

*****KRB-YRBDC POLICY 03-2019 [AMENDED]*****

Title: **Purchasing Policy for Goods and Services**

Date Adopted: October 24, 2019

Date Amended: October 28, 2022

POLICY

This policy and its procedures are in effect when 1) there does not exist, under emergency conditions, a threat to public health, welfare, or safety and 2) the Commission intends to procure services other than engineering, design, or technical services. In these conditions, the Commission intends to purchase goods and services exceeding a cost of \$100,000 from the lowest responsible and responsive bidder.

For work performed within the exclusive easement of the Kankakee River Basin and Yellow River Basin Development Commission (hereafter referred to as “the Commission”), the Commission may opt for the county government in which the work is performed to execute the project. In such cases, the adopted policies and procedures of that county shall govern the purchase of any goods or services necessary to complete the work.

At other times, the state of Indiana may perform work within the Commission’s exclusive easement. In such cases, the purchase of goods and services shall adhere to regulations and guidelines governing state agencies. The Commission also may opt to enter into to a Guaranteed Savings Contract under the provisions of IC 36-1-12.5.

In all other cases when the Commission exercises its authority to directly execute work within its exclusive easement, the following policies and procedures shall apply:

Protection of Offers; Status of Documents as Public Records

1. Protection of Offers Prior to Opening. The purchasing agent shall retain all offers received in a secure location prior to the date and time at which offers will be opened in order to prevent disclosure of the contents prior to the opening of the offers.

2. Unobstructed Evaluation of Offers. After offers have been opened, the purchasing agent shall be responsible for maintaining the offers in such a manner as to permit evaluation of the offers by the persons responsible for evaluating the offers.

3. Public Records Status of Bids. Bids submitted in response to an invitation for bids must available for public inspection and copying after the time of the bid opening.

4. Register of Proposals. The Commission shall prepare a register of proposals for each request for proposals issued which shall contain information concerning the proposals available for public inspection and copying. Proposals may not be disclosed.

Discussions with Offerors Responding to a Request for Proposals

The Commission may conduct discussions with, and best and final offers may be obtained from responsible offerors who submit proposals determined to be reasonably susceptible of being selected for a contract award.

Delay of Opening of Offers

When the Commission makes a determination that it is in the Commission's best interests, offers may be opened after the time stated in the solicitation. The date, time and place of the rescheduled opening must be announced at the time and place of the originally scheduled opening.

Evidence of Financial Responsibility

1. Purchases Less Than \$50,000. The Commission may not require evidence of financial responsibility when the estimated cost of a purchase is less than \$50,000.

2. Purchases Between \$50,000 and \$150,000. The solicitation may include a requirement that an offeror provide evidence of financial responsibility. If evidence of financial responsibility is required, the solicitation must indicate the kind of evidence that will be acceptable. If a bond or certified check is required, it may not exceed ten-percent (10%) of the estimated cost of the purchase.

3. Purchases Over \$150,000. The solicitation shall include a requirement that an offeror provide evidence of financial responsibility and must indicate the kind of evidence that will be acceptable. If a bond or certified check is required, it may not exceed ten percent (10%) of the estimated cost of the purchase of the good or services.

4. Small Business Set-Asides. The Commission may determine that no evidence of financial responsibility shall be required for a small business set-aside purchase.

Modification and Termination of Contracts

1. Price Adjustments. For reasons described in IC 5-22-15 ("Purchasing Preferences"), the Commission may include provisions to permit price adjustments in a purchase contract.

A) Price adjustments must be computed by agreement on a fixed price adjustment before the beginning of the pertinent performance or as soon after the beginning of performance is possible;

B) Price adjustments must be computed by unit prices specified in the contract or subsequently agreed upon;

C) Price adjustments must be computed by costs attributable to the events or situations under such clauses with adjustment of profit or fee, all as specified in the contract or subsequently agreed upon;

D) Price adjustments must be computed in such other manner as the contracting parties may mutually agree upon; or

E) In the absence of agreement by the parties, price adjustments must be computed by a unilateral determination by the Commission of the costs attributable to the events or situations under such clauses with adjustment of profit or fee, all as computed by the Commission in accordance with applicable rules adopted by the Commission.

2. Adjustments in Time of Performance. The Commission may include provisions in a purchase contract concerning adjustments for time of performance under the contract.

3. Unilateral Rights of the Commission. The Commission may include in a purchase contract provisions dealing with the unilateral right of the Commission to order changes in the work within the scope of the contract or to order temporary work stoppage or delays in time of performance.

4. Quantity Variations. The Commission may include in a purchase contract provisions dealing with variations between the estimated quantities of work in a contract and the actual quantity delivered.

Small Business Set-Aside Purchases

The Commission hereby determines to establish criteria for determining qualifications as a small business and to identify specific supplies for small business set-aside purchases:

1. Qualifications. A business qualifies as a small business if it qualifies as a small business under standards established by the Indiana Department of Commerce.

2. Businesses that are not small businesses:

- A) A wholesale business, if its average annual sales for its most recently completed fiscal year exceeds \$4 million;
- B) A construction business, if its average annual receipts for the preceding three fiscal years exceeds \$4 million;
- C) A retail business or business selling services, if its annual sales and receipts exceed \$500,000; and
- C) A manufacturing business, if it employs more than 100 persons.

Indiana Business Preference

1. **Qualifications.** An offeror is an Indiana business if it:

- A) Maintains its headquarters or primary office within the state of Indiana;
- B) Pays more than fifty-percent (50%) of its business taxes to the state of Indiana; or
- C) More than ninety-percent (90%) of the offeror's workforce is comprised of Indiana residents.

If the state of Indiana determines that an offeror is domiciled in a state with business preferences that are unfavorable to Indiana businesses, such offeror may be rejected in favor of an Indiana business.

2. **Computation of Indiana workers.** A member of the offeror's workforce is considered a resident of the state of Indiana if:

- A) The person has registered a motor vehicle in Indiana;
- B) The person is registered to vote in Indiana;
- C) The person has a child enrolled in an elementary or a secondary school located in Indiana.
- D) The person derives more than one-half (1/2) of the person's gross income (as defined in Section 61 of the Internal Revenue Code) from sources in Indiana, according to the provisions applicable to determining the source of adjusted gross income that are set forth in IC 6-3-2-2. However, a person who would otherwise be considered a resident of Indiana under this subdivision is not a resident of Indiana if a preponderance of the evidence concerning the factors set forth in subdivisions (1) through (3) proves that the person is not a resident of Indiana.

3. When entering a bid, each offeror shall provide the Commission with information on the number of residents of Indiana who will be employed by the offeror and the number of residents of Indiana who will be employed by any subcontractor.
4. The goal for a contract awarded by the commission for a public works project is to award the contract to a contractor who:
 - A) (1) employs residents of Indiana as at least ninety percent (90%) of the employees who work on the contract; and
 - B) (2) enters into subcontracts only with subcontractors who employ residents of Indiana as at least ninety percent (90%) of the employees who work on the subcontract.

PROCEDURES

Publication of Notices

1. Invitation for Bids. All notices of invitation for bids shall be published in accordance with IC 5-3-1 in the county or counties in which work is expected to be performed.

The Commission shall schedule the publication of notice to provide a reasonable amount of time for preparation and submission of bids. The notice will be published two times, at least one week apart. The second publication must occur at least seven (7) days prior to the date the bids will be opened.

The invitation for bids shall also be posted on the Commission's website and emailed to qualified offerors who responded to a Request for Qualifications (RFQ) pertaining to the expected work.

2. Requests for Proposals All notices of Requests for Proposals (RFP) shall be published in accordance with IC 5-3-1 in the county or counties in which work is expected to be performed.

The Commission shall schedule the publication of notice to provide a reasonable amount of time for preparation and submission of proposals. The notice will be published two times, at least one week apart. The second publication must occur at least seven (7) days prior to the date the proposals will be opened.

RFP's shall also be posted on the Commission's website and emailed to qualified offerors who responded to a Request for Qualifications (RFQ) pertaining to the expected work.

3. Requests for Qualifications. All notices of RFQ's shall be published in accordance with IC 5-3-1 in the county or counties in which work is expected to be performed.

The Commission shall schedule the publication of notice to provide a reasonable amount of time for preparation and submission of RFQ's. The notice will be published two times, at least one week apart. The second publication must occur at least seven (7) days prior to the date the qualifications are due.

RFQ's shall also be posted on the Commission's website and may be emailed to any potential offerors known to perform work of a nature demanded by the Commission.

Receiving Offers

1. **Opening of Offers.** Bids received in response to an invitation for bids must be opened publicly in the presence of at least one or more witnesses at the time and place designated in the invitation for bids. Proposals received in response to an RFP must be opened so as to avoid disclosure of the contents to competing offerors during the process of negotiation. Proposals received in response to an RFQ may be opened as specified in the RFQ.

2. **Electronic Receipt of Offers.** The purchasing agency may receive electronic offers in response to an invitation to bid, RFQ, or RFP.

3. The Commission may only receive an electronic offer if:

A) The solicitation includes the procedure for the electronic transmission of the offer; and

B) The purchasing agency receives the offer on a fax machine or other system with a security feature that protects the contents of an electronic offer with the same degree of protection as provided to an offer not transmitted electronically.

4. **Correction and Withdrawal of Bids.** An offeror may correct inadvertent errors in a bid up to the time at which bids will be opened by supplementing the erroneous bid and submitting a revised bid. A bidder may not supplement an inadvertently erroneous bid after the time at which the bids are opened.

A bidder may withdraw a bid containing inadvertent errors up to the time at which bids will be opened and for a period of not more than 24 hours after the time at which the bids were opened.

5. **Cancellation of Solicitation.** When the Commission makes a determination that it is in the Commission's best interests, the Commission may cancel a solicitation or reject all offers, provided that the solicitation included information concerning the procedure for cancellation.

6. **Award of work.** Work shall be awarded to the lowest responsible and responsive bidder.

Small Purchases

The Commission may, at its discretion, purchase supplies or services with an estimated cost of less than \$100,000 on the open market without inviting or receiving quotes.