors:

1. The ability and capacity of the offeror to provide the supplies or service.

2. The integrity, character, and reputation of the offeror.

3. The competency and experience of the offeror. [IC 5-22-16-1]

Failure to Provide Information. If an offeror fails to provide information required by the purchasing agent concerning a determination of whether the offeror is responsible, that offeror may not be considered responsible. Information furnished by an offeror shall not be disclosed outside the purchasing agency without the offeror's prior written consent. [IC 5-22-16-1]

Foreign Corporation. An offeror that is a foreign corporation must be registered with the Secretary of State to do business in Indiana in order to be considered responsible. The purchasing agent may award a contract to an offeror pending the offeror's registration with the Secretary of State. If, in the judgment of the purchasing agent, the offeror has not registered within a reasonable period, the purchasing agent shall cancel the contract. [IC 5-22-16-4]

Responsiveness of Offeror

In determining whether an offeror is responsive, a purchasing agent may consider the following factors:

1. Whether the offeror has submitted an offer that conforms in all material respects to the specifications.

2. Whether the offeror has submitted an offer that complies specifically with the solicitation and the instructions to offerors.

3. Whether the offeror has complied with all applicable statutes, ordinances, resolutions, or rules pertaining to the award of a public contract. [IC 5-22-16-2]

Prequalified Contractors

Prospective contractors may be prequalified for particular types of supplies. Solicitation mailing lists of potential contractors may include any or all of such prequalified persons. [IC 5-22-16-3]

Evidence of Financial Responsibility

Solicitation. A purchasing agent may specify in a solicitation that an offeror must provide evidence of financial responsibility in order to be considered responsible. The evidence of financial responsibility may be a bond, certified check, or other evidence specified by the purchasing agent in the solicitation. An offeror must file evidence of financial responsibility in the amount, at the time and as specified by the purchasing agent in the solicitation. [IC 5-22-16-5]

Amount. If a bond or certified check is required as the evidence of financial responsibility, the amount of the bond or certified check may not be set at more than ten percent of the contract price. The bond, certified check, or other evidence of financial responsibility shall be made payable to the governmental body. [IC 5-22-16-5]

Check of Successful Offeror. The check of a successful offeror shall be held until delivery or until completion of the contract. [IC 5-22-16-5]

Check of Unsuccessful Offeror. The check of an unsuccessful offeror shall be returned to the offeror by the purchasing agent upon selection of successful offerors. [IC 5-22-16-5]

Performance Bond

A performance bond may be required in addition to the bond, certified check or other evidence of financial responsibility if the amount of the performance bond is stated in the solicitation. [IC 5-22-16-5]

Affirmation by Offeror

An offeror must file with the purchasing agent an affirmation, made under the penalties for perjury, that states in substance the following:

1. The offeror has not entered into a combination or an agreement: relative to the price to be offered by a person; to prevent a person from making an offer; or to induce a person to refrain from making an offer.

2. The offeror's offer is made without reference to any other offer.

The purchasing agent may require the affirmation to be made in the contract documents.

The purchasing agent shall reject an offer that the purchasing agent finds to be collusive.

If after the purchasing agent has awarded the contract, the purchasing agent discovers that the successful offeror's affirmation was false, the purchasing agent shall declare the contract forfeited and award a new contract. [IC 5-22-16-6]

PURCHASING PREFERENCES

Rules

A governmental body may adopt rules to implement the statutes governing purchasing preferences. [IC 5-22-15-15]

Allowable Preferences

A offeror may claim one of the following types of preference for which the offeror is eligible:

1. An Indiana business preference under rules adopted under IC 5-22-15-20 or IC 4-13.6-6-2.5.

2. A preference for supplies as provided by sections 16, 18, 19, and 24 of IC 5-22-15.

3. An Indiana small business preference as provided by section 23 of IC 5-22-15.

An offeror may not claim more than one preference as provided by sections 16, 18, 19, and 24 of IC 5-22-15 for a given supply item. [IC 5-22-15-7]

Claiming a Preference

An offeror who wants to claim a preference provided under this chapter for a given supply item must indicate in the offer what supply item in the offer is a preferred supply. [IC 5-22-15-8]

A purchasing agent may require an offeror who claims a preference for a given supply item under IC 5-22-15-8 to certify that the supply offered meets the qualifications set for preferred supplies. [IC 5-22-15-9]

Computation of Adjusted Offer

If an offeror offers a preferred supply for a given supply item, the purchasing agent shall compute an adjusted offer for that item according to the following formula:

STEP ONE: Determine the price preference percentage for the supply item under this chapter.

STEP TWO: Multiply the offeror's offer for the supply item by the percentage determined under STEP ONE.

STEP THREE Subtract the number determined under STEP TWO from the offeror's offer for the supply item.

This computation does not apply to an absolute preference, as defined in IC 5-22-15-2. [IC 5-22-15-10]

Contract Award

Notwithstanding any statute requiring the award of a contract to the lowest offeror, but subject to IC 5-22-15-12, a purchasing agent shall award a contract to the offeror whose total adjusted offer is lower than the total adjusted offer of each other offeror. [IC 5-22-15-11]

The award of a contract under IC 5-22-15-11 is subject to the following:

1. A requirement of an applicable statute to award a contract to a responsible and responsive bidder.

2. A requirement of an applicable statute to award a contract to the best bidder or, in the case of a purchase under IC 5-22-9, to the offeror whose offer is most advantageous to the governmental body.

3. The authority of the purchasing agent under IC 5-22-17-12 to award contracts separately or for a combination of a line or class of supplies. [IC 5-22-15-12]

If the purchasing agent awards contracts separately, or for a combination of a line or class of supplies under an applicable law, the purchasing agent shall compute total adjusted offers and award contracts as if each combination of liens or classes of supplies to be awarded a contract had been solicited separately. [IC 5-22-15-13]

The price paid for preferred supplies purchased under a contract shall be the price offered for the supplies and not the adjusted offer price of the supplies. [IC 5-22-15-14]

Price Preferences

1. Price preference for supplies that contain recycled materials or post-consumer materials which meet the standards set by rules adopted by the governmental body, policies established by the purchasing agency, or the solicitation. The price preference may not be less than ten percent or exceed fifteen percent. [IC 5-22-15-16]

2. Price preference of ten percent for the purchase of soy diesel/bio diesel which meets the standards set forth in IC 5-22-15-19. [IC 5-22-15-19]

3. Price preference to Indiana Businesses. A governmental body may adopt rules to give a preference to an Indiana Business that submits an offer for a purchase if the requirements of IC 5-22-15-20 are met. [IC 5-22-15-20]

4. Price preference of fifteen percent for supplies to an Indiana small business (as defined in IC 5-22-14-1) that submits an offer for purchase under IC 5-22. [IC 5-22-15-23]

5. High calcium foods and beverages are preferred supplies. This section applies to a governmental entity listed in IC 5-22-15-1 or a business that contracts with a governmental entity listed in IC 5-22-15-1 that purchases food or beverages to be processed and served in a building or room owned or operated by a governmental entity. [IC 5-22-15-24]

Coal Mined in Indiana

Whenever a purchasing agent purchases coal for use as fuel, the purchasing agent shall give an absolute preference to coal mined in Indiana. This does not apply if federal law requires the use of low sulphur coal in the circumstances for which the coal is purchased. [IC 5-22-15-22]

"Absolute preference" means a requirement that a governmental body must purchase supplies regardless of price. [IC 5-22-15-22]

Supplies Manufactured in the United States

A governmental body shall adopt rules to promote the purchase of supplies manufactured in the United States. These rules shall provide that supplies manufactured in the United States shall be specified and purchased unless the governmental body determines that the requirements of IC 5-22-15-21(c) are met. [IC 5-22-15-21]

Supplies Made Using Forced Labor

If an offeror offers to furnish supplies made in a country other than the United States, a governmental body may not award a contract to the offeror for those supplies if the supplies were made using forced labor. As used in this section, "forced labor" has the meaning set forth in 19 U.S.C. 1307.

A governmental body shall inform offerors in the solicitation of the provisions of this section. [IC 5-22-15-24.2]

Steel Products

A solicitation must require that if any steel products are used in (1) the manufacture of the supplies- required under the contract; or (2) supplies used in the performance of the services under the contract by the contractor or a subcontractor of the contractor; the steel products must be manufactured in the United States. [IC 5-22-15-25(c)]

IC 5-22-15-25(c) does not apply if the: (1) head of the purchasing agency determines in writing that: (A) the cost of the contract with the requirements of subsection (c) would be greater than one hundred fifteen percent (115%) of the cost of the contract without the requirements of subsection (c); and (B) failure to impose the requirements of subsection (c) would not in any way: (i) harm the business of a facility that manufacturers steel products in Indiana; (ii) result in the reduction of employment or wages and benefits of employees of facility described in item (i); or (2) purchase is: (A) less than ten thousand dollars ($10,000); and (B) made under the small purchase policies (as described in IC 5-22-8-2(b)) established by the purchasing agency or under rules adopted by the governmental body.

A purchasing agency shall inform offerors in the solicitation of the provisions of this section.

CONTRACT PROVISIONS

Cost Plus a Percentage of Cost Contract

A governmental body may not enter into a cost plus a percentage of cost contract. [IC 5-22-17-1]

Cost Reimbursement Contract

A governmental body may enter into a cost reimbursement contract if the purchasing agent determines in writing that the contract is likely to be less costly to the governmental body than any other contract type, or that it is impracticable to obtain the supplies required except under such a contract. [IC 5-22-17-2]

Time Period

A contract for supplies may be entered into for a period not to exceed four years. However, this does not apply to a discounted contractual arrangement for services or supplies funded through a designated leasing entity. [IC 5-22-17-3]

Appropriations

The contract must specify that payment and performance obligations are subject to the appropriation and availability of funds. [IC 5-22-17-3]

A political subdivision must have available a sufficient appropriation balance or an approved additional appropriation before a purchasing agent may award a contract. [IC 5-22-17-3]

The foregoing two paragraphs do not apply to a discounted contractual arrangement for services or supplies funded through a designated leasing entity. [IC 5-22-17-3]

When the fiscal body of the governmental body makes a written determination that funds are not appropriated or otherwise available to support continuation of performance of a contract, the contract is considered canceled. [IC 5-22-17-5]

Renewal of Contracts

Subject to IC 5-22-17-5, a contract may be renewed any number of times with the agreement of the contractor and purchasing agency. However, the term of a renewed contract may not be longer than the term of the original contract. [IC 5-22-17-4]

A contract that contains a provision for escalation of the price of the contract may be renewed under this section if the price escalation is computed using a commonly accepted index named in the contract or a formula set forth in the contract. [IC 5-22-17-4]

Early Performance

The purchasing agent may specify in a contract that early performance of the contract will result in increased compensation at either a percentage of the contract amount or a specific dollar amount determined by the purchasing agent. Notice of inclusion of this contract provision must be included in the solicitation. [IC 5-22-17-6]

Late Performance

The purchasing agent may specify in a contract that completion of the contract after the termination date of the contract will result in a deduction from the compensation in the contract at either a percentage of the contract amount or a specific dollar amount determined by the purchasing agent. Notice of inclusion of this contract provision must be included in the solicitation. [IC 5-22-17-6]

Modification of Contracts

A governmental body may establish policies or adopt rules permitting or requiring any of the following:

1. The inclusion of clauses providing for adjustments in prices or time of performance.

2. The inclusion of contract provisions dealing with either of the following:

   A. The unilateral right of the governmental body to order in writing either of the following:

      1. Changes in the work within the scope of the contract.

      2. Temporary stopping of the work or delaying performance.

   B. Variations occurring between estimated quantities of work in a contract and actual quantities. [IC 5-22-20-1]

Adjustments in Price

Adjustments in price must be computed in one or more of the following ways:

1. By agreement on a fixed price adjustment before the beginning of the pertinent performance or as soon after the beginning of the performance as practicable.

2. By unit prices specified in the contract or subsequently agreed upon.

3. By the costs attributable to the events or situations under such clauses with adjustment of profit or fee, all as specified in the contract or subsequently agreed upon.

4. In such other manner as the contracting parties may mutually agree.

5. In the absence of agreements by the parties, by a unilateral determination by the governmental body of the costs attributable to the events or situations under such clauses, with adjustment of profit or fee, all as computed by the governmental body in accordance with applicable rules adopted by the governmental body. [IC 5-22-20-2]

OTHER ADMINISTRATIVE REQUIREMENTS

Public Notice

Whenever public notice is required by this article, notice shall be given by publication in the manner prescribed by IC 5-3-1. The purchasing agent may give notice other than as required in IC 5-3-1 that the purchasing agent considers will increase competition. [IC 5-22-18-1]

The purchasing agent shall schedule all notices to provide a reasonable amount of time for preparation and submission of responses after notification. The period between the last publication, mailing, or posting of notices of the final date set for submitting offers must be at least seven calendar days. [IC 5-22-18-1

Electronic Transmissions of Material

Whenever IC 5-22 requires that notice or other material be sent by mail, the material may be sent by electronic means as stated in any of the following:

1. Rules adopted by the governmental body.

2. Written policies of the purchasing agency.

3. A solicitation.

These rules, written policies, and solicitation statements are subject to IC 5-22 and must provide that the transmission of information is at least as efficient and secure as sending the material by mail.

A governmental body may receive electronic offers if both of the following apply:

1. The solicitation indicates the procedure for transmitting the electronic offer to the governmental body.

2. The governmental body receives the offer on a fax machine, by e-mail, or by means of another electronic system that has a security feature that protects the content of an electronic offer with the same degree of protection as the content of an offer that is not transmitted by electronic means. [IC 5-22-3-4]

Acceptance of Offer

Within thirty days after the acceptance of an offer, the purchasing agent shall deliver in person or by first class mail to the successful offeror the original of each purchase order or lease, retain a copy for the purchasing agent's records, and file a copy for public record and inspection as follows:

1. When a purchase or lease is made for a county or municipality, the copy of the purchase order or lease must be filed with the fiscal officer of the unit.

2. When a purchase or lease is made for a township, the copy of the purchase order or lease must be filed with the fiscal officer of the county.

3. When a purchase or lease is made for a school corporation or a quasi-public corporation, the copy of the purchase order or lease must be filed with the records of the corporation. [IC 5-22-18-5]

Award of Contracts

Award to Different Offerors. A solicitation may provide that offers will be received and contract will be awarded separately or for any combination of a line or a class of supplies or services contained in the solicitation. [IC 5-22-17-12]

If the solicitation does not indicate how separate contracts might be awarded, the purchasing agent may award separate contracts to different offerors under this section only if the purchasing agent makes a written determination showing that the award of separate contracts is in the interest of efficiency or economy. [IC 5-22-17-12]

Award to Other Than Lowest Offeror. If the purchasing agent awards a contract for a line or class of supplies or services, or any combination of lines or classes, to an offeror other than the lowest offeror, the purchasing agent must make a written determination stating the reasons for awarding a contract to that offeror. [IC 5-22-17-12]

Unspecified Number of Items. A solicitation may provide that the purchasing agent will award a contract for supplies or services for an unspecified number of items at a fixed price per unit. Such a contract may include a formula or a method for escalation of the unit price. [IC 5-22-17-13]

Cancellation of Solicitation and Rejection of Offers

When the purchasing agent determines it is in the best interests of the governmental body, a solicitation may be canceled or offers may be rejected in whole or in part as specified in the solicitation. The reasons for a cancellation of a solicitation or rejection of offers must be made a part of the contract file. [IC 5-22-18-2]

Offers Opened After Time Stated in Solicitation

Notwithstanding any other law, offers may be opened after the time stated in the solicitation if both of the following apply:

1. The governmental body makes a written determination that it is in the best interest of the governmental body to delay the opening.

2. The day, time, and place of the rescheduled opening is announced at the day, time, and place of the originally scheduled opening. [IC 5-22-18-3]

Contract and Purchasing Records

Except as provided by another law, contract and purchasing records are public records subject to public inspection under IC 5-14-3.

A governmental body may establish policies or adopt rules for the protection of documents submitted to the governmental body in response to a solicitation.

Policies or rules may provide procedures for the following:

1. Protection of offers before opening to prevent disclosure of contents.

2. Afford unobstructed evaluation of offers and award of contracts by the purchasing agent after opening.

3. Protection of offers from tampering before and after opening. [IC 5-22-18-4]

OVERPAYMENT COLLECTIONS

Governmental units should collect any overpayments made.

ADVANCE PAYMENTS

Compensation and any other payments for goods and services should not be paid in advance of receipt of the goods or services unless specifically authorized by statute. Payments made for goods or services which are not received may be the personal obligation of the responsible official or employee.

PURCHASING BONUSES

Any compensation, premium, bonus, or product earned as a result of the purchase of goods or services by the governmental unit becomes the property of the governmental unit.

ONLINE REVERSE AUCTIONS

Definitions

"Internet" means the international computer network of both federal and nonfederal interoperable packet switched data networks, including the graphical subnetwork called the world wide web. IC 5-22-2-13.5

"Internet purchasing site" means an open and interactive electronic environment that is designed to facilitate the purchase of supplies by means of the Internet. The term includes an Internet purchasing site developed under IC 4-13-17. [IC 5-22-2-13.7]

"Reverse auction" means a method of purchasing in which offerors submit offers in an open and interactive environment through the Internet. [IC 5-22-2-28.5]

A governmental body conducting a reverse auction must receive electronic offers for supplies through an Internet purchasing site. [IC 5-22-3-4(d)]

A purchasing agency may conduct a reverse auction for the purchase of supplies by using an Internet purchasing site to: (1) issue an invitation for bids; and (2) receive bids. (b) Except as provided in this chapter, a purchasing agency and a bidder must comply with the requirements of this article when participating in a reverse auction. [IC 5-22-7.5-1]

Policy

Before conducting a reverse auction, the purchasing agency must adopt written policies that do the following: (1) Establish procedures for all the following: (A) Transmitting notices, solicitations, and specifications. (B) Receiving offers. (C) Making payments. (D) Protecting the identity of a bidder or an offeror. (E) For a reverse auction, providing for the display of the amount of each offer previously submitted for public viewing. (F) Establishing the deadline by which offers must be received and will be considered to be open and available for public inspection. (G) Establishing the procedure for the opening of offers. (2) Require the purchasing agency to maintain adequate documentation regarding reverse auctions so that the transactions may be audited as provided by law. (b) Written policies that comply with rules for an Internet public purchasing site adopted by the Indiana department of administration under IC 4-13-17-4 satisfy the requirements of this section. [IC 5-22-7.5-2]

Notice

The purchasing agency shall give notice of the invitation for bids in the manner required by IC 5-3-1. The purchasing agency for a state agency shall also provide electronic access to the notice through the computer gateway administered by the Indiana Office of Technology. (c) The purchasing agency for a political subdivision may also provide electronic access to the notice through: (1) the computer gateway administered by the Indiana Office of Technology; or (2) any other electronic means available to the political subdivision. [IC 5-22-7-5]

Bids

If a purchasing agency issues an invitation for bids using a reverse auction conducted through an Internet purchasing site under this chapter, only bids made: (1) in accordance with the policies described in section 2 of this chapter; and (2) through the Internet purchasing site; may be evaluated by the purchasing entity at the close of bidding. [IC 5-22-7.5-3]

When used for a reverse auction, an Internet purchasing site must do the following: (1) Provide information that the purchasing entity considers necessary or beneficial to potential bidders. (2) Display the amount of all bids previously submitted regarding the reverse auction for public viewing. (3) Conceal information that identifies a bidder. (4) Comply with this article. [IC 5-22-7.5-4]

For purposes of IC 5-22-7-6, a bid made through an Internet purchasing site is considered to be opened when a computer generated record of the information contained in all bids for a proposed purchase that were received by the site not later than the posted bid deadline is reviewed publicly by the purchasing agency in the presence of one (1) or more witnesses at the time and place designated in the invitation for bids. [IC 5-22-7.5-6]

Fees

The purchasing agency may charge a bidder in a reverse auction a fee set in the written policies adopted under section 2 of this chapter. [IC 5-22-7.5-5]

PURCHASE OF LAND OR STRUCTURES [IC 36-1-10.5]

Application

IC 36-1-10.5 sets out certain procedures to be followed when purchasing real property costing more than $25,000. This applies to political subdivisions and their agencies. However, certain purchases are exempted from the requirements of IC 36-1-10.5. These exemptions are listed in IC 36-1-10.5-1(b). [IC 36-1-10.5-1]

Definition of Structure

Structure is defined to mean

1. A building used in connection with the operation of a political subdivision; or

2. A parking facility as defined in IC 5-22.

The term includes the site, equipment, and appurtenances to the building or parking facility. [IC 36-1-10.5-4]

Required Procedures

The purchasing agent shall purchase the land or structure after the following procedures have been followed:

1. The fiscal body of the political subdivision shall pass an ordinance or resolution to the effect that it is interested in making a purchase of specified land or a structure.

2. The purchasing agent shall appoint two appraisers to appraise the fair market value of the land or structure. The appraisers must be professionally engaged in making appraisals or be trained as an appraiser and licensed as a broker under IC 25-34.1.

3. The appraisers shall return their separate appraisals to the purchasing agent within thirty days after the date of their appointment. The purchasing agent shall keep the appraisals on file in the purchasing agent's office for five years after they are given to the purchasing agent.

4. The purchasing agent shall give a copy of both appraisals to the fiscal body. [IC 36-1-10.5-5]

Limitation

The purchasing agent may not purchase any land or structure for a price greater than the average of the two appraisals received under IC 36-1-10.5-5. [IC 36-1-10.5-6]

CAPITAL ASSETS

Every governmental unit should have a complete inventory of all capital assets owned which reflects their acquisition value. Such inventory should be recorded on the applicable Capital Assets Ledger. A complete inventory should be taken at least every two years for good internal control and for verifying account balances carried in the accounting records.

Land

The records of each governmental unit should reflect land owned, its location, its acquisition date and the cost (purchase price). If the purchase price is not available, appraised value may be used.

Buildings

A capital asset account for buildings should reflect the location of each building and the cost value (being the purchase or construction cost) and the cost of improvements, if applicable. If a building is acquired by gift, the account should reflect its appraised value at the time of acquisition.

Improvements Other Than Buildings

A capital asset account should reflect the acquisition value of permanent improvements, other than buildings, which have been added to the land. Examples of such improvements are fences, retaining walls, sidewalks, gutters, tunnels and bridges. The improvements should be valued at the purchase or construction cost.

Equipment

Tangible property of a permanent nature (other than land, buildings and improvements) should be inventoried. Examples include machinery, trucks, cars, furniture, typewriters, adding machines, calculators, bookkeeping machines, data processing equipment, desks, safes, cabinets, books, etc. The value of such items should be carried in the inventory at the purchase cost. The governing body should establish a capitalization policy that sets a dollar amount as a threshold to be used in determining which equipment items will be recorded.

Construction Work In Progress

Where construction work has not been completed in the current reporting calendar year, the cost of the project should be carried as "construction work in progress." When the project is completed, it will be placed on the inventory applicable to the assigned asset accounts.

SAMPLE
SUGGESTED FORMAT

INDEX TO SPECIFICATIONS

Date Specifications Adopted	Type of Supply	Requesting Department	Solicitation Type

Source: IC 5-22-5-4

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

SAMPLE
SUGGESTED FORMAT

Bid Record for Invitation for Bids

Date of Bid Opening: _____
Supplies Requested: _____
Requesting Agency: _____

Please Type or Print Legibly

Name	Address	Bid Amount	Other Information

Source: IC 5-22-7-9

SAMPLE
SUGGESTED FORMAT

Register of Proposals

Date: _____

Supplies: _____

ATTACH A COPY OF THE REQUEST FOR PROPOSALS AND A LIST OF ALL PERSONS TO WHOM COPIES OF THE REQUEST FOR PROPOSALS WERE GIVEN

Please Type or Print Legibly

Name of Offerer	Address	Amount of Offer

Source: IC 5-22-9-5

Successful Proposal:

Name of Offerer: _____

Amount of Offer: _____

Basis for Award: _____

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

SAMPLE
SUGGESTED FORMAT

NON-COLLUSION AFFIDAVIT

STATE OF INDIANA)
)
_____ COUNTY)

The undersigned offeror or agent, being duly sworn on oath, says that he has not, nor has any other member, representative, or agent of the firm, company, corporation or partnership represented by him, entered into any combination, collusion or agreement with any person relative to the price to be offered by any person nor to prevent any person from making an offer nor to induce anyone to refrain from making an offer and that this offer is made without reference to any other offer.

_____
___
Offeror (Firm)

_____
___
Signature of Offeror or Agent

Subscribed and sworn to before me this _____ day of _____, 1998.

My Commission Expired: _____ _____
Notary Public

County of Residence _____

Source: IC 5-22-16-6