

ARTICLE 1.1. STATE PROCUREMENT

NOTE: IC 4-13.4 was repealed by P.L.49-1997, SECTION 86, effective July 1, 1998.

Rule 1. General Provisions

25 IAC 1.1-1-1 Definitions

Authority: IC 4-13.4-3-1

Affected: IC 4-13.4-1-29

Sec. 1. The requirements of IC 4-13.4 [IC 4-13.4 was repealed by P.L.49-1997, SECTION 86, effective July 1, 1998.] do not apply to employment agreements. (Indiana Department of Administration; 25 IAC 1.1-1-1; filed Dec 15, 1981, 1:45 pm: 5 IR 239; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265)

25 IAC 1.1-1-2 Competitive sealed bids; bid guarantee

Authority: IC 4-13.4-3-1

Affected: IC 4-13.4-5-2

Sec. 2. At the discretion of the Director, bidders may be required to submit, with their bid, a bid guarantee in the form of a certified check, a cashiers' check, or a bond acquired from a surety company authorized to do business in the State of Indiana. If such is required, the amount of the bid guarantee shall be specified in the Invitation to Bid. Bid guarantees will be returned to bidders, upon request, after an award has been made or the solicitation has been cancelled.

At the discretion of the Director, a successful bidder may be required to submit, after the award has been made, a performance guarantee in the form of a certified check, a cashiers' check, or a bond acquired from a surety company authorized to do business in the State of Indiana. If such is required, the amount of the performance guarantee and the time that it must be submitted shall be specified in the Invitation to Bid. Performance guarantees will be returned, upon request, at the successful completion of the contract. (Indiana Department of Administration; 25 IAC 1.1-1-2; filed Dec 15, 1981, 1:45 pm: 5 IR 239; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265)

25 IAC 1.1-1-3 Competitive sealed bids; public inspection

Authority: IC 4-13.4-3-1

Affected: IC 4-13.4-5-2

Sec. 3. The following information shall be subject to public inspection after the contract award: (a) The invitation for bids; (b) A list of all vendors who received the invitation for bids; (c) The name and address of each bidder; (d) The amount of each bid; (e) A record showing the name of the successful bidder, the dollar amount of the bid, and the basis on which the award was made;

(f) The entire contents of the contract file except for proprietary information which may have been included with a bid such as:

- (1) trade secrets,
- (2) manufacturing processes,
- (3) financial information not otherwise publically [sic.] available, or
- (4) other data which does not bear on the competitive goals of public procurement,

which was not required by the terms of the invitation for bids itself to be made available for public inspection. A bidder shall identify information which he proposes to remain confidential and bind it separately from the remainder of his bid.

Requests for public disclosure of information which a bidder has identified as proprietary shall be made to the Director in writing. The Director shall examine the information to determine the validity of the bidder's request for confidentiality and shall inform the bidder of his decision, which decision shall become a part of the contract file. (Indiana Department of Administration; 25 IAC 1.1-1-3; filed Dec 15, 1981, 1:45 pm: 5 IR 239; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265)

25 IAC 1.1-1-4 Competitive sealed bids; withdrawal

Authority: IC 4-13.4-3-1
Affected: IC 4-13.4-5-2

Sec. 4. Withdrawal of a bid shall be permitted before the exact date and hour for submission of bids, either by an agent of the bidder bearing proper authorization and identification who shall receive and sign for the unopened bid packet, or by the timely receipt of a certified letter or telegram from the bidder.

A bid already submitted may be modified by withdrawal of the bid as provided above and resubmission of the modified bid before the exact date and hour for submission of bids. The bid may also be modified by the timely receipt of a certified letter or telegram from the bidder.

Neither the staff nor the facilities of the department of administration shall be available to a bidder desiring to make modifications.

The Commissioner has the authority to cancel awards or contracts based on bid mistakes when he determines that such action is in the best interest of the state. Such action shall be supported by a written determination made by the Commissioner.

This rule [*this section*] shall also apply to competitive sealed proposals. (*Indiana Department of Administration; 25 IAC 1.1-1-4; filed Dec 15, 1981, 1:45 pm: 5 IR 239; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

25 IAC 1.1-1-5 Competitive sealed proposals; bid guarantee

Authority: IC 4-13.4-3-1
Affected: IC 4-13.4-5-4

Sec. 5. At the discretion of the Director, offerors may be required to submit, with their proposal, a proposal guarantee in the form of a certified check, a cashiers' check, or a bond acquired from a surety company authorized to do business in the State of Indiana. If such is required, the amount of the proposal guarantee shall be specified in the Request for Proposals (RFPs). Proposal guarantees will be returned to offerors, upon request, after the execution of the contract.

At the discretion of the Director, a successful offeror may be required to submit, after the award has been made, a performance guarantee in the form of a certified check, a cashiers' check, or a bond acquired from a surety company authorized to do business in the State of Indiana. If such is required, the amount of the performance guarantee and the time that it must be submitted shall be specified in the Request for Proposals. Performance guarantees will be returned, upon request, at the successful completion of the contract. (*Indiana Department of Administration; 25 IAC 1.1-1-5; filed Dec 15, 1981, 1:45 pm: 5 IR 240; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

25 IAC 1.1-1-6 Competitive sealed proposals; public inspection

Authority: IC 4-13.4-3-1
Affected: IC 4-13.4-5-4

Sec. 6. The following information shall be subject to public inspection after the contract award: (a) The request for proposals; (b) A list of all vendors who received the request for proposals; (c) The name and address of each offeror; (d) The amount of each offer; (e) A record showing the name of the successful offeror, the dollar amount of the offer, and the basis on which the award was made.

(f) The entire contents of the contract file except for proprietary information which may have been included with an offer such as:

- (1) trade secrets,
- (2) manufacturing processes,
- (3) financial information not otherwise publically [*sic.*] available, or
- (4) other data which does not bear on the competitive goals of public procurement,

which was not required by the terms of the request for proposals itself to be made available for public inspection. An offeror shall identify information which he proposes to remain confidential and bind it separately from the remainder of his offer.

Requests for public disclosure of information which an offeror has identified as proprietary shall be made to the Director in writing. The Director shall examine the information to determine the validity of the offeror's request for confidentiality and shall inform the offeror of his decision, which decision shall become a part of the contract file.

After opening, but prior to the contract award, the following information shall be subject to public inspection: (a) the request for proposals; (b) a list of all vendors who received the request for proposals; (c) the name and address of each offeror. (*Indiana Department of Administration; 25 IAC 1.1-1-6; filed Dec 15, 1981, 1:45 pm: 5 IR 240; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

25 IAC 1.1-1-7 Competitive sealed proposals; clarification

Authority: IC 4-13.4-3-1

Affected: IC 4-13.4-5-4

Sec. 7. As provided for in the request for proposals, discussions may be conducted with responsible offerors, who submit proposals determined to be reasonably susceptible of being selected for award, for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements.

No discussions shall be held with an offeror whose proposal fails to meet a mandatory requirement of the RFP.

Discussions shall be held to: (a) promote understanding of the State's requirements and the offerors' proposals; and

(b) facilitate arriving at a contract that will be most advantageous to the State, taking into consideration price and other evaluation factors set forth in the RFP.

In conducting discussions, there must be no disclosure of any information derived from proposals submitted by competing offerors.

The only factors or criteria that may be used in the evaluation of proposals are those specified in the request for proposals. The requirements of the RFP shall not be altered.

After identification of the responsible offeror whose proposal appears to be the most advantageous to the State, the State will enter into contract preparation activities with the offeror. If at any time the contract preparation activities are judged to be ineffective, the State may cease all activities with that offeror and begin contract preparation activities with the next highest ranked offeror. This process may continue until a completed contract is executed. The State reserves the right to cease all contract preparation activities at any time and to reject all proposals if such action is determined by the Commissioner to be in the best interest of the State. (*Indiana Department of Administration; 25 IAC 1.1-1-7; filed Dec 15, 1981, 1:45 pm: 5 IR 240; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

25 IAC 1.1-1-8 Competitive sealed proposals; determination (Repealed)

Sec. 8. (*Repealed by Indiana Department of Administration; filed Feb 25, 1994, 10:00 a.m.: 17 IR 1518*)

25 IAC 1.1-1-9 Small purchases

Authority: IC 4-13.4-3-1

Affected: IC 4-13.4-5-5

Sec. 9. All purchases for which the amount of the ultimate expenditure is estimated not to exceed the amount set out in IC 4-13.4-5-5(a) [*IC 4-13.4 was repealed by P.L.49-1997, SECTION 86, effective July 1, 1998.*] may be made either upon competitive sealed bids or in the open market, at the discretion of the Director. If made in the open market, a manually signed quote must be secured and shall be filed with the requisition. If practicable, two or three quotes shall be secured, but failure to do so shall not prevent the purchase from being made. (*Indiana Department of Administration; 25 IAC 1.1-1-9; filed Dec 15, 1981, 1:45 pm: 5 IR 241; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

25 IAC 1.1-1-10 Sole source procurement

Authority: IC 4-13.4-3-1

Affected: IC 4-13.4-5-6

Sec. 10. (a) The signature of the governor on a contract satisfies the requirements of this section for the governor's written approval.

(b) In instances where the compatibility of equipment, accessories or replacement parts is the paramount consideration, a contract may be awarded without formal competition when the Commissioner states in writing his determination that there is only one (1) source which meets the agency's reasonable requirements, on the basis of a written justification submitted by the head of the state agency desiring to procure such supplies.

(c) In the case of high technology supplies, or a combination of supplies and services, such as word processing systems, a contract may be awarded without formal competition when the commissioner states in writing his determination that there is only one (1) source which meets the agency's reasonable requirements, on the basis of a specific written recommendation by the data processing division of the department of administration, developed as the result of a formal analysis of the state agency's needs undertaken by the division which meets the criteria established by the division, including cost factors.

(d) In the case of services not to exceed fifty thousand dollars (\$50,000), a contract may be awarded without formal competition when the Commissioner states in writing his determination that there is only one (1) source which meets the agency's reasonable requirements, on the basis of a written justification submitted by the head of the state agency desiring to procure such services.

(e) A contract may be awarded for a supply or service without competition in other instances when the Commissioner states in writing his determination that there is only one (1) source for the required supply or service. (*Indiana Department of Administration; 25 IAC 1.1-1-10; filed Dec 15, 1981, 1:45 pm: 5 IR 241; filed Jul 5, 1983, 3:22 pm: 6 IR 1371; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

25 IAC 1.1-1-11 Emergency procurements

Authority: IC 4-13.4-3-1

Affected: IC 4-13.4-5-7

Sec. 11. An emergency condition is a situation which creates a threat to the public health, welfare or safety such as may arise by reason of floods, epidemics, riots, equipment failures, or such other reason as may be proclaimed by the Governor, or determined by the Commissioner. The existence of such conditions create an immediate and serious need for supplies or services that cannot be met through normal procurement methods, and the lack of which would seriously threaten: (1) the functioning of state government; (2) the preservation or protection of property; or (3) the health or safety of any person.

Any state agency may make emergency procurements of up to \$1,500 for the repair of moveable equipment without prior Department of Administration approval when an emergency condition, as defined above, arises and the need cannot be met through normal procurement methods. Whenever practical, however, approval by the Commissioner or Director shall be obtained prior to the procurement. Emergency procurements of \$1,500 or more require the prior approval of the Commissioner or Director, either in writing or orally followed by written confirmation.

The procurement procedure used shall be selected to assure that the required supplies or services can be procured in time to meet the emergency. Given this constraint, such competition as is practicable shall be obtained. The agency head shall make a written determination stating the basis for an emergency procurement and for the selection of the particular contractor. Such determination shall be sent promptly to the Director. (*Indiana Department of Administration; 25 IAC 1.1-1-11; filed Dec 15, 1981, 1:45 pm: 5 IR 241; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

25 IAC 1.1-1-12 Procurement by federal supply service schedules

Authority: IC 4-13.4-3-1

Affected: IC 4-13.4-5-7

Sec. 12. (a) "Procurement" from federal supply service schedules includes buying, purchasing, renting, leasing, or otherwise acquiring any supplies or services.

(b) Any vendor listed on the current federal supply service schedules who is willing to make those prices available to the State for a fixed period of time shall make this availability known to the Director by filing with him a form available from the Procurement Division and receiving an identifying number.

(c) In the event the Commissioner determines in writing that it is advantageous to the State's interests in efficiency and

economy to procure an agency's request for specified supplies or services from federal supply service schedules rather than to conduct a competitive procurement, the Director shall select from the schedules the available (as specified above) vendor whose supplies or services best meet the agency's criteria and offer the best value to the State and shall enter into a contract with said vendor to meet the agency's request.

(d) In the event no appropriate vendor has filed with the Division, the Director may contact up to three scheduled vendors whose supplies or services best meet the agency's criteria and offer the best value to the State and invite them to file. The Director shall make his selection from the vendors who file pursuant to this request within a specified period of time. In the event no vendor files, a selection process other than IC 4-13.4-5-8 [IC 4-13.4-5-8 was repealed by P.L. 14-1996, SECTION 8, effective July 1, 1996.] shall be used.

(e) In making a selection among vendors listed on the schedules on any basis other than price, the Director shall justify his selection in writing. (*Indiana Department of Administration; 25 IAC 1.1-1-12; filed Dec 15, 1981, 1:45 pm: 5 IR 242; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

25 IAC 1.1-1-13 Cancellation or rejection of solicitations

Authority: IC 4-13.4-3-1

Affected: IC 4-13.4-5-9; IC 4-13.4-6-1

Sec. 13. (a) Prior to opening, a solicitation may be cancelled in whole or in part when the Commissioner or Director determines in writing that such action is in the best interest of the State for reasons including, but not limited to:

- (1) The State no longer requires the supplies or services;
- (2) The State no longer can reasonably expect to fund the procurement;
- (3) Proposed amendments to the solicitation would be of such magnitude that a new solicitation is desirable.

When a solicitation is cancelled prior to opening, notice of cancellation shall be sent to all businesses which have received a solicitation.

The notice of cancellation shall: (a) identify the solicitation, and (b) cite the reason for cancellation.

The reason for cancellation shall be made part of the procurement file and shall be available for public inspection.

(b) After opening but prior to award, all bids or proposals may be rejected in whole or in part when the Commissioner or the Director determines in writing that such action is in the State's best interest for reasons including but not limited to:

- (1) The supplies or services being procured are no longer required;
- (2) Ambiguous or otherwise inadequate specifications were part of the solicitation;
- (3) Prices exceed available funds and it would not be appropriate to adjust quantities to come within available funds;
- (4) All otherwise acceptable bids or proposals received are at clearly unreasonable prices;
- (5) There is reason to believe that the bids or proposals may not have been independently arrived at in open competition, may have been collusive, or may have been submitted in bad faith;

A notice of rejection shall be sent to all businesses which submitted bids or proposals.

The reason for rejection shall be made part of the procurement file and shall be available for public inspection.

(c) After opening but prior to award, individual bids or proposals may be formally rejected when the Director or Commissioner makes a written determination that:

- (1) The business that submitted the bid is nonresponsive pursuant to IC 4-13.4-6-1 [IC 4-13.4 was repealed by P.L. 49-1997, SECTION 86, effective July 1, 1998.].
- (2) The bid is not responsive in that it does not conform in all material respects to the requirements of the solicitation.
- (3) The supply or service offered is unacceptable by reason of its failure to meet the requirements of the specifications or permissible alternatives or other acceptability criteria set forth in the solicitation.

The determination shall be made a part of the contract file. (*Indiana Department of Administration; 25 IAC 1.1-1-13; filed Dec 15, 1981, 1:45 pm: 5 IR 242; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

25 IAC 1.1-1-14 Qualifications and duties of bidders, offerors, and prospective contractors; determination of nonresponsive bidder

Authority: IC 4-13.4-3-1

Affected: IC 4-13.4-6-1

Sec. 14. (a) Factors to be considered in determining whether the standard of responsibility has been met include whether a prospective contractor has:

- (1) available the appropriate financial, material, equipment, facility, and personnel resources and expertise, or the ability to obtain them, necessary to indicate its capability to meet all contractual requirements;
- (2) a satisfactory record of performance;
- (3) a satisfactory record of integrity;
- (4) qualified legally to contract with the State;
- (5) supplied all requested information in connection with the inquiry concerning responsibility.

This section shall not prevent the Director from establishing additional responsibility standards for a particular procurement, provided that they are set forth in the solicitation.

(b) The prospective contractor shall supply information requested by the Director concerning the responsibility of such contractor. If the contractor fails to supply the requested information, the Director shall base the determination of responsibility upon any available information or may find the prospective contractor nonresponsible if such failure to respond is unreasonable.

(c) The prospective contractor may demonstrate the availability of necessary financing, equipment, facilities, expertise, and personnel by submitting upon request:

- (1) evidence that the contractor possesses such items;
 - (2) acceptable plans to subcontract for such items; or
 - (3) a documented commitment from, or explicit arrangement with, a satisfactory source to provide the items.
- (d) Before awarding a contract, the Director must be satisfied that the prospective contractor is responsible.

(e) If a bidder or offeror is found nonresponsible, a written determination of nonresponsibility setting forth the basis of the finding shall be prepared by the Commissioner or Director and shall be made part of the contract file. A copy of the determination shall be sent promptly to the nonresponsible bidder or offeror. (*Indiana Department of Administration; 25 IAC 1.1-1-14; filed Dec 15, 1981, 1:45 pm: 5 IR 243; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

25 IAC 1.1-1-15 Cost or pricing data; contractor certification

Authority: IC 4-13.4-3-1

Affected: IC 4-13.4-6-3; IC 4-13.4-9-1

Sec. 15. Except in cases: (a) where the contract price is based on adequate price competition;

(b) where the contract price is based on established catalog prices or market prices;

(c) where the contract prices are set by law or rule; or

(d) where the Director makes a determination that these requirements may be waived and the reasons for the waiver are stated in writing;

the following requirements shall apply.

An offeror submitting a competitive sealed proposal must submit cost or pricing data which he certifies is accurate, complete and current as of a mutually agreed date prior to the date of the pricing of any contract awarded pursuant to a Request for Proposals, where the total contract price is expected to exceed \$50,000.

A proposed sole source contractor must submit cost or pricing data which he certifies is accurate, complete and current as of a mutually agreed date prior to the date of the pricing of any contract awarded pursuant to the sole source provisions of the law, where the total contract price is expected to exceed \$25,000.

A contractor who wishes to obtain a change order or modification pursuant to IC 4-13.4-9-1 [*IC 4-13.4 was repealed by P.L.49-1997, SECTION 86, effective July 1, 1998.*] must submit cost or pricing data which he certifies is accurate, complete and current as of a mutually agreed date prior to the date of the pricing of any change order or contract modification, whenever the original contract price exceeds \$50,000 and the amount of the change order or contract modification is expected to exceed \$5,000.

The Director may require the submission of certified cost or pricing data prior to contract award in cases where only one qualified bid is received in response to an invitation for bids. (*Indiana Department of Administration; 25 IAC 1.1-1-15; filed Dec 15, 1981, 1:45 pm: 5 IR 243; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

25 IAC 1.1-1-16 Types of contracts; prohibited contracts

Authority: IC 4-13.4-3-1

Affected: IC 4-13.4-7-1; IC 4-13.4-9-1

Sec. 16. (a) Any type of contract not otherwise prohibited by law, except a cost plus a percentage of cost contract, may be used. However, a firm fixed price contract is preferred; any other type of contract may be used only when the director or commissioner determines that such use is in Indiana's best interest. Any solicitation shall include notice of the contract terms and conditions.

(b) The following are among the factors which may be considered in selecting contract type:

- (1) The type or complexity of the supply or service being procured.
- (2) The difficulty of estimating performance costs such as the inability of Indiana to develop definitive specifications, to identify the risks to the contractor inherent in the nature of the work to be performed, or otherwise establish clearly the requirements of the contract.
- (3) The administrative costs to both parties.
- (4) The degree to which Indiana must provide technical coordination during the performance of the contract.
- (5) The effect of the choice type on the amount of compensation to be expected.
- (6) The stability of material or commodity market prices or wage levels.
- (7) The urgency of the requirement.
- (8) The length of contract performance.
- (9) Federal requirements.

(c) A contract may contain an option for renewal or extension of its terms, without modification, for a specified period of time.

However:

- (1) exercise of the option is at the sole discretion of Indiana and not subject to agreement or acceptance by the contractor;
- (2) notice of such provision must be included in any solicitation; and
- (3) such renewal or extension must be approved by the commissioner and the state budget director.
- (d) A contract for rental or lease may contain an option to purchase. However:
 - (1) exercise of the option is at the sole discretion of Indiana and not subject to agreement or acceptance by the contractor;
 - (2) provision of such option must be part of any solicitation;
 - (3) a means of computing the cost of the item to Indiana at fixed intervals, should it exercise its option, which is no more than the actual resale or fair market value of the item at the time of exercising the option, must be part of the agreement;
 - (4) Indiana must have the right to cancel the lease or rental agreement, at fixed intervals, without penalty; and
 - (5) exercise of the option to purchase must be subject to the approval of the commissioner and the state budget director.
- (e) A using agency may not enter into an installment sales contract unless the contract contains the following:
 - (1) A contract clause that permits the department to cancel the contract if the budget director makes a written determination that funds are not appropriated or otherwise available to support continuation of the contract.
 - (2) Other contract terms that the commissioner may require.
- (f) As used in this section, "quantity purchase agreement" includes the following:
 - (1) A contract for an indefinite amount of specific supplies or services to be furnished at a specific time, or as ordered, that establishes a fixed price per unit.
 - (2) A contract for supplies or services to furnish all the actual requirements of a designated using agency or agencies, or a determinable part of the actual requirements (such as a percentage), during a specified period of time.
- (g) Indiana may enter into an indefinite quantity contract if:
 - (1) the director determines it appropriate;
 - (2) an approximate quantity or the best information available as to quantity is stated in the solicitation; and
 - (3) the term of the contract is specified.
- (h) Indiana may enter into a requirements contract if:
 - (1) the director determines it appropriate;
 - (2) an approximate quantity or the best information available as to quantity is stated in the solicitation;
 - (3) the term of the contract is specified; and
 - (4) use of this type contract is limited to instances where actual requirements can be reasonably estimated.

(i) A solicitation for an indefinite quantity contract or a requirements contract and the resultant contract may reserve the right to Indiana to separately meet requirements of the using agency or agencies.

(j) The vendor for a quantity purchase agreement may be selected by means of an invitation for bids, request for proposals, or in any other manner not prohibited by law.

(k) Price adjustments in quantity purchase agreements will be permitted only:

(1) under the terms and conditions specified in the solicitation; and

(2) if the adjustment is computed by a rule, method, or formula specified in the agreement.

(l) Upon the termination of a quantity purchase agreement, the director may reaward the agreement to the vendor quarterly, semiannually, or annually, without further competition, if the vendor consents to the same prices as the original award. A quantity purchase agreement may not be extended unless notice of it was part of the solicitation. No reaward may extend the total period of the agreement with the vendor beyond a two (2) year term.

(m) The director shall make every effort to ensure that no more quantity purchase orders than are reasonably necessary for the efficient operation of the governmental bodies affected thereby are in effect at any one (1) time. Although this does not preclude the issuance of more than one (1) quantity purchase order for any specific item, effort shall be made to specify the governmental agency, geographic location, etc. for which each is applicable so that there is little or no overlap. (*Indiana Department of Administration; 25 IAC 1.1-1-16; filed Dec 15, 1981, 1:45 p.m.: 5 IR 244; filed Jul 5, 1983, 3:22 p.m.: 6 IR 1371; filed May 13, 1987, 11:55 a.m.: 10 IR 2262; filed Jul 26, 1988, 4:10 p.m.: 11 IR 4070; filed Apr 17, 1991, 3:00 p.m.: 14 IR 1710; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

25 IAC 1.1-1-17 Modification and termination of contracts for supplies and services; contract clauses

Authority: IC 4-13.4-3-1

Affected: IC 4-13.4-9-1

Sec. 17. A fixed price contract with price adjustment provides for variation in the contract price under special conditions defined in the contract. The formula or other basis by which adjustment in contract price can be made shall be specified in the solicitation and resulting contract. Adjustment allowed may be upward, downward, or both. Examples of special conditions for which contract adjustments provisions may be permitted by the Director to be included in a fixed price contract include changes due to rapid and substantial price fluctuations, which can be related to an accepted index (such as contracts for gasoline, heating oils, and dental gold alloy). (*Indiana Department of Administration; 25 IAC 1.1-1-17; filed Dec 15, 1981, 1:45 pm: 5 IR 245; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

25 IAC 1.1-1-18 Specifications; inspections, tests, and preparations for delivery

Authority: IC 4-13.4-3-1; IC 4-13.4-4-1

Affected: IC 4-13.4-4

Sec. 18. Specifications shall, to the extent practicable, emphasize the functional or performance requirements of an agency's procurement of supplies or services. Using agencies shall include as part of their purchase requisition the supply or service specification or description and all requirements for inspecting, testing or preparing a service or supply item for delivery. The following procedures governing the preparation, maintenance and utilization of specifications, unless otherwise prescribed by the director, are to be used in the procurement of supplies and services for governmental use.

(a) Specification preparation: (1) Using agencies may prepare and submit individual agency specifications for the procurement of supplies and services. These specifications are subject to procurement division approval and acceptance for use in public purchasing procedures.

(2) Common or general use specifications are to be prepared by the procurement division for all agency use. Wherever practical, agencies shall use specifications developed by the procurement division.

(3) Any specifications developed and used by the United States government or its agencies may be used by the procurement division in the procurement of supplies.

(b) Maintenance of specifications: (1) The procurement division shall maintain a central file of common or general use specifications for all state agency use. Agencies may submit general use specifications to the director for approval and subsequent utilization for the procurement of supplies or services that may be awarded on individual competitive sealed bids, regularly scheduled

class bids, or all state agency quantity purchase awards.

(2) Any agency preparing specifications for its use shall maintain a central file of specifications which the division and other agencies may utilize in the procurement of supplies and services.

(c) Specification content: (1) All specifications shall contain the description of the physical or functional characteristics or the nature of a supply or service procurement. This description may also include, with reasonable particularity, the kind, quantity and quality of all materials, equipment goods and supplies to be purchased.

(2) The following types of specifications, and those prescribed by the director from time to time, may be used by the division and agencies in the procurement of supplies and services:

(A) Design-type (also physical or technical)—A description of materials or components to be used, and dimensions to be adhered to, in a detailed, precise manner.

(B) Functional—A description of performance characteristics to be met, without prescribing exactly how they are to be accomplished.

(C) Brand name or equivalent—A specification which uses one (1) or more manufacturer's names or catalogue numbers to describe the standard of quality, performance or other characteristics needed to meet the state agencies requirements, and which provides for the submission of equivalent products.

(D) Common or general use—Those specifications developed and maintained by the division for use by all agencies for recurring procurement needs where the characteristics of supplies or services, as commercially produced or provided, remain relatively stable, although the frequency or volume of procurements may vary.

(3) A specification may provide alternate description of supplies or services where two (2) or more design, functional or performance criteria will satisfactorily meet the state's procurement requirements.

(4) A specification may include a description of any requirement for inspecting, testing or preparing a supply or service for delivery.

(5) To the extent practical, a specification should not include any solicitation or contract term or condition such as a requirement for time or place of bid opening, time of delivery, payment, liquidated damages or qualification of bidders.

(d) Inspection and testing: (1) All supplies and services provided to the state are subject to the division's inspection and testing requirements at all times before, during or after manufacture or delivery. All such inspection and testing requirements may be established as part of individual bid solicitations or as part of operational procedures developed by the director. Those operational procedures may also allow for reasonable charges assessed to supplying vendors to recover costs of inspections or testing as required by the division.

(2) Vendors shall furnish, without additional charges, all reasonable facilities and assistance for the safe and convenient inspections and tests required by the division.

(3) The division shall have the right to reject and return at the vendor's expense, or to require at vendor's expense, the correction or replacement of supplies or services which are defective or do not conform with solicitation or purchase order requirements. All rejection shall be held at the vendor's expense and risk, including all transportation and handling costs, until returned to the vendor or corrected by the vendor. (*Indiana Department of Administration; 25 IAC 1.1-1-18; filed Nov 21, 1983, 4:29 pm: 7 IR 320; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

Rule 2. Indiana Business Definition, Certification, and Enforcement (Repealed)

(Repealed by Indiana Department of Administration; filed Jul 11, 1996, 8:50 a.m.: 19 IR 3290)

Rule 3. United States Manufactured Product Definition, Policy, Certification, and Enforcement

25 IAC 1.1-3-1 General provisions

Authority: IC 4-13-1-4; IC 4-13-1-7

Affected: IC 4-13.4-2-10

Sec. 1. IC 4-13.4-2-10 [*IC 4-13.4 was repealed by P.L.49-1997, SECTION 86, effective July 1, 1998.*] allows a preference to promote the purchase of products manufactured in the United States. (*Indiana Department of Administration; 25 IAC 1.1-3-1; filed Aug 30, 1994, 2:25 p.m.: 18 IR 6; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

25 IAC 1.1-3-2 “Components” defined

Authority: IC 4-13-1-4; IC 4-13-1-7
Affected: IC 4-13.4-2-10

Sec. 2. As used in this rule, “components” means those articles, materials, and supplies incorporated directly into the products. (*Indiana Department of Administration; 25 IAC 1.1-3-2; filed Aug 30, 1994, 2:25 p.m.: 18 IR 6; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

25 IAC 1.1-3-3 “United States” defined

Authority: IC 4-13-1-4; IC 4-13-1-7
Affected: IC 4-13.4-2-10

Sec. 3. As used in this rule, “United States” means the United States, its possessions, Puerto Rico, and any other place subject to its jurisdiction, but does not include trust territories. (*Indiana Department of Administration; 25 IAC 1.1-3-3; filed Aug 30, 1994, 2:25 p.m.: 18 IR 6; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

25 IAC 1.1-3-4 “United States manufactured product” defined

Authority: IC 4-13-1-4; IC 4-13-1-7
Affected: IC 4-13.4-2-10

Sec. 4. As used in this rule, “United States manufactured product” means either of the following:

- (1) An unmanufactured product mined or produced in the United States.
- (2) A product manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds fifty percent (50%) of the cost of all its components. (In determining if a product is manufactured in the United States, only the product and its components shall be considered.) The cost of each component includes transportation costs to the place of incorporation into the product and any applicable duty (whether or not a duty-free entry certificate is issued). Components of a foreign origin of the same class or kind for which determinations have been made in accordance with section 5(a)(3) or 5(a)(4) of this rule are treated as United States manufactured. Scrap generated, collected, and prepared for processing in the United States is considered United States manufactured.

(*Indiana Department of Administration; 25 IAC 1.1-3-4; filed Aug 30, 1994, 2:25 p.m.: 18 IR 6; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

25 IAC 1.1-3-5 Policy

Authority: IC 4-13-1-4; IC 4-13-1-7
Affected: IC 4-13.4-2-10

Sec. 5. (a) The statute requires that only United States manufactured products be acquired for public use, except articles, materials, and supplies as determined by the commissioner or designee:

- (1) for use outside the United States;
- (2) for which the cost would be unreasonable;
- (3) for which the preference would be inconsistent with the public interest; or
- (4) that are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality.

(b) For purposes of determining unavailability, the items listed in Federal Acquisition Regulation 25.108 (48 CFR 25.108) are presumed to be not reasonably available. However, the commissioner or designee reserves the right to determine an item to be available for a particular bid, request for proposal, or other acquisition procedure. (*Indiana Department of Administration; 25 IAC 1.1-3-5; filed Aug 30, 1994, 2:25 p.m.: 18 IR 6; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

25 IAC 1.1-3-6 Certification

Authority: IC 4-13-1-4; IC 4-13-1-7
Affected: IC 4-13.4-2-10

Sec. 6. (a) Any business which makes an offer, a proposal, or a bid for the purpose of seeking the preference in IC 4-13.4-2-10 [IC 4-13.4 was repealed by P.L.49-1997, SECTION 86, effective July 1, 1998.] shall certify under the penalties of perjury that it is offering United States manufactured products within the meaning of section 4 of this rule. The certification will be made on forms provided by the department and approved by the commission on public records.

(b) The director may presume the representations contained in the certification are true, thereby qualifying the business for the United States manufactured products preference. However, this presumption may be rebutted under section 7 of this rule or if the director has reason to question the representations contained in the certification.

(c) Whether the United States manufactured product preference is offered shall be stated in each invitation for bid, request for proposal, or other acquisition procedure.

(d) The decision to grant the United States manufactured product preference shall be at the sole discretion of:

- (1) the director of procurement of the department or designee; or
- (2) the commissioner or designee.

(Indiana Department of Administration; 25 IAC 1.1-3-6; filed Aug 30, 1994, 2:25 p.m.: 18 IR 6; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265)

25 IAC 1.1-3-7 Enforcement

Authority: IC 4-13-1-4; IC 4-13-1-7
Affected: IC 4-13.4-2-10

Sec. 7. (a) If, prior to award, the commissioner or designee determines the business does not qualify for the United States manufactured product preference, the commissioner or designee may do any of the following in any combination deemed appropriate:

- (1) Declare the business nonresponsible and bar it from doing business with the state for a specified period, not exceeding two (2) years.
- (2) Require the business to reimburse the state for the costs incurred due to rebidding of the contract.

(b) If, after the award, the commissioner or designee determines the business does not qualify for the United States manufactured product preference, the commissioner or designee may do any of the following in any combination deemed appropriate:

- (1) Cancel the contract.
- (2) Declare the business nonresponsible and bar it from doing business with the state for a specified period, not exceeding two (2) years.
- (3) Require the business to reimburse the state for the amount incurred due to rebidding of the contract.

(c) The sanctions in subsections (a) and (b) in no way limit what actions could be taken through appropriate civil or criminal statutes.

(d) Any applicant for the United States manufactured product preference who is dissatisfied with the decision rendered concerning sanctions may, within fifteen (15) days after receiving such notification, request in writing a reconsideration of that decision and submit additional written evidence bearing on the sanction. The commissioner or designee will consider any such request within forty-five (45) days of receipt thereof. A written decision will be issued. *(Indiana Department of Administration; 25 IAC 1.1-3-7; filed Aug 30, 1994, 2:25 p.m.: 18 IR 7; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265)*

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