


**PUBLIC PURCHASES
and
PUBLIC WORKS**

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Public Purchases - Definitions

**Indiana Code 5-22-2**

Purchase - to buy, procure, rent, lease, or otherwise acquire.

Purchasing Agency - the governmental body that is authorized to enter into contracts.

Purchasing Agent - the individual authorized by a purchasing agency to act as agent for the purchasing agency.

Supplies-equipment, goods, and materials.

Written Policies



- Indiana Code 5-22-3-3: “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 established under this subsection may:
 - (1) supplement this article or a rule adopted by the purchasing agency's governmental body; and
 - (2) not be inconsistent with this article or a rule adopted by the purchasing agency's governmental body

Notices by Mail

**Indiana Code 5-22-3-4:**

Whenever this article 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:

- Rules adopted by the governmental body.
- Written policies of the purchasing agency.
- A solicitation

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Categories of Purchases

**3 Categories of Purchases (based on price):**

Price < \$50,000

Price at least \$50,000 and not more than \$150,000

Price > \$150,000

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Price < \$50,000



(a) This section applies only if the purchasing agent expects the purchase to be less than fifty thousand dollars (\$50,000).

(b) A purchasing agent may make a purchase under small purchase policies established by the purchasing agency or under rules adopted by the governmental body.

As added by P.L.49-1997, SEC.1. Amended by P.L.7-1998, SEC.2; P.L.195-2007, SEC.2.

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\$50,000 But Not More Than \$150,000



Indiana Code 5-22-8-3

(a) This section applies only if the purchasing agent expects the purchase to be:

- (1) at least fifty thousand dollars (\$50,000); and
- (2) not more than one hundred fifty thousand dollars (\$150,000).

(b) A purchasing agent may purchase supplies under this section by inviting quotes from at least three (3) persons known to deal in the lines or classes of supplies to be purchased.

(c) The purchasing agent shall mail an invitation to quote to the persons described in subsection (b) at least seven (7) days before the time fixed for receiving quotes.

(d) 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.

(e) The purchasing agent may reject all quotes.

(f) 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.

As added by P.L.7-1998, SEC.3. Amended by P.L.195-2007, SEC.3.

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Price > \$150,000



Indiana Code 5-22-7

Invitation for bids shall be issued. Invitation must include:

- Purchase Description
- Contractual Terms
- Bid evaluation criteria
- Time & place for bid opening
- If certified check is required
- Conditions for cancellation or rejection

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Notice of Invitation to Bid



Indiana Code 5-22-7-5:

IC 5-22-7-5 Notice of invitation for bids

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

(b) The purchasing agency for a state agency shall also provide electronic access to the notice through the computer gateway administered by the 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 office of technology; or

(2) any other electronic means available to the political subdivision.

As added by P.L.49-1997, SEC.1. Amended by P.L.251-1999, SEC.5; P.L.31-2002, SEC.3; P.L.93-2004, SEC.8; P.L.177-2005, SEC.22.

Indiana Code 5-3-1-2(e):

“If the event is the receiving of bids, notice shall be published two (2) times, at least one (1) week apart, with the second publication made at least seven (7) days before the date the bids will be received.”

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Opening of Bids



IC 5-22-7-6

Public opening of bids

Sec. 6. The purchasing agency shall open bids publicly in the presence of one (1) or more witnesses at the time and place designated in the invitation for bids.
As added by P.L.49-1997, SEC.1.

IC 5-22-7-7

Bids; acceptance; evaluation

Sec. 7. Bids must be:
(1) unconditionally accepted without alteration or correction, except as provided in sections 11 through 13 of this chapter; and
(2) evaluated based on the requirements provided in the invitation for bids.
As added by P.L.49-1997, SEC.1.

Award of Contract



IC 5-22-7-8

Awarding of contract

Sec. 8. A contract must be awarded with reasonable promptness by written notice to the lowest responsible and responsive bidder.
As added by P.L.49-1997, SEC.1.

IC 5-22-7-9

Maintenance of information by purchasing agency

Sec. 9. (a) 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.
(b) The information described in subsection (a) is subject to public inspection after each contract award.
As added by P.L.49-1997, SEC.1.

Special Purchasing Methods



- **IC 5-22-10-1 Purchase without soliciting bids or proposals**

Sec. 1. Notwithstanding any other provision of this article, a purchasing agent may make a purchase under this chapter without soliciting bids or proposals.

As added by P.L.49-1997, SEC.1.

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- **IC 5-22-10-2 Competition**

Sec. 2. A special purchase must be made with competition as is practicable under the circumstances.

As added by P.L.49-1997, SEC.1.

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Special Purchasing Methods



- *Emergency Conditions (IC 5-22-10-4)*
- *Savings to governmental body (IC 5-22-10-5)*
- *Auctions (IC 5-22-10-6)*
- *Data processing contract or license agreements (IC 5-22-10-7)*
- *Compatibility of equipment, accessories, or replacement parts (IC 5-22-10-8)*
- *No offer received under other purchasing methods (IC 5-22-10-10)*
- *Governmental discounts available (IC 5-22-10-12)*
- *Single source for supply (IC 5-22-10-13)*

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Special Purchasing Methods



IC 5-22-10-3 Contract files; record listing all contracts

Sec. 3. (a) A purchasing agent shall maintain the contract records for a special purchase in a separate file.

(b) A purchasing agent shall include in the contract file a written determination of the basis for:

- (1) the special purchase; and
- (2) the selection of a particular contractor.

(c) Notwithstanding any other law, a governmental body shall maintain a record listing all contracts made under this chapter for a minimum of five (5) 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.

(d) The contract records for a special purchase are subject to audit by the state board of accounts.

As added by P.L.49-1997, SEC.1. Amended by P.L.181-2015, SEC.22.

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Purchasing Preferences



Indiana Code 5-22-15:

- Recycled supplies
- Soy/bio diesel fuel
- Indiana business
- Indiana local business
- Supplies manufactured in the U. S.
- Coal mined in Indiana
- Indiana small business
- High calcium food
- Forced labor supplies
- U.S. steel products

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Other Purchasing Considerations



- ✓ Department of Corrections supplies and services
- ✓ Rehabilitation Center products
- ✓ Nonprofit agencies
- ✓ Small business set aside
- ✓ Bio-based products

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Other Purchasing Considerations



- Request for proposals (RFP) [Ind. Code 5-22-9]
- Cooperative purchasing through an Interlocal Agreement [Ind. Code 36-1-7]
- Online reverse auctions [Ind. Code 5-22-7.5]
- Purchase of services [Ind. Code 5-22-6]
- Duration of contracts/renewal [Ind. Code 5-22-17]
- Evidence of financial responsibility [Ind.Code 5-22-16-5]

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PUBLIC WORKS



Public Works - Definitions



Indiana Code 36-1-12

Public Works – construction, reconstruction, alteration, or renovation of a public building, airport facility, or other structure that is paid for out of a public fund or special assessment.

The term includes the construction, reconstruction, alteration, or repair of a highway, street, bridge, sewer, drain, or other improvement paid out of public funds or special assessment.

Also includes any public work leased with an option to purchase.

Public Works Projects < \$150,000



IC 36-1-12-5 Procedures for inviting quotes; small projects

Sec. 5. (a) This section applies whenever a public work project is estimated to cost less than fifty thousand dollars (\$50,000). Except as provided in subsection (g) for local boards of aviation commissioners and local airport authorities, if a contract is to be awarded, the board may proceed under section 4 of this chapter or under subsection (b) or (c).

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

(1) The board shall invite quotes from at least three (3) persons known to deal in the class of work proposed to be done by mailing them a notice stating that plans and specifications are on file in a specified office. The notice must be mailed not less than seven (7) days before the time fixed for receiving quotes.

(2) The board may not require a person to submit a quote before the meeting at which quotes are to be received. The meeting for receiving quotes must be open to the public. All quotes received shall be opened publicly and read aloud at the time and place designated and not before.

(3) The board shall award the contract for the public work to the lowest responsible and responsive quote.

(4) The board may reject all quotes submitted.

(5) If the board rejects all quotes under subdivision (4), the board may negotiate and enter into agreements for the work in the open market without inviting or receiving quotes if the board establishes in writing the reasons for rejecting the quotes.

(c) The board may not proceed under subsection (b) for the resurfacing (as defined in IC 8-14-2-1) of a road, street, or bridge, unless:

(1) the weight or volume of the materials in the project is capable of accurate measurement and verification; and

(2) the specifications define the geographic points at which the project begins and ends.

(d) For the purposes of this section, if contiguous sections of a road, street, or bridge are to be resurfaced in a calendar year, all of the work shall be considered to comprise a single public work project.

(e) The board may purchase or lease supplies in the manner provided in IC 5-22 and perform the public work by means of its own workforce without awarding a public work contract.

(f) Before the board may perform any work under this section by means of its own workforce, the political subdivision or agency must have a group of employees on its staff who are capable of performing the construction, maintenance, and repair applicable to that work.

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Public Works Projects < \$150,000



IC 36-1-12-5 Procedures for inviting quotes; small projects (continued)

(i) Quotes for public works projects costing less than twenty-five thousand dollars (\$25,000) may be obtained by soliciting at least three (3) quotes by telephone or facsimile transmission. The seven (7) day waiting period required by subsection (b)(1) does not apply to quotes solicited under this subsection.

[Pre-Local Government Recodification Citations: 5-16-1 part; Part new.]

As added by Acts 1981, P.L.57, SEC.38. Amended by Acts 1981, P.L.56, SEC.5; P.L.329-1985, SEC.19; P.L.85-1991, SEC.4; P.L.21-1995, SEC.147; P.L.82-1995, SEC.17; P.L.49-1997, SEC.76; P.L.195-2007, SEC.8; P.L.172-2011, SEC.141; P.L.17-2012, SEC.4; P.L.67-2012, SEC.4.

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Public Works Projects < \$250,000 Using Own Workforce

**IC 36-1-12-3 Public work projects**

Sec. 3. (a) The board may purchase or lease materials in the manner provided in IC 5-22 and perform any public work, by means of its own workforce, without awarding a contract whenever the cost of that public work project is estimated to be less than two hundred fifty thousand dollars (\$250,000). Before a board may perform any work under this section by means of its own workforce, the political subdivision or agency must have a group of employees on its staff who are capable of performing the construction, maintenance, and repair applicable to that work. For purposes of this subsection, the cost of a public work project includes:

- (1) the actual cost of materials, labor, equipment, and rental;
- (2) a reasonable rate for use of trucks and heavy equipment owned; and
- (3) all other expenses incidental to the performance of the project.

(b) This subsection applies only to a municipality or a county. The workforce of a municipality or county may perform a public work described in subsection (a) only if:

- (1) the workforce, through demonstrated skills, training, or expertise, is capable of performing the public work; and
- (2) for a public work project under subsection (a) whose cost is estimated to be more than one hundred thousand dollars (\$100,000), the board:
 - (A) publishes a notice under IC 5-3-1 that:
 - (i) describes the public work that the board intends to perform with its own workforce; and
 - (ii) sets forth the projected cost of each component of the public work as described in subsection (a); and
 - (B) determines at a public meeting that it is in the public interest to perform the public work with the board's own workforce.

A public work project performed by a board's own workforce must be inspected and accepted as complete in the same manner as a public work project performed under a contract awarded after receiving bids.

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Public Works Projects < \$250,000 Using Own Workforce

**IC 36-1-12-3 Public work projects (continued)**

(c) When the project involves the rental of equipment with an operator furnished by the owner, or the installation or application of materials by the supplier of the materials, the project is considered to be a public work project and subject to this chapter. However, an annual contract may be awarded for equipment rental and materials to be installed or applied during a calendar or fiscal year if the proposed project or projects are described in the bid specifications.

(f) If a public works project involves a structure, an improvement, or a facility under the control of a department (as defined in IC 4-3-19-2(2)), the department may not artificially divide the project to bring any part of the project under this section.

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Public Works Projects > \$150,000

**IC 36-1-12-4 Bidding procedures for projects costing more than certain amounts**

Sec. 4. (a) This section applies whenever the cost of a public work project will be:

- (1) except as provided in subdivision (2), at least one hundred fifty thousand dollars (\$150,000); or
- (2) in the case of a board of aviation commissioners or an airport authority board, at least one hundred thousand dollars (\$100,000).

(b) The board must comply with the following procedure:

- (1) The board shall prepare general plans and specifications describing the kind of public work required, but shall avoid specifications which might unduly limit competition. If the project involves the resurfacing (as defined by IC 8-14-2-1) of a road, street, or bridge, the specifications must show how the weight or volume of the materials will be accurately measured and verified.
- (2) The board shall file the plans and specifications in a place reasonably accessible to the public, which shall be specified in the notice required by subdivision (3).
- (3) Upon the filing of the plans and specifications, the board shall publish notice in accordance with IC 5-3-1 calling for sealed proposals for the public work needed.
- (4) The notice must specify the place where the plans and specifications are on file and the date fixed for receiving bids.
- (5) The period of time between the date of the first publication and the date of receiving bids shall be governed by the size of the contemplated project in the discretion of the board. The period of time between the date of the first publication and receiving bids may not be more than:
 - (A) six (6) weeks if the estimated cost of the public works project is less than twenty-five million dollars (\$25,000,000); and
 - (B) ten (10) weeks if the estimated cost of the public works project is at least twenty-five million dollars (\$25,000,000).

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Public Works Projects > \$150,000

**IC 36-1-12-4 Bidding procedures for projects costing more than certain amounts (continued):**

(6) The board shall require the bidder to submit a financial statement, a statement of experience, a proposed plan or plans for performing the public work, and the equipment that the bidder has available for the performance of the public work. The statement shall be submitted on forms prescribed by the state board of accounts.

(7) The board may not require a bidder to submit a bid before the meeting at which bids are to be received. The meeting for receiving bids must be open to the public. All bids received shall be opened publicly and read aloud at the time and place designated and not before. Notwithstanding any other law, bids may be opened after the time designated if both of the following apply:

- (A) The board makes a written determination that it is in the best interest of the board to delay the opening.
- (B) The day, time, and place of the rescheduled opening are announced at the day, time, and place of the originally scheduled opening.

(8) Except as provided in subsection (c), the board shall:

- (A) award the contract for public work or improvements to the lowest responsible and responsive bidder; or
- (B) reject all bids submitted.

(9) If the board awards the contract to a bidder other than the lowest bidder, the board must state in the minutes or memoranda, at the time the award is made, the factors used to determine which bidder is the lowest responsible and responsive bidder and to justify the award. The board shall keep a copy of the minutes or memoranda available for public inspection.

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Public Works Projects > \$150,000

IC 36-1-12-4 Bidding procedures for projects costing more than certain amounts (continued):

(11) In determining whether a bidder is a responsible bidder, the board may consider the following factors:

- (A) The ability and capacity of the bidder to perform the work.
- (B) The integrity, character, and reputation of the bidder.
- (C) The competence and experience of the bidder.

(12) The board shall require the bidder to submit an affidavit:

- (A) that the bidder has not entered into a combination or agreement:
 - (i) relative to the price to be bid by a person;
 - (ii) to prevent a person from bidding; or
 - (iii) to induce a person to refrain from bidding; and
- (B) that the bidder's bid is made without reference to any other bid.

(c) Notwithstanding subsection (b)(8), a county may award sand, gravel, asphalt paving materials, or crushed stone contracts to more than one (1) responsible and responsive bidder if the specifications allow for bids to be based upon service to specific geographic areas and the contracts are awarded by geographic area. The geographic areas do not need to be described in the specifications.

[Pre-Local Government Recodification Citations: 5-16-1 part; Part new.]

As added by Acts 1981, P.L.57, SEC.38. Amended by Acts 1981, P.L.56, SEC.4; P.L.329-1985, SEC.17; P.L.213-1986, SEC.4; P.L.252-1993, SEC.3; P.L.82-1995, SEC.15; P.L.22-2001, SEC.1; P.L.169-2006, SEC.48; P.L.113-2010, SEC.108; P.L.139-2011, SEC.6; P.L.172-2011, SEC.139; P.L.6-2012, SEC.241; P.L.17-2012, SEC.2; P.L.67-2012, SEC.2.



Public Works Projects > \$150,000

General Form 96:

www.in.gov/sboa

Political Subdivisions

Counties

Electronic Forms

Electronic Forms ▾

- [Contractor's Bid for Public Work \(Form 96\)](#)
- [Petition for Waiver or Reduction of Property Taxes Against a Brownfield - County Form 137BR](#)
- [Highway \(Local Road and Street\) Annual Report](#)
- [Instructions for the Highway Annual Report](#)
- [Publishers Notice](#)





CONTRACTOR'S BID FOR PUBLIC WORK - FORM 96

State Form 52414 (R2 / 2-13) / Form 96 (Revised 2013)
 Prescribed by State Board of Accounts



PART I

(To be completed for all bids. Please type or print)

Date (month, day, year): _____

1. Governmental Unit (Owner): _____

2. County : _____

3. Bidder (Firm): _____

Address: _____

City/State/ZIPcode: _____

4. Telephone Number: _____

5. Agent of Bidder (if applicable): _____

Pursuant to notices given, the undersigned offers to furnish labor and/or material necessary to complete the public works project of _____

(Governmental Unit) in accordance with plans and specifications prepared by _____

_____ and dated _____ for the sum of

_____ \$ _____

The undersigned further agrees to furnish a bond or certified check with this bid for an amount specified in the notice of the letting. If alternative bids apply, the undersigned submits a proposal for each in accordance with the notice. Any addendums attached will be specifically referenced at the applicable page.

Award of Contract – Notice to Proceed



IC 36-1-12-6 Contracts; notice to proceed; failure to award and execute contract and to issue notice; election by bidder to reject contract

Sec. 6. (a) Except as provided in subsections (b) and (c), the board shall award the contract and shall provide the successful bidder with written notice to proceed within sixty (60) days after the date on which bids are opened.

(b) If general obligation bonds are to be sold to finance the construction that is the subject of the bid, the board shall allow the bidder ninety (90) days.

(c) If revenue bonds are to be issued, when approved by the utility regulatory commission, or if special taxing district, special benefit, or revenue bonds are to be issued and sold to finance the construction, the board shall allow the bidder one hundred fifty (150) days.

(d) A failure to award and execute the contract and to issue notice within the time required by this section entitles the successful bidder to:

- (1) reject the contract and withdraw the successful bidder's bid without prejudice; or
- (2) extend the time to award the contract and provide notice to proceed at an agreed later date.

If the successful bidder elects to reject the contract and withdraw the bidder's bid, notice of that election must be given to the board in writing within fifteen (15) days of the sixty (60) day expiration date or any other extension date.

[Pre-Local Government Recodification Citations: 5-16-1 part; Part new.]

As added by Acts 1981, P.L.57, SEC.38. Amended by P.L.23-1988, SEC.116; P.L.127-2017, SEC.16.

Bond or Certified Check



IC 36-1-12-4.5 Bond or certified check; filing by bidders

Sec. 4.5. (a) The political subdivision or agency:

- (1) shall require a bond or a certified check to be filed with each bid by a bidder in the amount determined and specified by the board in the notice of the letting if the cost of the public work is estimated to be more than two hundred thousand dollars (\$200,000); and
- (2) may require a bond or a certified check to be filed with each bid by a bidder in the amount determined and specified by the board in the notice of the letting if the cost of the public work is estimated to be not more than two hundred thousand dollars (\$200,000).

(b) The amount of the bond or certified check may not be set at more than ten percent (10%) of the contract price. The bond or certified check shall be made payable to the political subdivision or agency.

(c) 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, as provided in section 14(e) of this chapter.

As added by P.L. 329-1985, SEC.18. Amended by P.L. 133-2007, SEC.12.

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Payment Bond



IC 36-1-12-13.1 Payment bond for public works projects in excess of \$200,000

- Sec. 13.1. (a) Except as provided in subsection (e), the appropriate political subdivision or agency:
 - (1) shall require the contractor to execute a payment bond to the appropriate political subdivision or agency, approved by and for the benefit of the political subdivision or agency, in an amount equal to the contract price if the cost of the public work is estimated to be more than two hundred thousand dollars (\$200,000); and
 - (2) may require the contractor to execute a payment bond to the appropriate political subdivision or agency, approved by and for the benefit of the political subdivision or agency, in an amount equal to the contract price if the cost of the public work is estimated to be not more than two hundred thousand dollars (\$200,000).
- The payment bond is binding on the contractor, the subcontractor, and their successors and assigns for the payment of all indebtedness to a person for labor and service performed, material furnished, or services rendered. The payment bond must state that it is for the benefit of the subcontractors, laborers, material suppliers, and those performing services.
- (b) The payment bond shall be deposited with the board. The payment bond must specify that:
 - (1) a modification, omission, or addition to the terms and conditions of the public work contract, plans, specifications, drawings, or profile;
 - (2) a defect in the public work contract; or
 - (3) a defect in the proceedings preliminary to the letting and awarding of the public work contract;
- does not discharge the surety. The surety of the payment bond may not be released until one (1) year after the board's final settlement with the contractor.

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Open Price Provision



IC 36-1-12-8 Road, street, or bridge work; open price provisions; price adjustments of materials; limitations

Sec. 8. The board may award a public work contract for road, street, or bridge work subject to the open price provisions of IC 26-1-2-305. The contract may provide that prices for construction materials are subject to price of materials adjustment. When price adjustments are part of the contract, the method of price adjustments shall be specified in the contract. However, this section does not authorize the expenditure of money above the total amount of money appropriated by the political subdivision or agency for road, street, or bridge contracts.

[Pre-Local Government Recodification Citations: 5-16-1 part; Part new.]

As added by Acts 1981, P.L.57, SEC.38. Amended by P.L.329-1985, SEC.20.

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Change Orders



IC 36-1-12-18 Change or alteration of specifications; change orders

Sec. 18. (a) If, in the course of the construction, reconstruction, or repair of a public work project, it becomes necessary to change or alter the original specifications, a change order may be issued to add, delete, or change an item or items in the original contract. The change order becomes an addendum to the contract and must be approved and signed by the board and the contractor.

(b) If a licensed architect or engineer is assigned to the public work project, the change order must be prepared by that person.

(c) A change order may not be issued before commencement of the actual construction, reconstruction, or repairs except in the case of an emergency. In that case, the board must make a declaration, and the board's minutes must show the nature of the emergency.

(d) The total of all change orders issued that increase the scope of the project may not exceed twenty percent (20%) of the amount of the original contract. A change order issued as a result of circumstances that could not have been reasonably foreseen does not increase the scope of the project.

(e) All change orders must be directly related to the original public work project.

(f) If additional units of materials included in the original contract are needed, the cost of these units in the change order must be the same as those shown in the original contract.

As added by P.L.329-1985, SEC.24.

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Performance Bond



IC 36-1-12-14 Contracts in excess of \$200,000; retaining portions of payments; escrow agreements; performance bonds; payment on substantial completion; actions against surety contracts less than \$250,000

Sec. 14. (a) This section applies to public work contracts in excess of two hundred thousand dollars (\$200,000) for projects other than highways, roads, streets, alleys, bridges, and appurtenant structures situated on streets, alleys, and dedicated highway rights-of-way. A board may require a contractor and subcontractor to include contract provisions for retainage as set forth in this section for contracts that are not more than two hundred thousand dollars (\$200,000). This section also applies to a lessor corporation qualifying under IC 20-47-2 or IC 20-47-3 or any other lease-back arrangement containing an option to purchase, notwithstanding the statutory provisions governing those leases.

(b) A board that enters into a contract for public work, and a contractor who subcontracts parts of that contract, shall include in their respective contracts provisions for the retainage of portions of payments by the board to contractors, by contractors to subcontractors, and for the payment of subcontractors. At the discretion of the contractor, the retainage shall be held by the board or shall be placed in an escrow account with a bank, savings and loan institution, or the state as the escrow agent. The escrow agent shall be selected by mutual agreement between board and contractor or contractor and subcontractor under a written agreement among the bank or savings and loan institution and:

- (1) the board and the contractor; or
- (2) the subcontractor and the contractor.

The board shall not be required to pay interest on the amounts of retainage that it holds under this section.

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Performance Bond



IC 36-1-12-14 Contracts in excess of \$200,000; retaining portions of payments; escrow agreements; performance bonds; payment on substantial completion; actions against surety contracts less than \$250,000 (continued):

(e) Except as provided by subsections (i) and (h), the contractor shall furnish the board with a performance bond equal to the contract price. If acceptable to the board, the performance bond may provide for incremental bonding in the form of multiple or chronological bonds that, when taken as a whole, equal the contract price. The surety on the performance bond may not be released until one (1) year after the date of the board's final settlement with the contractor. The performance bond must specify that:

- (1) a modification, omission, or addition to the terms and conditions of the public work contract, plans, specifications, drawings, or profile;
- (2) a defect in the public work contract; or
- (3) a defect in the proceedings preliminary to the letting and awarding of the public work contract;

does not discharge the surety.

(h) This subsection applies to public work contracts of less than two hundred fifty thousand dollars (\$250,000). The board may waive the performance bond requirement of subsection (e) and accept from a contractor an irrevocable letter of credit for an equivalent amount from an Indiana financial institution approved by the department of financial institutions instead of a performance bond. Subsections (e) through (g) apply to a letter of credit submitted under this subsection.

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Emergencies



IC 36-1-12-9

Emergencies; contracts by invitation

Sec. 9. (a) The board, upon a declaration of emergency, may contract for a public work project without advertising for bids if bids or quotes are invited from at least two (2) persons known to deal in the public work required to be done.

(b) The minutes of the board must show the declaration of emergency and the names of the persons invited to bid or provide quotes.

[Pre-Local Government Recodification Citations: 5-16-1 part; Part aew.]

As added by Acts 1981, P.L.57, SEC.38. Amended by P.L.329-1985, SEC.21.

Indiana State Board of Accounts

Final Payment



IC 36-1-12-12 Final payment; requirements; claims by subcontractors, laborers, or suppliers; disputes

Sec. 12. (a) When a public work project is to be performed, the board shall withhold final payment to the contractor until the contractor has paid the subcontractors, material suppliers, laborers, and those furnishing services. However, if there is not a sufficient sum owed to the contractor to pay those bills, the sum owed to the contractor shall be prorated in payment of the bills among the claimants entitled to payment.

(b) To receive payment a subcontractor, material supplier, laborer, or person furnishing services must file a claim with the board not later than sixty (60) days after that person performed the last labor, furnished the last material, or performed the last service as provided in section 13 of this chapter.

(c) If there is no dispute among the claimants, the board shall pay the claim from the money due the contractor and deduct the amount of the claims from the contract price. The board shall take a receipt for each payment made on a claim.

(d) If there is a dispute among the claimants, the board shall retain sufficient money to pay the claims until the dispute is settled and the correct amount is determined. However, the board may make a final and complete settlement with the contractor after thirty (30) days after the date of the completion and acceptance of the public work if the contractor has materially fulfilled all of its obligations under the public works contract.

Indiana State Board of Accounts

Final Payment

**IC 36-1-12-12 Final payment; requirements; claims by subcontractors, laborers, or suppliers; disputes (continued)**

(e) If the board receives a claim from a subcontractor or a material supplier under this section, the board shall withhold the amount of the claim until the claim is resolved under this section.

(f) A claim form must be signed by an individual from the political subdivision or agency who is directly responsible for the project and who can verify:

- (1) the quantity of a purchased item; or
- (2) the weight or volume of the material applied, in the case of a road, street, or bridge project.

[Pre-Local Government Recodification Citations: 5-16-1 part; Part new.]

As added by Acts 1981, P.L.57, SEC.38. Amended by P.L.329-1985, SEC.23; P.L.75-2012, SEC.9.

Indiana State Board of Accounts

Payment of Claim

**IC 36-1-12-17 Road or street work contracts; timely payment of claims; final payment; interest for late payment**

Sec. 17. (a) A contract for road or street work must contain a provision for the timely payment of claims made by the contractor.

(b) Each contract must provide for final payment within one hundred twenty (120) days after final acceptance and completion of the contract. Final payment may not be made on any amount that is in dispute, but final payment may be made on that part of a contract or those amounts that are not in dispute.

(c) For each day after one hundred twenty (120) days, the board shall pay to the contractor interest for late payment of money due to the contractor. However, interest may not be paid for those days that the delay in payment is not directly attributable to the board. The annual percentage rate of interest that the board shall pay on the unpaid balance is twelve percent (12%).

As added by P.L.340-1983, SEC.1.

Indiana State Board of Accounts

Private Road Work (specific to counties)

**IC 8-19-7-1 Request for equipment and employees; charges**

Sec. 1. (a) Any resident taxpayer may petition the executive of the county where the taxpayer resides to use county highway equipment and employees for ditching, grading, or hauling gravel or stone or other services on the taxpayer's premises.

(b) The executive may order the county highway superintendent to do the work requested, if the county equipment is being used in the vicinity of the taxpayer's premises, and if the equipment is not needed for county business. The equipment may not be used for contractual work in any municipality or subdivision of the municipality.

(c) The county executive shall fix the charges for the work, which may not be less than the actual cost. The charge for hauling material may not be less than the actual cost per yard mile, or less than the private prevailing contract price in the community.

Formerly: Acts 1943, c.96, s.1. As amended by P.L.86-1988, SEC.164.

IC 8-19-7-2 Records

Sec. 2. The county highway supervisor shall keep a record of the services performed under section 1 of this chapter, and when the work is completed, the highway supervisor shall prepare an itemized statement of the work and the charges. The highway supervisor shall send one (1) copy to the petitioner, and one (1) copy to the county auditor. The county highway supervisor shall, at the regular monthly meeting of the executive, report work done during the month, and the charges made for the work. The county auditor shall bill the petitioners for the services, and shall credit the money collected to the county highway fund.

Formerly: Acts 1943, c.96, s.2. As amended by P.L.86-1988, SEC.165.

Indiana State Board of Accounts

Private Road Work (specific to counties)

**IC 8-19-7-3 Payment for work; collections**

Sec. 3. If any petitioner fails to pay for any work, the charges shall be charged by the county auditor on the county tax duplicate against that person, and shall be collected in the same manner as taxes. Any amount collected by the county treasurer shall be turned over to the county auditor and credited to the county road fund under section 2 of this chapter.

Formerly: Acts 1943, c.96, s.3. As amended by P.L.86-1988, SEC.166.

Indiana State Board of Accounts

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