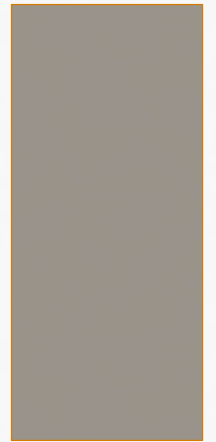


# STATE PURCHASING REQUIREMENTS

INDIANA STATE BOARD OF ACCOUNTS



# INTRODUCTION TO INDIANA CODE 5-22

- IC 5-22-1-1: “Except as provided in this chapter, this article applies to every expenditure of public funds by a governmental body.”
- IC 5-22-3-3: “A governmental body may adopt rules to regulate purchases of the governmental body. A rule adopted under this subsection may: (1) supplement this article; and (2) not be inconsistent with this article.”

# INTRODUCTION TO INDIANA CODE 5-22

## CONTINUED

- IC 5-22-4-5 and IC 5-22-4-6
  - The individuals designated by the purchasing agency are the purchasing agents for the governmental body.
  - A purchasing agency may have more than one purchasing agent.
- IC 5-22-4-7
  - Allows governmental bodies, under IC 36-1-7 (Interlocal Agreement), to form cooperative purchasing organizations.
  - Requires cooperative purchasing organizations to follow IC 5-22.
  - The cooperative purchasing organization becomes the purchasing agency for the governmental body for that particular purchase. The individual designated by the cooperative purchasing organization becomes the purchasing agent for the governmental body for that particular purchase.

# PURCHASES OF SERVICES

- IC 5-22-6-1: “The purchasing agency of a governmental body may purchase services using any procedure the governmental body or the purchasing agency of the governmental body considers appropriate.”
- IC 5-22-2-30: “”Services” means the furnishing of labor, time, or effort by a person, not involving the delivery of specific supplies other than printed documents or other items that are merely incidental to the required performance.”

# PURCHASE OF SUPPLIES – COMPETITIVE BIDDING

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

# INVITATION FOR BIDS

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

# RECEIVING BIDS

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

# OTHER PROCEDURES

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



# SMALL PURCHASES – EXCEPTIONS TO COMPETITIVE BIDDING REQUIREMENTS

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

# SPECIAL PURCHASING METHODS

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

# SPECIAL PURCHASING METHODS CONTINUED

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

# NEW FEDERAL GRANT PROCUREMENT REQUIREMENTS

- Pre-Uniform Guidance Grants:
  - Purchases of goods and services are properly procured based on IC 5-22
- Uniform Guidance Grants:
  - Must use their own documented procurement procedures
  - Must meet the general procurement standards in 2 CFR 200.318
  - Must conduct all procurement transactions in a manner providing full and open competition
  - Must use the micro-purchase and small purchase methods only for procurements that meet the applicable criteria under 2 CFR 200.320(a) and(b)
  - Must use one of three methods when an acquisition exceeds the simplified acquisition threshold
    - Sealed bid method - 2 CFR 200.320(c)
    - Competitive proposals method - 2 CFR 200.320(d)
    - Noncompetitive proposals method - 2 CFR 200.320(e)
  - Must perform a cost or price analysis with every procurement in excess of the simplified acquisition threshold, including contract modifications
  - Must ensure that every purchase order or other contract includes applicable provisions required by 2 CFR 200.326

# DISPOSAL OF SURPLUS PERSONAL PROPERTY

- Surplus Property with estimated value under \$1,000 or Group under \$5,000:
  - IC 5-22-22-6 says that you can sell at a public or private sale without advertising.
- Surplus Property with estimated value over \$1,000 or Group over \$5,000:
  - IC 5-22-22-4: may engage an auctioneer; advertising must include detailed description of property sold.
  - IC 5-22-22-4.5: may use Internet auction site approved by the office of technology and linked to the electronic gateway; posting must include a detailed description of property sold.
    - <http://in.gov/iot/2379.htm>
  - IC 5-22-22-5: may sell at a public sale or by sealed bids; advertised in accordance with IC 5- 3-1; sales must be made to the highest responsible bidder.
- Worthless Property:
  - IC 5-22-22-8: worthless property may be demolished or junked; property considered worthless if the value is less than the estimated cost of sale or transportation.

# PURCHASE OF LAND OR STRUCTURES

- Purchases of land or structures with a total price that exceeds \$25,000
  - IC 36-1-10.5-5 requires the following:
    - The School Board to pass a resolution that it is interested in purchasing the land.
    - The purchasing agent must appoint two appraisers to determine the fair market value.
    - Appraisals are returned within thirty days and they are kept on record for at least five years.
    - Purchasing agent must present the appraisals to the School Board.
  - IC 36-1-10.5-6 says that the purchase price can not be greater than the average of the two appraisals received.

# PUBLIC WORKS LAW

## IC 36-1-12

- IC 36-1-12-2:
  - “As used in this chapter, "public work" means the construction, reconstruction, alteration, or renovation of a public building, airport facility, or other structure that is paid for out of a public fund or out of a special assessment. The term includes the construction, alteration, or repair of a highway, street, alley, bridge, sewer, drain, or other improvement that is paid for out of a public fund or out of a special assessment. The term also includes any public work leased by a political subdivision under a lease containing an option to purchase.”

# PUBLIC WORK PROJECTS

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



# PROJECTS BETWEEN \$50,000 & \$150,000

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

# SMALL PROJECTS < \$50,000

- ***Prior slide's requirements apply as well.***
- Board can purchase or lease supplies in accordance with IC 5-22 and perform the public works using its own workforce
  - Must have a group of employees on staff who are capable of performing the construction, maintenance, and repair of all applicable work
- Purchases under \$25,000, quotes by phone/fax allowed.
  - 7 day waiting period does not apply.
- If the board rejects all quotes, may negotiate for work in the open market without the bidding/quote process.

# PROJECTS > \$150,000

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

# ALTERNATIVE PROCEDURES

- Alternate Procedures for Projects costing less than \$150,000.
  - Applies to a public work for the routine operation, repair, or maintenance of existing structures, buildings, or real property.
  - May award a contact for public work in accordance with IC 5-22.

# PUBLIC WORKS - MISC

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

# PUBLIC WORKS - MISC

- Bond or certified check must be filed with each bid if cost of public work is > \$200,000.
  - Amount to be set by the board with a 10% maximum.
- Once contract awarded, must provide successful bidder a 'Notice to Proceed' within 60 days.
  - Time limit increased if bonds are issued.

# RESOURCES

- Indiana State Board of Accounts – <http://www.in.gov/sboa/4449.htm>
  - School Manual
  - School Bulletin
  - State Examiner Directives
  - Links to applicable School statutes
- Indiana General Assembly – [www.iga.in.gov](http://www.iga.in.gov)
  - 2016 – <http://iga.in.gov/legislative/laws/2016/ic/>

# CONTACT INFORMATION

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