

ARTICLE 1.5. SMALL BUSINESS PROCUREMENTS AND PROJECTS

Rule 1. Definitions

25 IAC 1.5-1-1 Application of definitions

Authority: IC 4-13-1-7; IC 4-13.6-3-1
Affected: IC 4-13.6

Sec. 1. (a) Unless indicated otherwise, all words in 25 IAC 1.5 have the meanings specified in IC 4-13-13.5 [IC 4-13-13.5 was repealed by P.L.49-1997, SECTION 86, effective July 1, 1998.], IC 4-13.4 [IC 4-13.4 was repealed by P.L.49-1997, SECTION 86, effective July 1, 1998.], or IC 4-13.6.

(b) The definitions in 25 IAC 1.5-1 apply throughout 25 IAC 1.5. (*Indiana Department of Administration; 25 IAC 1.5-1-1; filed Jul 17, 1985, 11:48 am: 8 IR 1697; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

25 IAC 1.5-1-2 "Construction business" defined

Authority: IC 4-13-1-7; IC 4-13.6-3-1
Affected: IC 4-13-13.5-2

Sec. 2. "Construction business" means a business that derives its principal source of income from the participation in the erection of buildings, facilities, structures, bridges, overpasses or highways. (*Indiana Department of Administration; 25 IAC 1.5-1-2; filed Jul 17, 1985, 11:48 am: 8 IR 1697; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

25 IAC 1.5-1-3 "Director" defined

Authority: IC 4-13-1-7; IC 4-13.6-3-1
Affected: IC 4-13.6

Sec. 3. "Director" means the director of the procurement division in relation to a procurement under IC 4-13.4 [IC 4-13.4 was repealed by P.L.49-1997, SECTION 86, effective July 1, 1998.] and means the director of the public works division in relation to a public works project under IC 4-13.6. (*Indiana Department of Administration; 25 IAC 1.5-1-3; filed Jul 17, 1985, 11:48 am: 8 IR 1697; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

25 IAC 1.5-1-4 "Employee" defined

Authority: IC 4-13-1-7; IC 4-13.6-3-1
Affected: IC 4-13-13.5-2

Sec. 4. "Employee" means any individual employed by a business full-time, part-time or temporarily. (*Indiana Department of Administration; 25 IAC 1.5-1-4; filed Jul 17, 1985, 11:48 am: 8 IR 1697; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

25 IAC 1.5-1-5 "Manufacturing business" defined

Authority: IC 4-13-1-7; IC 4-13.6-3-1
Affected: IC 4-13-13.5-2

Sec. 5. "Manufacturing business" means a business that derives its principal source of income from the sale of goods made from raw, unfinished materials, as distinguished from the final product. (*Indiana Department of Administration; 25 IAC 1.5-1-5; filed Jul 17, 1985, 11:48 am: 8 IR 1697; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

25 IAC 1.5-1-6 "Offer" defined

Authority: IC 4-13-1-7; IC 4-13.6-3-1
Affected: IC 4-13-13.5

Sec. 6. "Offer" means a response to a solicitation. (*Indiana Department of Administration; 25 IAC 1.5-1-6; filed Jul 17, 1985, 11:48 am: 8 IR 1697; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

25 IAC 1.5-1-7 “Retail business” defined

Authority: IC 4-13-1-7; IC 4-13.6-3-1
Affected: IC 4-13-13.5-2

Sec. 7. “Retail business” means a business that derives its principal source of income from the sale of supplies to the ultimate consumer. (*Indiana Department of Administration; 25 IAC 1.5-1-7; filed Jul 17, 1985, 11:48 am: 8 IR 1697; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

25 IAC 1.5-1-8 “Service business” defined

Authority: IC 4-13-1-7; IC 4-13.6-3-1
Affected: IC 4-13-13.5-2

Sec. 8. “Service business” means a business that derives its principal source of income from the sale of useful artistic, educational, intellectual, literary, or scientific labor from which no necessary tangible commodity is derived. (*Indiana Department of Administration; 25 IAC 1.5-1-8; filed Jul 17, 1985, 11:48 am: 8 IR 1697; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

25 IAC 1.5-1-9 “Small business” defined

Authority: IC 4-13-1-7; IC 4-13.6-3-1
Affected: IC 4-13-13.5-2

Sec. 9. “Small business” means a business that:
(1) is independently owned and operated;
(2) is not dominant in its industry; and
(3) meets the restrictions imposed by 25 IAC 1.5-3-1.

(*Indiana Department of Administration; 25 IAC 1.5-1-9; filed Jul 17, 1985, 11:48 am: 8 IR 1697; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

25 IAC 1.5-1-10 “Small business procurement” defined

Authority: IC 4-13-1-7; IC 4-13.6-3-1
Affected: IC 4-13-13.5

Sec. 10. “Small business procurement” means a procurement limited to small businesses under 25 IAC 1.5. (*Indiana Department of Administration; 25 IAC 1.5-1-10; filed Jul 17, 1985, 11:48 am: 8 IR 1698; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

25 IAC 1.5-1-11 “Small business project” defined

Authority: IC 4-13-1-7; IC 4-13.6-3-1
Affected: IC 4-13-13.5

Sec. 11. “Small business project” means a public works project limited to small businesses under 25 IAC 1.5. (*Indiana Department of Administration; 25 IAC 1.5-1-11; filed Jul 17, 1985, 11:48 am: 8 IR 1698; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

25 IAC 1.5-1-12 “Solicitation” defined

Authority: IC 4-13-1-7; IC 4-13.6-3-1
Affected: IC 4-13.6-5

Sec. 12. “Solicitation” means:
(1) any procedure authorized under IC 4-13.4-5 [*IC 4-13.4 was repealed by P.L.49-1997, SECTION 86, effective July 1, 1998.*] by which a procurement may be made, whether by invitation to bid, request for proposals or other procedure; or
(2) an invitation to bid on a public works project under IC 4-13.6-5.

(Indiana Department of Administration; 25 IAC 1.5-1-12; filed Jul 17, 1985, 11:48 am: 8 IR 1698; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265)

25 IAC 1.5-1-13 “Wholesale business” defined

Authority: IC 4-13-1-7; IC 4-13.6-3-1
Affected: IC 4-13-13.5-2

Sec. 13. “Wholesale business” means a business that derives its principal source of income from sales to retailers, other merchants, or industrial, institutional or commercial users who will use the goods for resale or business use. *(Indiana Department of Administration; 25 IAC 1.5-1-13; filed Jul 17, 1985, 11:48 am: 8 IR 1698; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265)*

Rule 2. Policies

25 IAC 1.5-2-1 Purpose

Authority: IC 4-13-1-7; IC 4-13.6-3-1
Affected: IC 4-13-13.5

Sec. 1. The purpose of 25 IAC 1.5-2 is to implement the public policy of the state of Indiana, expressed in IC 4-13-13.5 [IC 4-13-13.5 was repealed by P.L.49-1997, SECTION 86, effective July 1, 1998.], so that a fair proportion of state government's total purchases and contracts for supplies and services is placed with small businesses. *(Indiana Department of Administration; 25 IAC 1.5-2-1; filed Jul 17, 1985, 11:48 am: 8 IR 1698; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265)*

25 IAC 1.5-2-2 Applicability of other law

Authority: IC 4-13-1-7; IC 4-13.6-3-1
Affected: IC 4-13.6

Sec. 2. The provisions of IC 4-13.4 [IC 4-13.4 was repealed by P.L.49-1997, SECTION 86, effective July 1, 1997.], IC 4-13.6, 25 IAC 1.1, 25 IAC 1.5 and other applicable law shall otherwise govern small business procurements and small business projects. *(Indiana Department of Administration; 25 IAC 1.5-2-2; filed Jul 17, 1985, 11:48 am: 8 IR 1698; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265)*

Rule 3. Procedures

25 IAC 1.5-3-1 Qualification as small business

Authority: IC 4-13-1-7; IC 4-13.6-3-1
Affected: IC 4-13-13.5-2

Sec. 1. (a) For purposes of determining whether a business is a small business, all affiliates of the business will be considered as part of the business.

(b) Whenever reference is made to a number of employees in this section, the number shall mean the average number of employees that the business had during its most recently completed fiscal year.

(c) A business is not a small business if it fails to meet the following restrictions:

(1) For a construction business: average gross annual receipts for the current and three (3) previous fiscal years is [sic.] four million dollars (\$4,000,000) or less.

(2) For a manufacturing business: the number of its employees is one hundred (100) or less.

(3) For a retail business: average sales and receipts for the current and three (3) previous fiscal years is [sic.] five hundred thousand dollars (\$500,000) or less.

(4) For a service business: average sales for the current and three (3) previous fiscal years is [sic.] five hundred thousand dollars (\$500,000) or less and the number of its employees is twenty-five (25) or less.

(5) For a wholesale business: annual sales for its most recently completed fiscal year is [sic.] four million dollars (\$4,000,000) or less.

(Indiana Department of Administration; 25 IAC 1.5-3-1; filed Jul 17, 1985, 11:48 a.m.: 8 IR 1698; filed Nov 3, 1988, 9:20 a.m.: 12 IR 526; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265)

25 IAC 1.5-3-2 Designation of small business procurements and projects

Authority: IC 4-13-1-7; IC 4-13.6-3-1
Affected: IC 4-13.6-5

Sec. 2. (a) The director may, with the approval of the commissioner, require the procurement to be a small business procurement or that the project be performed as a small business project.

(b) The director shall not recommend to the commissioner that a procurement be a small business procurement or that a public works project be a small business project unless there is a reasonable expectation that at least two (2) responsible small businesses are capable of submitting an offer at a fair and reasonable price. *(Indiana Department of Administration; 25 IAC 1.5-3-2; filed Jul 17, 1985, 11:48 am: 8 IR 1699; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265)*

25 IAC 1.5-3-3 Notification of designation

Authority: IC 4-13-1-7; IC 4-13.6-3-1
Affected: IC 4-13.6-5

Sec. 3. When the director makes a small business procurement or designates a public works project as a small business project, the solicitation shall indicate that the procurement or the project is limited to small businesses. *(Indiana Department of Administration; 25 IAC 1.5-3-3; filed Jul 17, 1985, 11:48 am: 8 IR 1699; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265)*

25 IAC 1.5-3-4 Certification as a small business

Authority: IC 4-13-1-7; IC 4-13.6-3-1
Affected: IC 4-13.6-5

Sec. 4. (a) Any business which makes an offer in the case of a small business procurement or in the case of a small business project shall certify that it is a small business within the meaning of 25 IAC 1.5.

(b) The director shall presume the representations contained in the small business certification submitted by an offeror are true, thereby qualifying the offeror as a small business. However, this presumption may be rebutted under 25 IAC 1.5-4-1, under 25 IAC 1.5-4-2 or if the director has reason to question the representations contained in the certification.

(c) The director may require a business which submits an offer as a small business to provide information the director considers necessary to demonstrate that the business is a small business. *(Indiana Department of Administration; 25 IAC 1.5-3-4; filed Jul 17, 1985, 11:48 am: 8 IR 1699; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265)*

25 IAC 1.5-3-5 Awards

Authority: IC 4-13-1-7; IC 4-13.6-3-1
Affected: IC 4-13.6-5

Sec. 5. (a) The director shall make an award to the small business which has submitted the lowest priced offer if:

(1) the business is responsive and responsible; and

(2) the offer is reasonable in the judgment of the director.

(b) If either of the criteria set out in subsection (a) is not met, the director may:

(1) make an award to the small business that has made the next lowest priced offer and that satisfies both criteria set out in subsection (a); or

(2) cancel the solicitation as a small business procurement or a small business project.

(c) If the director does not make an award under this section, then the procurement may be made or the public works project performed without limitation to small businesses. *(Indiana Department of Administration; 25 IAC 1.5-3-5; filed Jul 17, 1985, 11:48 a.m.: 8 IR 1699; filed Nov 3, 1988, 9:20 a.m.: 12 IR 526; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265)*

25 IAC 1.5-3-6 Acceptance of procedures and sanctions

Authority: IC 4-13-1-7; IC 4-13.6-3-1
Affected: IC 4-13.6-5

Sec. 6. A solicitation under 25 IAC 1.5 shall state that businesses submitting offers as small businesses will accept all procedures and possible sanctions provided in 25 IAC 1.5-4 and that the provisions of 25 IAC 1.5 are incorporated by reference into any contract awarded under 25 IAC 1.5. (*Indiana Department of Administration; 25 IAC 1.5-3-6; filed Jul 17, 1985, 11:48 am: 8 IR 1699; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

Rule 4. Compliance

25 IAC 1.5-4-1 Challenge of small business status—prior to award

Authority: IC 4-13-1-7; IC 4-13.6-3-1
Affected: IC 4-13.6-5

Sec. 1. (a) After offers are opened, and prior to award, any person may submit information to the commissioner regarding the qualifications as a small business of the business which would be awarded a contract under 25 IAC 1.5.

(b) If the commissioner determines that the information provided has some foundation, the commissioner may:

- (1) hold a hearing to determine whether the business qualifies as a small business;
- (2) cancel the solicitation as a small business procurement or a small business project; or
- (3) act under both subsection (b)(1) and subsection (b)(2).

(c) If the commissioner does not cancel the solicitation as a small business procurement or small business project, the commissioner shall not award a contract until a determination is made on the merits of the case.

(d) If after a hearing under subsection (b), the commissioner determines the business which would be awarded a contract under 25 IAC 1.5 does not qualify as a small business, the commissioner may impose the following sanctions in any combination deemed appropriate:

- (1) the offer of the business shall be rejected;
- (2) the bid bond of the business shall be forfeited;
- (3) the business shall not be permitted to submit an offer for the same supplies, services or public works project if the solicitation is cancelled and subsequently opened to all businesses generally; or
- (4) the business shall be barred from doing business with the state of Indiana for a specified period, not exceeding two (2) years.

(*Indiana Department of Administration; 25 IAC 1.5-4-1; filed Jul 17, 1985, 11:48 am: 8 IR 1700; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

25 IAC 1.5-4-2 Challenge of small business status—after award

Authority: IC 4-13-1-7; IC 4-13.6-3-1
Affected: IC 4-13.6-5

Sec. 2. (a) After a contract has been awarded, any person may submit information to the commissioner regarding the qualifications as a small business of the business which has been awarded the contract.

(b) If the commissioner determines that the information has some foundation, the commissioner may hold a hearing to determine whether the business qualified as a small business at the time of the award.

(c) Until a determination is made on the merits of the case, the department shall presume that the business qualified as a small business at the time of award and the business shall be permitted to continue performance of the contract without prejudice until a determination is made on the merits of the case.

(d) If after a hearing under subsection (b), the commissioner determines that a business to which a contract has been awarded under 25 IAC 1.5 did not qualify as a small business at the time the award was made, the commissioner may impose the following sanctions in any combination deemed appropriate:

- (1) the business will pay the state of Indiana an amount, determined by the commissioner, not greater than ten percent (10%) of the amount of the offer made by the business or such an amount shall be deducted from any amounts due the business under

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the contract;

(2) the contract with the business shall be cancelled;

(3) the business shall not be permitted to submit an offer for the same supplies, services or project if the contract is cancelled, and a new solicitation is made for the same supplies, services or project; or

(4) the business shall be barred from doing business with the state of Indiana for a specified period, not exceeding two (2) years.

(Indiana Department of Administration; 25 IAC 1.5-4-2; filed Jul 17, 1985, 11:48 am: 8 IR 1700; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265)

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