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**TITLE 25 INDIANA DEPARTMENT OF
ADMINISTRATION**

Proposed Rule
LSA Document #06-4

DIGEST

Amends 25 IAC 1.1-1-6, 25 IAC 1.1-1-7, 25 IAC 1.1-1-14, and 25 IAC 1.1-1-16 to include changes to competitive sealed proposals, qualifications of prospective contractors, and quantity purchase agreements. Makes technical and clarifying corrections. Effective 30 days after filing with the Secretary of State.

IC 4-22-2.1-5 Statement Concerning Rules Affecting Small Businesses

None of the proposed changes should have an economic impact beyond what is already imposed by the existing rule. The proposed amendments will not impose requirements or costs on small businesses under IC 4-22-2.1-5.

25 IAC 1.1-1-6	25 IAC 1.1-1-14
25 IAC 1.1-1-7	25 IAC 1.1-1-16

SECTION 1. 25 IAC 1.1-1-6 IS AMENDED TO READ AS FOLLOWS:

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

Authority: IC 4-13-1-7; IC 5-22-3

Affected: IC 5-22-9

Sec. 6. (a) The following information shall be subject to public inspection after the contract award:

~~(a)~~ (1) The request for proposals (**RFP**).

~~(b)~~ (2) A list of all vendors who received the ~~request for proposals~~; **RFP**.

~~(c)~~ (3) The name and address of each offeror.

~~(d)~~ (4) The amount of each offer.

~~(e)~~ (5) A record showing **the following**:

(A) The name of the successful offeror.

(B) The dollar amount of the offer. ~~and~~

(C) The basis on which the award was made.

~~(f)~~ (6) The entire contents of the contract file except for ~~proprietary~~ **proprietary** information ~~which that~~ may have been included with an offer, such as:

~~(1)~~ (A) trade secrets;

~~(2)~~ (B) manufacturing processes;

~~(3)~~ (C) financial information not otherwise ~~publically~~ **publicly** available; or

~~(4)~~ (D) other data ~~which that~~ does not bear on the competitive goals of public procurement ~~which that~~ was not required by the terms of the ~~request for proposals~~ **RFP** itself to be made available for public inspection.

An offeror shall identify information ~~which that~~ he **or she** proposes to remain confidential and bind it separately from the remainder of his **or her** offer.

(b) Requests for public disclosure of information ~~which that~~ an offeror has identified as proprietary shall be made to the director in writing. The director shall **do the following**:

(1) Examine the information to determine the validity of the offeror's request for confidentiality. ~~and shall~~

(2) Inform the offeror of his **or her** decision, which ~~decision~~ shall become a part of the contract file.

(c) After opening, but ~~prior to before~~ the contract award, the ~~following information~~ **RFP** 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 p.m.: 5 IR 240; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265)

SECTION 2. 25 IAC 1.1-1-7 IS AMENDED TO READ AS FOLLOWS:

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

Authority: IC 4-13-1-7; IC 5-22-3

Affected: IC 5-22-9

Sec. 7. (a) As provided for in the request for proposals (**RFP**), discussions **and negotiations** may be conducted with responsible offerors who submit proposals determined to be reasonably susceptible of being selected for award; for **the any appropriate** 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.~~

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

(c) 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 **do the following**:

(1) Cease all activities with that offeror. ~~and~~

(2) 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 the~~ 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 p.m.: 5 IR 240; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265)

SECTION 3. 25 IAC 1.1-1-14 IS AMENDED TO READ AS FOLLOWS:

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

Authority: IC 4-13-1-7; IC 5-22-3

Affected: IC 5-22-7; IC 5-22-9; IC 5-22-16

Sec. 14. (a) **As follows**, factors to be considered in determining whether the standard of responsibility has been met include whether a prospective contractor has:

(1) Available the:

(A) appropriate:

(i) financial;

(ii) material;

(iii) equipment;

(iv) facility; and

(v) personnel resources and expertise; or ~~the~~

(B) ability to obtain them;

necessary to indicate its capability to meet all contractual requirements.

(2) A satisfactory record of **the following**:

(A) Performance, **including past performance and cooperation with the state.**

- ~~(3)~~ a satisfactory record of **(B)** Integrity.
- ~~(4)~~ **(3)** Qualified legally to contract with the state.
- ~~(5)~~ **(4)** 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 the~~ contractor. If the contractor fails to supply the requested information, the director:

- (1)** shall base the determination of responsibility upon any available information; or
- (2)** may find the prospective contractor nonresponsible if ~~such the~~ failure to respond is unreasonable.

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

- (1)** Evidence that the contractor possesses ~~such the~~ items.
- (2)** Acceptable plans to subcontract for ~~such the~~ 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:

- (1)** prepared by the commissioner or director; and ~~shall be~~
- (2)** 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 p.m.: 5 IR 243; readopted filed Nov 20, 2001, 9:30 a.m.: 25 IR 1265*)

SECTION 4. 25 IAC 1.1-1-16 IS AMENDED TO READ AS FOLLOWS:

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

Authority: IC 4-13-1-7; IC 5-22-3

Affected: IC 5-22-17

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 its~~ 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 that~~ may be considered in selecting a 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 **do any of the following**:
 - (A)** Develop definitive specifications. ~~to~~
 - (B)** Identify the risks to the contractor inherent in the nature of the work to be performed. ~~or~~
 - (C)** 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:
 - (A)** at the sole discretion of Indiana; and
 - (B)** not subject to agreement or acceptance by the contractor;

- (2) notice of ~~such the~~ provision must be included in any solicitation; and
- (3) ~~such the~~ 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:

(A) at the sole discretion of Indiana; and

(B) not subject to agreement or acceptance by the contractor;

(2) provision of ~~such the~~ 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 that is no not~~ 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 **a contract for** 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:

(A) all the actual requirements of a designated using agency or agencies; or

(B) 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 **of** 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 **as follows**:

(1) By means of:

(A) an invitation for bids; **or**

(B) **a** request for proposals. ~~or~~

(2) In any other manner not prohibited by law.

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

(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~~ **award** 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~~ **award** 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*)

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on April 3, 2006 at 10:00 a.m., at the Indiana Government Center-South, 402 West Washington Street, Room W467, Indianapolis, Indiana the Indiana Department of Administration will hold a public hearing on amendments to 25 IAC 1.1, to include, but may not be limited to, amendments relating to competitive sealed proposals, qualifications of prospective contractors, quantity purchase agreements, and technical or clarifying corrections.

The Department of Administration has authority to adopt these rules under IC 4-13-1-7 and IC 5-22-3. These revisions are of a technical nature, and none of the proposed changes should have an economic impact beyond what is already imposed by the existing rules. The proposed amendments will not impose requirements or costs on small businesses under IC 4-22-2.1-5.

Copies of these rules are now on file at the Indiana Government Center-South, 402 West Washington Street, Room W479 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

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