Public Purchasing: Indiana Laws and Best Practices

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Retention of Services

IC 5-22-6
Retention of Services

• General Definitions
  • Discussion today is generally focused on Indiana Code 5-22
    • Purchasing Agency – Governmental body that is authorized to enter into contracts by the statute, rules adopted under the statute, or other law
    • Governmental Body – executive, judicial, legislative branch, political subdivision, or any agency, department, or division thereof
Retention of Services

• Services

  ▪ Ind. Code 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.”

  ▪ Ind. Code 5-22-6-2 – the purchasing agency or the governmental body may adopt rules concerning the purchase of services.
Retention of Services

• Services (continued)
  ▪ The reason:
    • Services are not like products, supplies, or public works. You are hiring someone based on your confidence in their ability to provide the service.
      – Examples: your attorney, your engineer, your architect, your financial advisor
  ▪ Potential options
    • RFI (Request for Information)
    • Quotes
    • Hire who you think will do the best job
Retention of Services

• Services (continued)
  ▪ Potential pitfalls:
    • Is it a service or is it equipment?
      – Example: New voting software vs. licensing
      – Example: You need voting services
      – Example: Radio services/equipment
    • Is it a public work?
      – Example: New flooring
      – Example: Your architect is building a new building; at what point does their work become a public work?
Public Work Projects

IC 36-1-12
Public Work

• “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.
  - Includes highway, street, alley, bridge, sewer, drain, or other improvement

• "**Regardless** of whether performed on property" of the political subdivision.
“Public fund” means **all funds** that are:

(A) derived from the established revenue sources of a political subdivision or an agency of a political subdivision; and

(B) deposited in a general or special fund of a municipal corporation, or another political subdivision or agency of a political subdivision.
Public Work

Exceptions:
- Public-private agreement funds
- Bond proceeds payable exclusively by private entity
- Design-Build
- Guaranteed Energy Savings
- Utility extensions with own workforce
- Developer utility extension if pay less than 50%
Over $150,000

Full specification and bidding requirements, including:

- (1) develop specifications;
- (2) publish notice no more than 6 weeks before date of receiving bids (10 weeks if project over $25 million);
- (3) open bids publicly; and
- (4) award to lowest responsible and responsive bidder, or reject all bids.
$50,000+ to $150,000

Invite bids by mail, including:

- (1) develop specifications;
- (2) invite quotes from at least 3 persons known to deal in the class of work proposed by mailing them notice stating plans and specs are on file;
- (3) mail notice at least 7 days before deadline;
- (4) open bids publicly; and
- (5) award contract to lowest responsible and responsive bidder, or reject all quotes.
Less than $50,000

Invite bids by mail, but may reject all and negotiate, including:

- (1) same procedure as above, except:
- (2) if all quotes are rejected, then write the reasons for rejecting all quotes; and
- (3) may then negotiate and enter into agreements in open market without inviting or receiving quotes.
Less than $50,000

May also now solicit quotes by **telephone** for under $50,000 (previously was under $25,000) including:

- (1) solicit three quotes by telephone or fax; and
- (2) 7 day waiting period does not apply.

**If use this procedure, bid result must be read aloud in board meeting.**
Emergencies – Any Price

• (1) Declare emergency (reflect declaration in board meeting minutes); and

• (2) invite bids or quotes from at least 2 persons known to deal in the public work required to be done (reflect name of persons invited to bid in meeting minutes).
Own Workforce
Less than $250,000

• (1) For projects between $100,000 and $250,000, publish notice, **hold a public meeting** & determine it is in public's interest to use government workforce; and

• (2) follow **public purchasing** rules for purchase of materials.

• (3) Must be **inspected and accepted** in same manner of other public works projects
Routine Maintenance
Less than $150,000

• Follow Procedures for Purchase of Supplies and Equipment
Change Orders

• Up to **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.
Dividing Projects

- The cost of a single public work project **may not be divided** into two (2) or more projects for the purpose of avoiding the requirement to solicit bids.

- Bidder who knowingly violates commits a **Class A infraction** and may not benefit from a public work project for **two (2) years** from the date of the conviction.

- Public official who knowingly violates this section commits a Class A infraction.
Supplies and Equipment

IC 5-22-7
IC 5-22-8
Supplies and Equipment

• Definition:
  ▪ "Supplies" as used in the code means "equipment, goods, and materials." It does not include "interest in real property."
  • IC 5-22-2-38
Small Purchases < $50,000

• Purchases less than $50,000
  ▪ No statutory requirement
    • Can adopt local rules
    • Make sure as an NEO that you check with your auditor concerning any local rules.
  ▪ Before deciding what to do, you will need to determine about how much the supply will cost.
Medium Purchases

- Purchases between $50,000 and $150,000

- "Invite Quotes"
  - Mail an invitation to quote from at least three (3) people/places "known to deal in the lines or classes of supplies" to be purchased

- Must award to the lowest responsible and responsive offeror (if you receive a quote) or reject all quotes

- If no quotes, "special purchase"
Large Purchases > $150,000

• Purchases over $150,000
  ▪ Invitation for bids
    • Must have specific terms in the bid invitation
    • Time and place for opening bids
  ▪ Criteria to evaluate must be "objective"
  ▪ Must publish notice of invitation for bid – two times – seven days part, and seven days before opening
Large Purchases > $150,000

• Must open the bids publicly in the presence of one (1) or more witnesses at time and place in the invitation
• Must award to the lowest responsible responsive, or reject all
• Alternative – RFP
Special Purchases

• IC 5-22-10 lists
  ▪ There are certain circumstances where you do not have to issue bids for large purchases
  ▪ Three things to consider:
    • (1) Is it a "permitted" special purchase listed in the statute;
    • (2) Do we have a written record saying we can do that; and
    • (3) Was there "competition"
Special Procedures

• Negotiated Bidding
  ▪ The State of Indiana Executive Branch can use negotiated bidding
  ▪ State's prices may provide a basis for special purchase for you

• Reverse Auction
  ▪ Internet purchasing site to issue invitation for bids and receive bids
  ▪ Must have a written policy for this
Request for Proposals

IC 5-22-9
Request for Proposals

Request for proposals must include:

- (1) **Factors or criteria** that will be used in evaluating the proposals.
  - May only consider those factors listed in RFP
- (2) Statement on relative **importance of price** and other factors.
- (3) Statement on **financial responsibility** requirements.
- (4) Statement concerning whether **discussions** may be conducted with responsible offerors.
Request for Proposals

- Publish Notice
- Offers are Private During Negotiations
- Register of Proposals
  - (1) A copy of the RFP
  - (2) A list of all persons to whom RFP given.
  - (3) A list of all proposals received
  - (4) The basis on which the award was made.
  - (5) The entire contents of the contract file except for proprietary information.
Request for Proposals

• **May negotiate** with responsible offerors
• Award to proposal determined in **writing** to be most advantageous to governmental body, taking into consideration price and the other evaluation factors set forth in the RFP.
• If provided in the RFP, may award to more than one (1) offeror.
Request for Proposals

• Offerors must be accorded *fair and equal* treatment with respect to any opportunity for discussion and revisions of proposals.

• In conducting discussions, information derived from other proposals may be used in discussion only if the identity is not disclosed.

• Must provide equivalent information to all offerors with which the purchasing agency chooses to have discussions.
Parting Thoughts

• Government funds, not a private business.

• Disposing of property.
THANK YOU!

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