

Public Purchasing

Unless otherwise stated in statute, every purchase of goods or supplies by a public agency must comply with the competitive bidding provisions of Indiana's Public Purchasing Act ("PPA"). The following procedures shall be followed by school administrators for the purchase of any goods or supplies not exempted by statute:

- I. **Specifications** – Prior to purchasing goods or supplies, the purchasing agent will prepare specifications describing the physical or functional characteristics of the desired goods or supplies. Specifications should be prepared in such a manner to promote overall economy and to encourage competition. All specifications shall be maintained in an indexed file.
- II. **Good Faith Requirement** – Each purchasing agent shall negotiate, perform, or administer each contract in good faith.
- III. **Rules and Policies** – The school may adopt additional guidelines to regulate purchases which may supplement, but may not be inconsistent with, the PPA. The school may also establish written policies for purchases. Written policies may apply to all purchases generally or to a specific purchase.
- IV. **Electronic Transmission** – The purchasing agent may give and receive notices and offers electronically only if the solicitation indicates the procedure for transmitting and electronic offer and the offer is receive on a system with adequate security features to protect the contents of electronic offers.
- V. **Trusts** – If the purchasing agent receives an offer from a trust, the purchasing agent must require the trust to identify all of the beneficiaries of the trust and each settlor empowered to revoke or modify the trust prior to accepting such an offer to determine if a conflict of interest may exist.
- VI. **No Artificial Division** – Purchases may not be artificially divided to avoid any requirement of the PPA or any other applicable law. Artificial division to avoid any requirement could result in personal responsibility for the purchasing agent and possible criminal charges.
- VII. **Invitation for Bids** – Unless a purchase is exempted by statute, to make a purchase of goods or supplies, a purchasing agent must issue an invitation for bids which must include the following information:

- A. A description for the goods or supplies to be purchased which may include specifications attached to or made a part of the solicitation;
- B. All contractual terms and conditions that apply to the purchase;
- C. A statement of the evaluation criteria that will be used in the review of responses including any inspection, testing, quality, workmanship, delivery, or suitability standards;
- D. The times and place for opening of bids;
- E. A statement concerning whether the bid must be accompanied by bid security or other evidence of financial responsibility; and
- F. A statement concerning the conditions under which a bid may be cancelled or rejected in whole or in part.

VIII. Evaluation Criteria – Evaluation criteria that will affect the bid price and will be considered in the bid evaluation process must be objectively measurable. A purchasing agent may only use criteria specified in the invitation to evaluate the bids. The purchasing agent may use language in the invitation for bids to indicate that the evaluation criteria listed therein is non-exclusive and subject to additions. Including this language will provide some leniency when evaluating bids.

IX. Evidence of Financial Responsibility – The purchasing agent may specify in a solicitation that an offeror must provide evidence of financial responsibility in order to be considered a responsible bidder. Evidence of financial responsibility may be a bond, certified check, or other evidence specified by the purchasing agent in the solicitation. A bond or certified check may not be set at more than ten percent (10%) of the contract price. A purchasing agent may also require performance bonds in addition to evidence of financial responsibility.

X. Public Notice – The purchasing agent must give notice of any invitation for bids in accordance with IC 5-3-1 which requires that a notice for invitation of bids must be published two (2) times at least one (1) week apart with the second notice at least seven (7) days prior to the opening of bids.

XI. Public Opening - The purchasing agent shall open bids publicly in the presence of one (1) or more witnesses at the time and place designated in the invitation for bids. The purchasing agent him or herself is not required to participate in the bid opening, and this function can be assigned to administrative personnel. Offers may be opened after the

noticed date if the school board determines in writing that it is in its best interest and the time and place is announced at the originally scheduled opening.

XII. Prohibited Changes – The purchasing agent may not permit changes in bid prices or other provisions of bids that are prejudicial to the interest of the school or fair competition after the bid opening. The school board may adopt policies to allow for the correction or withdrawal of inadvertently erroneous bids before or after award and cancel of awards or contracts based on mistakes. Except as otherwise provided in policies or guidelines, a purchasing agent must make a written decision to permit the correction or withdrawal of a bid or cancel awards or contracts based on bid mistakes.

XIII. Award of Contract – The purchasing agent must award the contract for procurement with reasonable promptness by written notice to the lowest responsible and responsive bidder or reject all bids submitted. The purchasing agent must maintain a listing of the name of each bidder and the amount bid. If the purchasing agent awards the contract to a bidder other than the lowest bidder, the reason for the award must be stated in the minutes of the meeting at the time the award is made and should include the factors used to determine which bidder is the lowest responsible and responsive bidder.

A. Responsible Bidder

The purchasing agent must determine whether an offeror is “responsible” and if not, that determination must be made in writing. The PPA allows the following factors to be taken into consideration:

- i. whether an offeror fails to provide information required to determine whether they are responsible;
- ii. the ability and capacity of the offeror to provide the goods or supplies;
- iii. the integrity, character, and reputation of the offeror; and
- iv. the competency and experience of the offeror.

An offeror that is a foreign corporation must be registered with the Indiana Secretary of State to do business in Indiana in order to be considered responsible.

B. Responsive Bidder

The purchasing agent must determine whether an offeror is responsive. The purchasing agent may consider the following factors:

- i. whether the offer confirms in all material respects to the specifications;
- ii. whether the offer complies specifically with the solicitation and the instruction to offerors; and

- iii. whether the offeror has complied with all applicable statutes, ordinances, resolutions, or rules pertaining to the award of a public contract.

XIV. Unconditional Acceptance – Bids must be unconditionally accepted without alteration or correction, with limited exceptions. If a bidder inserts contract terms or bids on items not specified in the invitation, the purchasing agent shall treat the additional material as a proposal for addition to the contract and may either declare the bidder nonresponsive, permit the bidder to withdraw the proposed additions to the contract, or accept any of the proposed additions to the contract. However, a purchasing agent may not accept proposed additions that are prejudicial to the school or to fair competition.

XV. Purchase Order - Within thirty (30) days after the acceptance of an offer, the purchasing agent shall deliver in person or by first class mail to the successful offeror the original of each purchase order, retain a copy for the purchasing agent's records, and file a copy for public record and inspection as follows:

- A. When a purchase or lease is made for a county or municipality, the copy of the purchase order or lease must be filed with the fiscal officer of the unit.
- B. When a purchase or lease is made for a township, the copy of the purchase order or lease must be filed with the fiscal officer of the county.
- C. When a purchase or lease is made for a school corporation or a quasi-public corporation, the copy of the purchase order or lease must be filed with the records of the corporation.

XVI. Length of Goods/Supplies Contract – A contract for goods or supplies may be entered into for a period not to exceed four (4) years and must specify that payment and performance obligations of the school are subject to the appropriation and availability of funds.

XVII. Contract Renewal – A contract that contains a provision for escalation of the price of the contract may be renewed if the price only if the price escalation is linked to a commonly accepted index or a formula set forth in the contract. The term of a renewed contract may not be longer than the initial term of the contract.

Alternative Purchasing Methods

In addition to the PPA, the school may use alternative methods. These alternate methods include relying upon vendors to respond with specifications, requesting proposals from vendors, cooperative purchasing arrangement, and reverse online auctions.

- I. Requests for Specifications** – The school board may make a written finding that the development of specifications is not feasible and may grant a purchasing agent approval to issue a request for specifications. Requests for specifications should be published in accordance with IC 5-3-1 which requires that a notice for invitation of bids must be published two (2) times at least one (1) week apart. Requests must include the following:
- A. the factors or criteria that will be used in evaluating the specifications;
 - B. a statement concerning the relative importance of the evaluation factors; and
 - C. a statement concerning whether discussions may be conducted with persons proposing specifications to clarify the specification requirements.

All entities proposing specifications must be accorded fair and equal treatment with respect to any opportunity for discussions and revisions of proposed specifications.

II. Request for Proposals (“RFP”)

The purchasing agent may also issue a request for proposals in lieu of the traditional bidding process if guidelines or policies are passed by the school board providing that it is not practicable or not advantageous to the school to purchase specified types of goods or supplies by competitive sealed bidding and receiving proposals is the preferred method for purchase of that type of supply. The RFP process allows the school the flexibility to generally state what is needed and allow offerors to bring innovative solutions to the table to fulfill the school’s needs.

An RFP must include at least the following:

- A. the factors or criteria that will be used in evaluating the proposals;
- B. a statement concerning the relative importance of price and other evaluation factors (only these evaluation factors may be considered in the evaluation of proposals);
- C. a statement concerning whether the proposal must be accompanied by evidence of financial responsibility; and
- D. a statement concerning whether discussion may be conducted with responsible offerors who submit proposals determined to be reasonably susceptible of being selected for award.

Requests for proposals should be published in accordance with IC 5-3-1 which requires that a notice for invitation of bids must be published two (2) times at least one (1) week apart.

If an RFP is issued, the purchasing agent must prepare a register of proposals which must be open to the public after the contract is awarded. The register must contain:

- A. a copy of the RFP;
- B. a list of all persons to whom copies were given;
- C. a list of all proposals received, including the name and address of all offerors, the dollar amount of each offer, and the name and dollar amount of the successful offeror;
- D. the basis on which the award was made; and
- E. the entire contents of the contract file, except for proprietary information included with an offer.

As provided in the request for proposals or under the rules or policies of the school, discussions may be conducted with, and best and final offers obtained from, responsible offerors who submit proposals determined to be reasonably susceptible of being selected for award. The RFP must be awarded to the responsible offeror whose proposal is determined in writing to be the most advantageous to the school. Awards may be made to more than one offeror if the proposals are determined in writing to be advantageous to the school.

The purchasing agent must treat each offeror fairly and equally with respect to any opportunity for discussion and revision of proposals. In conducting discussions with an offeror, the purchasing agent may use information derived from other proposals in discussion only if the identity of the offeror providing the information is not disclosed to others. Equivalent information must be provided to all offerors with which the purchasing agent chooses to have discussions.

III. Cooperative Purchasing Entities - If the school is a participant in an interlocal agreement, a purchasing agent may work with the interlocal organization which may act as the purchasing agent for the school. A cooperative purchasing organization must be formed in accordance with IC 36-1-7.

IV. Reverse Online Auctions - If the school board has adopted written policies permitting the use of reverse online auctions, the purchasing agent may conduct a reverse auction for

the purchase of supplies by using an internet purchasing site to issue an invitation for bids and receive bids in accordance with IC 5-22-7.5.

V. Procurement with Federal Funds

It is the objective of the School to provide equal educational opportunities for all students within the School. Therefore, it is the intent of the School to study Federal legislation to enhance the educational opportunities, the educational environment, and the physical and mental growth for each Student.

The Superintendent/Treasurer shall review new Federal and State education legislation with regards to grant opportunities and prepare applications for programs s/he deems appropriate and beneficial to the students and the School. The Superintendent/Treasurer shall approve each such proposal prior to its submission, and the Board shall approve all grants resulting from such proposals.

The Board regards available Federal and State funds of aid to local school districts and communities as a public trust. It forbids the use of such Federal and State monies for partisan political activities and for any use that would not be in accord with Federal or State guidelines on discrimination. The Superintendent/Treasurer shall ensure that each draw of Federal monies is as close as administratively feasible to the related program expenditures. In spending Federal Funds, the School will comply with the requirements of OMB 2 C.F.R. 200.318 through 200.326.

- A. Micro Purchases: Purchases of goods and services that are less than \$10,000 are defined as micro-purchases. The School shall purchase goods and services under this threshold from among available vendors at reasonable prices without competitive procurement procedures.
- B. Small Purchases: Small purchases are the purchase of goods and services that are above \$10,000 and less than \$250,000. For small purchases, price or rate quotations must be obtained from at least three available vendors.
- C. Macro Purchases: Macro purchases are the purchase of goods and services that are above \$250,000. For macro purchases, the School will issue RFP (Request for Proposal) to eligible vendors for products and services. Contracts shall be awarded to the most reasonable proposal based upon criteria such as price, quality, time, references, etc.

- D. Non-competitive Purchases: Non-competitive purchases shall be used when the purchase of goods or services exceeds \$10,000 and from a “sole source vendor” under narrow circumstances.

Western Wayne Schools, Wayne County, Indiana

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