

2016 Guide to Public Purchasing



Indiana Association of
Cities and Towns

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Disclaimer

These materials are intended for general information purposes only and do not constitute legal advice. The materials should not be used or relied upon as a substitute for a review of applicable statutes, regulations, rulings and court decisions. The reader should consult legal counsel to determine how laws apply to specific situations. These materials were prepared in May 2016, and, consequently, will not reflect changes in law subsequent to that date.

Introduction

The purpose of this publication is to provide a general guide to Indiana's public procurement laws - specifically - those statutes governing the purchase of goods and services. It is intended to provide readers with a basic understanding of the procedures surrounding purchasing. It is not intended to be an exhaustive review of applicable statutes and case law, and should not replace consultation with local counsel as to how the law will apply to any specific situation.

This publication is intended for use by Indiana's cities and towns, and to special purpose entities such as park districts, redevelopment districts, and storm water districts established by individual municipalities. It is not intended for use by counties, townships, school corporations, or other political subdivisions, although much of the information provided is applicable to those governmental entities. The State of Indiana is governed by some of these provisions, but also has specific legislation in some situations. This publication will address the procedures for public purchases of every dollar amount, from large to small, distinguish between public purchasing and public works and note the common procedures for public works and public purchasing contracting.

Distinguishing Between Public Purchases and Public Works

It is a public work if it is the construction, reconstruction, alteration, or renovation of a public building, airport facility, or other structure that is paid for out of a public fund or out of a special assessment. The term includes the construction, alteration, or repair of a highway, street, alley, bridge, sewer, drain, or other improvement that is paid for out of a public fund or out of a special assessment. The term also includes any public work leased by a political subdivision under a lease containing an option to purchase. Public works projects are governed by the laws at IC 36-1-12. Design-build contracts and utility efficiency programs or guaranteed savings contracts are alternatives of a traditional public works project and have different rules. Also excluded from the public works law are projects by a municipal utility that maintains, extends, and installs services of the utility if the necessary work is done by the employees of the utility, the operation of a city market and there is a public-private operating agreement. A public purchase is the acquisition (buy, procure, rent, lease or otherwise) for use by the municipality of any property, including equipment, goods and materials, and services as described below.

General Requirements: Public Procurement

Certain requirements apply to or affect both purchases of supplies and the construction of public works.

- Specifications are required for every purchase, regardless of cost.
- Plans and specifications are required for all public works projects.
- Purchases may not be "artificially" divided to avoid the applicable purchasing thresholds.
- Public works projects may not be "artificially" divided to avoid either the applicable bidding thresholds.
- Each purchase must be accompanied by a purchase order.
- A contract must be executed for each public works project.
- The municipality must have a sufficient appropriation or fund balance before issuing a purchase order or executing a contract for a public work project.
- Contract generally must be awarded to the lowest "responsible" and "responsive" bidder/quoter/offeror.
- Lowest bid/quote/offer must be rejected if bidder/quoter/offeror is not responsive or responsible.
- "Responsive" bidder/quoter/offeror is a bidder or quoter who has submitted a bid or quote conforming in all material respects to the specifications.
- "Responsible" bidder or quoter is a bidder or quoter who is capable of performing the contract requirements fully and who has the integrity and reliability that will assure good faith performance
- As part of the immigration legislation, which passed in 2011, all written public contracts for services with a contractor (for purchasing and public works projects) must: 1) include a provision requiring the contractor to use E-Verify, and 2) a signed affidavit by the contractor affirming the contractor does not knowingly employ an unauthorized alien
- A public servant (employee or appointed official) or his/her dependent who knowingly or intentionally: (1) has a pecuniary interest in; or (2) derives a profit from; a contract or purchase connected with an action by the governmental entity served by the public servant commits conflict of interest, a Level 6 felony unless all of the contracts and purchases for the 12 months before the date of the contract or purchase was \$250 or less or the public servant is eligible to file a Uniform Conflict Of Interest Disclosure Statement form and properly files it before the final action on the contract or purchase.
- A relative (spouse, parent, stepparent, child, adopted child, stepchild, brother, sister, half-brother, half-sister, stepbrother, stepsister, niece, nephew, aunt, uncle, daughter-in-law and son-in-law) of the Mayor or city or town council member or the relative's business entity [wholly or partially owned] may enter into or renew a contract with the municipality for purchasing of goods or services or public works only after disclosure which must be in writing, describe contract and relationship, be affirmed under penalties of perjury, be submitted to and accepted by the legislative body in a public meeting before final action on the contract and be filed in 15 days with SBOA and Clerk of Circuit Court and the agency acting on behalf of municipality must certify in a statement that the contract was the lowest or give reasons why the relative or relative's business was selected, and file a Uniform Conflict of Interest Statement if necessary.

Public Purchasing

Application of Purchasing Requirements [IC 5-22-1]

The statute governing public purchasing applies to every expenditure of public funds by a governmental body, with the exception of the following entities and activities.

Exempt Entities	Exempt Activities
A Body Corporate and Politic as established by the Indiana General Assembly. (NOTE: they must comply with purchasing preferences)	Contract between governmental bodies, other than a contract authorized under the statute.
Local Hospital Authority	Public Works Project
Municipality Owned Utility under IC 8-1-11.1 or IC 8-1.5	Collective bargaining agreement between a governmental body and its employees
Certain Hospitals (IC 16-22-1 through 16-22-5, 16-23, 16-22-8, 16-23-1 or 16-24-1)	Employment relationship between governmental body and its employees
Library Board (IC 36-12-3-16(b))	Investment of Public funds
Local Housing Authority (IC 36-7-18)	Contract for social services
Tax exempt Indiana nonprofit corporations leasing and operating a city market owned by a political subdivision	Contract with a body corporate and politic
Person paying for a purchase or lease with funds other than public funds	
Person entered into a public-private agreement under IC 5-23	
Municipality operating municipal facilities used for the collection, treatment, purification, and disposal in a sanitary manner of liquid and solid waste, sewage, night soil, and industrial waste	

General provisions applicable to all purchases are in IC 5-22-3

- All parties must act in good faith.
- Gifts (Governmental body may comply with the terms and conditions of a gift if noncompliance with those terms and conditions would invalidate the gift).
- Governmental body may adopt rules and policies, which may not be inconsistent IC 5-22.
- Purchasing agency of a governmental body may establish written policies and procedures, which may not be inconsistent with IC 5-22.
- Electronic transmission of notice or other materials sufficient for mail if noticed in a rule, policy or solicitation and is at least as secure.
- Property interest in award of contract (Offeror does not gain a property interest, unless he/she is awarded contract and the contract is completely executed.).
- Offer by a Trust must list each beneficiary and each settler empowered to revoke or modify the trust.

Additional provision applicable to all purchases.

- An entity submitting a bid, offer, or proposal for the provision of supplies or services may not be on the Department of Administration's list as engaged in investment activities in Iran unless statutory findings pursuant to IC 5-22-16.5-12 are made.

Definitions Applicable to Public Purchasing [IC 5-22-2-1]

The public purchasing statutes employ a number of defined terms with which municipal officials should become familiar. Some of these terms have ordinary, commonly understood meanings, while other terms have meanings specific to the purchasing statutes. Whenever the word is used it has all of the meanings noted in the definition.

Purchase	<p>Purchase includes buy, procure, rent, lease, or otherwise acquire. The term includes:</p> <ul style="list-style-type: none"> • A description of requirements (specifications, delivery terms, etc.); • Solicitation or selection of sources from which purchase will be made; • Preparation and award of the purchase contract; • All phases of contract administration; and • All functions that pertain to purchasing (whatever that means). <p>*This would include a trade-in or warranty work requirements.</p>
Governmental Body	<p>Governmental body means an agency, a board, a branch, a bureau, a commission, a council, a department, an institution, an office, or another establishment of a political subdivision.</p> <ul style="list-style-type: none"> • While a city or a town is a political subdivision, so is a redevelopment district, park district, stormwater district, and waterworks district. • A governmental body may be the council, the board of works or the utility services board for the city or town itself. • A governmental body may be the redevelopment commission, the park board, or the stormwater board.
Purchasing Agency	<p>Purchasing agency is a governmental body that is authorized to enter into contracts by the purchasing statutes, by "rules" adopted by the governmental body, or another law.</p> <ul style="list-style-type: none"> • The purchasing agency for the municipality itself could be the board of works, the utility services board or the council. A municipality could decide to have all of them serve as separate purchasing agencies. • The purchasing agency could be the department of redevelopment, the parks department, etc.
Purchasing Agent	<p>Purchasing agent is a person authorized by a purchasing agency to act as an agent for the purchasing agency in the administration of the duties of the purchasing agency.</p>
Rule	<p>Rule refers to an order, an ordinance, a resolution, or another procedure by which the governmental body is authorized by law to adopt a policy that has the force and effect of law.</p> <ul style="list-style-type: none"> • For the city or town itself, a "rule" will generally be an ordinance. • For a redevelopment district, park district, or other special purpose entity, a "rule" will generally be a resolution.
Policy	<p>Policy means a written statement of purchasing procedures or purposes that does not have the force and effect of law, whether it is adopted by a governmental body or a purchasing agency.</p>

Purchasing Organizations

The “purchasing agency” for a political subdivision is the governmental body, board, or department designated by law or by rule of the governmental body [IC 5-22-4-5(a)]. The individuals designated by the purchasing agency are the “purchasing agents” for the governmental body [IC 5-22-4-5(b)]. A purchasing agency may have more than one purchasing agent [IC 5-22-4-6]. A governmental body may enter into an agreement with other governmental bodies under the Interlocal Cooperation Act to form a cooperative purchasing organization [IC 5-22-4-7].

Purchase of Services [IC 5-22-6]

The purchasing agency of a governmental body may purchase services using any procedure the governmental body or the purchasing agency of the governmental body considers appropriate. A governmental body may adopt rules governing the purchase of services for the governmental body. The purchasing agency of a governmental body may establish policies regarding the purchase of services for the governmental body.

Specifications for Purchasing [IC 5-22-5-1 through 5-22-5-5(e)]

A governing body may adopt rules or establish policies for the preparation, maintenance and content of specifications for purchases. The purchasing agent shall prepare, issue, revise, maintain, and monitor the use of specifications. An indexed file of specifications shall be maintained. Specifications must promote overall economy for the purposes intended and encourage competition in satisfying the governmental body's needs.

If the development of specifications by the governmental body is not feasible, the purchasing agent may issue a public request for specifications if: 1) the purchasing agent gives written notice that it is not feasible and 2) the executive of the governmental body approves the issuance of the request for specifications. The request for specifications must be published in accordance with IC 5-3-1, and must include items outlined in IC 5-22-5-5(b), such as: factors or criteria to be used in evaluations of proposals, weighting or relative importance of factors, and whether discussions may be conducted with persons proposing specifications.

If provided for in the request for specifications, the purchasing agent may discuss proposed specs with those who submitted proposals. All persons submitting proposals must be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposed specifications. IC 5-22-5-9 has special provisions for the purchases of biobased products.

Additional Provision Applicable to Service Contracts

A contract must contain provision requiring the contractor to enroll in and verify the work eligibility status of all newly hired employees through the E-Verify program.

The contractor must sign an affidavit affirming that it does not knowingly employ an unauthorized alien.
IC 22-5-1.7-11

Methods for Purchasing

All purchases of supplies must be bid, unless another method or procedure is available. Purchases may not be artificially divided so as to constitute a small purchase [IC 5-22-8-1]. The following table outlines the general process for each price category.

<p>Purchases < \$50,000</p>	<p>No quote or bid process required [IC 5-22-8] Purchasing agent may make a purchase of less than \$50,000, without formal quotes or bids process, as long as it follows the small purchase policies or rules established by the agent’s purchasing agency or governmental body.</p>
<p>Purchases Between \$50,000 - \$150,000</p>	<p>Quotes process required [IC 5-22-8] Purchasing agent may purchase supplies by inviting quotes from at least three (3) persons known to deal in the lines or classes of supplies to be purchased. Invitations to quote shall be mailed at least seven (7) days before time fixed for receiving quotes. If a satisfactory quote is received, purchasing agent shall award a contract to the lowest responsible bidder. All quotes may be rejected. If no quotes are received by a responsible and responsive offeror, the purchasing agent may purchase supplies using the methods outlined for "special purchases" (see page 4 for more on special purchases).</p>
<p>Purchases > \$150,000</p>	<p>Competitive bid process [IC 5-22-7] For purchases greater than \$150,000, the competitive bid process includes:</p> <ol style="list-style-type: none"> 1) Issue invitation for bids that includes - purchase description, all contractual terms and conditions, state of evaluation criteria, time and place for opening bids, financial proof requirements, and a statement on conditions under which a bid may be cancelled or rejected in whole or in part. 2) Invitations must meet public notice requirements (IC 5-3-1 Two notices, published at least one week apart with the second notice published at least 10 days prior to deadline for receiving bids) 3) Open bids publicly <p>A contract must be awarded with reasonable promptness by written notice to the lowest responsible and responsive bidder. Bids may not be changed substantively after they have been submitted (in price or other provisions). The purchasing agency must maintain the name of each bidder and the bid amount and such other information required by state law or local rules for public inspection after the award.</p>

Purchasing Preferences [IC 5-22-15]

The Indiana Code outlines certain price preferences that shall be given to certain offerors. Offerors (persons submitting a proposal or being considered for a purchasing contract) are allowed to claim **only one** preference and must indicate in the offer what supply item in the offer is a preferred supply.

A purchasing agent shall award a contract to the offeror whose total adjusted offer is lower than the total adjusted offer of each other offeror, as long as it meets the other requirements set forth in the Indiana Code as the “best bidder” or “most responsible and responsive bid.” A governmental body may adopt rules to implement price preferences.

Other Purchasing Preferences / Exceptions

- **Department of Correction** [Preference required, IC 5-22-11]
Governmental body shall purchase from the department of correction supplies and services produced or manufactured by the department, as listed in the department's printed catalog, unless the supplies and services cannot be furnished in a timely manner.
- **Purchase of Rehabilitation Center Products** [Preference required, IC 5-22-12]
A governmental body shall purchase articles produced by the rehabilitation center and listed in its catalogue, unless similar articles are produced by the governmental body, do not meet the specifications and needs of the governmental body, are not offered at a fair market price or the governmental body receives a written statement from the bureau that it cannot furnish it
- **Nonprofit Agencies for Persons With Severe Disabilities** [Exception, IC 5-22-13]
A governmental body may purchase supplies and services without advertising or calling for bids from a qualified agency.
- **Small Business Set Aside** [Preference allowed, IC 5-22-14]
A governmental body may establish a “small business set-aside” by identifying specific supplies to be purchased by the governmental body from a small business, but only if it has a reasonable expectation that offers will be received from at least 2 small business capable of furnishing the desired supplies or service at a fair and reasonable price. The solicitation must state that offers will only be accepted from small businesses too. If these tests are met then the governmental body must first adopt rules to implement a set-aside and to establish criteria for eligibility for a set-aside. A small business is independently owned and operated, not dominant in its field of operation; and satisfies the criteria in the rules adopted by the governmental body establishing criteria for a small business or a veteran owned small business concern as provided in IC 5-22-14-3.5. The Small business set-aside rules must include the following basic criteria:
 - Wholesaler eligible if sales are less than \$4 million annually
 - Construction business eligible if average annual receipts for 3-year period are less than \$4 million
 - Retail business or business selling services eligible if annual sales and receipts are less than \$500,000
 - Manufacturing business eligible if fewer than 100 employees

However, if there is a small business set-aside it must provide that Information technology, life sciences, transportation, and logistic businesses are eligible if they employ fewer than 100 persons; or have annual sales are less than \$5 million. Otherwise, the rules may consider the number of employees and the dollar volume of the offeror’s business and must include affiliates in the calculation.

A small business set-aside designation must be made before the solicitation is issued and the public notice for the purchase must indicate that the purchase is a small business set-aside. If a purchase is designated as a small purchase set-aside, the solicitation must be limited to small businesses. A contract must be awarded to the lowest responsible and responsive offerer among the small businesses.

- **Veteran-Owned Small Business** [Preference allowed, IC 5-22-14-2.5 and 3.5]
In 2016, the definition of small business for the purpose of the small business set aside was broadened by expanding the definition of veteran. To be eligible as an Indiana veteran-owned business, the business must be 1) verified as a veteran-owned business by the U.S. Department of Veteran Affairs or a current certification as a veteran owned small business by the Indiana Department of Administration, 2) be owned or controlled, or in the case of a corporation 51% of the stock owned by one or more veterans, and 3) has the principal place of business located in Indiana.
- **Purchases of Biobased Products** [Preferred when possible, IC 5-22-5-9]
Applies to purchases by governmental body or state educational institution. “Biobased products” refer to items designated as biobased by the US Dept. of Agriculture (7 U.S.C. 8102). Provides for a preference to purchase biobased products, whenever possible if: bioproducts are available at the time of purchase, it is economically feasible, and it is not inappropriate in regards to federal regulations and scientific purposes.

Price Preferences (As Provided in IC 5-22-15)

Supplies that Contain Recycled or Post-consumer Materials	Price preference set by either 1) governmental body rule, 2) purchasing agency policy, or 3) solicitation.	Price preference must be between 10 - 15%.
Soy Diesel / Bio Diesel	Applies to a purchase of fuel of which at least twenty percent (20%) by volume is soy diesel/bio diesel.	Price preference is 10%.
Indiana Businesses	Under guidance of 5-22-15-20 a government body may adopt a rule giving preference to an Indiana business.	The rule shall determine the method by which the preference is computed.
Indoor Air Quality Inspection and Evaluation Program	For Indiana Business only.	Price preference is 10%.
Supplies Manufactured in the United States	Requires governmental body to set rules to promote purchase of supplies made in the USA.	Preference given when possible.
Coal Mined in Indiana	Does not apply if federal law requires the use of low Sulphur coal in the circumstances for which the coal is purchased.	Absolute preference given.
Indiana Small Business	Indiana small business, as defined in IC 5-22-14-1	Price preference is 15%.
High Calcium Food	High calcium foods and beverages are preferred supplies	Preference given for higher level calcium if < or = price of similar products.
Forced Labor; Supplies Prohibition	May not award a contract to the offeror (if outside US) if the supplies were made using forced labor.	Prohibition.
Steel Products	Must use steel products made in the US. Exception: if supplies < \$10,000; or using US steel would cost more than 115% of other price and it would not harm IN steel business.	Preference to US steel.
Local Businesses	Local Indiana business is defined in IC 5-22-15-20.9.	5% for a purchase less than \$50,000; 3% for a purchase of at least \$50,000, but less than \$100,000; and, 1% for a purchase at least \$100,000.
Indiana Agriculture	Government body can adopt a rule giving preference to agricultural products that are grown, produced or processed in Indiana.	Price preference is up to 10%.

Other Procedures

In some instances, the Indiana Code allows for another method for purchasing, such as:

- **Requests for Proposals:** Applies to purchases, which the governmental body has deemed not advantageous and not practicable for competitive sealed bidding (see IC 5-22-9).
- **Special Purchasing Methods:** Allows for purchase without RFP or competitive bidding in certain circumstances usually after consultation with and perhaps an opinion from the municipal attorney (IC 5-22-10).
- **Cooperative Purchasing:** Allows more than one governmental body to purchase services / supplies jointly or on behalf of another (see IC 36-1-7-12).
- **Online Reverse Auctions:** Allows for use of Internet site for issuance of an invitation to bid and to receive bids (IC 5-22-7.5).

Requests for Proposals [IC 5-22-9]

A purchasing agent may award a contract through a request for proposals procedure instead of competitive bidding, subject to the policies of the purchasing agency.

The process includes:

- The RFP must be published two times, one week apart with the second publication at least seven days prior to the date fixed for receiving proposals.
- The RFP must include the following: factors or criteria to be used in evaluating proposals, statement concerning the relative importance of price and the other evaluation factors, proof requirements, and a statement on whether discussions may be conducted with responsible offerors.
- Proposals must be opened to avoid disclosure of contents to competing offerors during the process of negotiation.
- The purchase contract shall be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to the governmental body. Note: The purchase may be awarded to more than one offeror, as long as it was outlined as a possibility in the RFP.
- Offerors must be accorded fair and equal treatment with opportunities for discussions and revisions of proposals.

The purchasing agent shall prepare and maintain a register of proposals that must be open for public inspection after contract award.

The governmental body may provide by rule or policy that competitive bidding is not advantageous or practicable for specified supplies and therefore that the RFP process is the preferred method for that type of supply.

Special Purchasing Methods [IC 5-22-10]

A purchasing agent may award a contract under Special Purchasing without soliciting bids or proposals in the following circumstances:

1. **Emergency conditions** (When there exists, under emergency conditions, a threat to public health, welfare, or safety.)
2. **Savings to governmental body** (When there exists a unique opportunity to obtain supplies or services at a substantial savings to the governmental body.)
3. **At auction**
4. **Data processing contract or license agreements** (For software programs or supplies or services, when only one source meets the using agency's reasonable requirements.)
5. **Compatibility of equipment, accessories, or replacement parts**
6. **Purchasing method impairs functioning of agency** (If another purchasing method would seriously impair the functioning of the using agency.)
7. **No offer received under other purchasing method** (When the agency has solicited for a purchase under another purchasing method described in this article and has not received a responsive offer.)
8. **Evaluation of supplies or system containing supplies** (To obtain functional information or comparative data for a purpose that in the judgment of the purchasing agent may advance the long term competitive position of the governmental body.)
9. **Governmental discount available**
10. **Single source for supply; award of contract**
11. **General Services Administration price** (Given in writing that supplies can be purchased at prices equal to or less than the prices stipulated in current federal supply service schedules established by the federal General Services Administration, and it is advantageous to the governmental body's interest in efficiency and economy.)
12. **Purchase from person who has contract with federal agency** (If person's contract with the federal agency requires the person to make the supplies available to the state or political subdivisions, or a person who has a contract with a state agency and the person's contract with the state requires the person to make the supplies or services available to political subdivisions.)
13. **Acquisition of supplies through transfer from federal government** (If supplies can be transferred at a cost less than would be obtained otherwise.)
14. **Acquisition of supplies through acceptance of gift**
15. **Special purchase of copyrighted material**
16. **Purchase from public utility following independent appraisal**
17. **Purchase of petroleum products by aviation commissioners or airport authority**
(Only applicable for board of aviation commissioners or an airport authority.)

All contracts for special purchases shall be maintained by the purchasing agent in a separate file that is kept for 5 years and the special purchases are subject to audit by the State Board of Accounts. The file must contain each of the contractor's name, the amount and type of each contract, the description of the supplies purchased under each contract and the written basis for both the purchase and the contractor selected. A special purchase must be made with competition as is practicable under the circumstances.

Cooperative Purchasing [IC 36-1-7-1]

Indiana statute allows collaborative purchasing, including:

- No notice by publication or posting is required for purchasing contracts between or among Indiana governmental entities
- Whenever a contract provides for one Indiana governmental entity to make a purchase for another, compliance by the one with the applicable statutes governing public bids constitutes compliance by the other.
- A governmental entity may make a purchase from any other governmental entity or under another governmental entity's referenced written contract if there is compliance with state purchasing law by the original purchasing unit.
- Two or more governmental entities may procure together or with a nonprofit entity if the requirements of the public purchasing statutes are met.

Reverse Online Auction [IC 5-22-7.5]

A reverse auction may be used for the purchase of supplies by using an Internet site to issue an invitation for bids and receive bids. A purchasing agency and a bidder must comply with all other requirements of the purchasing statute when participating in a reverse auction.

Before conducting a reverse auction, the purchasing agency must adopt written policies that comply with rules adopted by the Indiana Department of Administration (IDOA) under IC 4-13-17-4.

A purchasing agency must use an Internet purchasing site to issue an invitation for bids and to receive bids. An **Internet purchasing site** is an open and interactive electronic environment that is designed to facilitate the purchase of supplies by means of the Internet. Contact the IACT office for examples of written policies and further information.

OneIndiana Program

The Indiana State Department of Administration (IDOA) administers the Operating with New Efficiency program, better known as OneIndiana. This collective purchasing program is web-based, allowing city and town officials to access the site after receiving a user name and password. The site contains a categorized listing of state quantity purchasing agreements (QPA) available to local governments, in essence allowing the entity to get the product or service at the price negotiated by the state. While there is a wide arrange of contracts, some of the greatest savings have been in the product lines of computer equipment, office supplies, and communication equipment.

While the QPA is the core program, OneIndiana has several other services to enhance procurement efficiency. The user can customize on-line catalogues on the site to include local vendors making easy comparisons between all vendors including the OneIndiana vendors. The site can also be used to track spending habits and trends and generate detailed reports. OneIndiana also provides a free spend analysis that reviews your spending in select areas and provides direct pricing comparisons to the state's QPAs in select categories.

Road Salt Program

The Indiana State Department of Administration (IDOA) also administers the program for cooperative purchasing of road salt. If a municipality chooses to participate, it must guarantee a base amount of road salt that will be purchased. Typically this guarantee must be made in early to mid-spring for the following winter. The IDOA aggregates the volume, solicits bids from vendors, and awards the bids based on competitive pricing. The local government must purchase at least 80% of the base amount guaranteed in the spring. The bid price can be extended for volume in excess of the base amount up to 20% excess of the base.

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Appendix A: “Rule” Making Authority Under IC 5-22

When a rule is required:

IC 5-22-4-5 — A governmental body shall designate by law or by rule the purchasing agent for its political subdivision.

IC 5-22-15-21 — A governmental body shall adopt rules to promote the purchase of supplies manufactured in the United States.

When a rule may be promulgated:

IC 5-22-3-3 — A governmental body may adopt rules to regulate purchases of the governmental body.

IC 5-22-3-4 — A governmental body may adopt rules to allow the use of electronic means in the purchasing process.

IC 5-22-5-1 — A governmental body may adopt rules for the preparation, maintenance, and content of specifications.

IC 5-22-6-2 — A governmental body may adopt rules governing the purchase of services. (This rule should be promulgated.)

IC 5-22-7-10 — A governmental body may adopt rules to allow for the (i) correction or withdrawal of inadvertently erroneous bids before or after an award; or (ii) cancellation of awards or contracts based on an inadvertent mistake.

IC 5-22-8-2 — A governmental body may adopt rules relating to purchases under \$25,000 (small purchases.)

IC 5-22-9-6,8 — A governmental body may adopt rules regarding a request for proposal process, particularly regarding when to use the request for proposal method of purchasing and the opportunity for discussions with offerors.

IC 5-22-14-3 — A governmental body may adopt rules governing small business set-aside purchases.

IC 5-22-15-15 — A governmental body may adopt rules governing the purchasing preferences as outlined in the statute.

IC 5-22-18-4 — A governmental body may adopt rules for the protection of documents submitted to the governmental body in response to a solicitation.

IC 5-22-20-1 — A governmental body may adopt rules permitting or requiring (i) the inclusion of clauses providing for adjustments in prices or time of performance; (ii) the inclusion of contract provisions dealing with the unilateral right of the governmental body to order changes in the work within the scope of the contract and temporary stopping of the work or delaying performance; (iii) the inclusion of contract provisions dealing with variations occurring between estimated quantities of work in a contract and actual quantities.

Appendix B: Sample Ordinances Creating and Designating Purchasing Agency and Agents

[Ordinance creating independent city purchasing agency]

- Section 1. The City of _____ Purchasing Agency (the " City Agency") is established as the purchasing agency for the City.
- Section 2. The City Purchasing Agency shall all the powers and duties authorized under IC 5-22, as may be supplemented from time to time by ordinances adopted by the Common Council and policies adopted by the Purchasing Agency.
- Section 3. The City Purchasing Agency shall act as the purchasing agency for every agency, board, office, branch, bureau, commission, council, department or other establishment of the City..
- Section 4. The City Purchasing Agency may designate as purchasing agents:
- (a) Clerk-Treasurer; and
 - (b) the City street superintendent [engineer]; and
 - (c) any employee, designated in writing.

[Ordinance designating Town Council as purchasing agency; designating several purchasing agents]

- Section 1. The Town Council hereby determines that it is the purchasing agency for the Town.
- Section 2. The Town Council hereby designates the following persons to serve as purchasing agents for the Town:
- (a) the Clerk-Treasurer;
 - (b) the Town Manager; and
 - (d) such Town employees as are designated from time to time, in writing.
- Section 3. This Ordinance is effective upon passage and signing by the presiding officer.

Appendix C: Form of Purchasing Rules or Policies That May Only Be Adopted By the Common Council or Town Council (Or Another "Governmental Body")

SECTION 1. The following are the purchasing rules for [City] [Town] of [County], Indiana:

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 be available for public inspection and copying after the time of the bid opening.
4. Register of Proposals. The purchasing agent 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 purchasing agent 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 Council makes a written determination that it is in the [city] [town]'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 purchasing agent 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.
4. Small Business Set-Asides. The purchasing agent may determine that no evidence of financial responsibility shall be required for a small business set-aside purchase.

Use of RFP for Purchases of Designated Types of Supplies

The [City] [Town] determines that:

- A) It is either not practicable or not advantageous to purchase certain types of supplies by sealed competitive bidding; and
- B) Receiving proposals is the preferred method for purchasing the following types of supplies:

[insert list of supplies designated for RFP purchase]

Modification and Termination of Contracts

1. Price Adjustments. The purchasing agent may include provisions to permit price adjustments in a purchase contract. The following provisions for price adjustments may be included:
 - 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 as 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 de-termination by the governmental body of the costs attributable to the events or situations under such clauses with adjustment of profit or fee, all as computed by the governmental body in accordance with applicable rules adopted by the governmental body.
2. Adjustments in Time of Performance. The purchasing agent may include provisions in a purchase contract concerning adjustments for time of performance under the contract.
3. Unilateral Rights of [City] [Town]. The purchasing agent may include in a purchase contract provisions dealing with the unilateral right of the [City] [Town] 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 purchasing agent may include in a purchase contract provisions dealing with variations between the estimated quantities of work in a contract and the actual quantity delivered.

Purchase of Services

The [City] [Town] determines that the each agency, and department may purchase services in whatever manner the purchaser determines to be reasonable.

The purchasing agency may not require any agency, department or to purchase services in any particular manner.

Small Business Set-Aside Purchases. The [City] [Town] 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
 - D) A manufacturing business, if it employs more than 100 persons.
3. Specific Supplies Eligible for Small Business Set-Aside

[insert list of specific supplies eligible for small business set-aside]

Indiana Business Preference

1. Qualification. An offeror is an Indiana business if it: *[insert criteria to be use, such as owned or operated, principal place of business operations, state where incorporated, etc.]*.
2. The following states have business preferences that are unfavorable to Indiana businesses because: *[identify states that have business preferences unfavorable and explain why]*.
3. The Indiana business preference shall be applied as follows: *[insert method to calculate Indiana business preference]*.

Purchase of Supplies Manufactured in the United States

Supplies manufactured in the United States shall be specified for all [City] [Town] purchases and shall be purchased unless the [City] [Town] determines that:

- A) The supplies are not manufactured in the United States in reasonably available quantities;
- B) The prices of the supplies manufactured in the United States exceeds by an unreasonable amount the price of available and comparable supplies manufactured elsewhere;
- C) The quality of the supplies manufactured in the United States is substantially less than the quality of comparably priced available supplies manufactured elsewhere; or
- D) The purchase of supplies manufactured in the United States is not in the public interest.

Appendix D: Form of Purchasing Policies That May Be Adopted Either By The Governmental Body Or By The Purchasing Agency

PURCHASING POLICIES OF THE [CITY] [TOWN] OF, INDIANA

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 _____ and the _____ (*insert name of newspaper if only one newspaper is published in the municipality; otherwise, identify two newspapers*); *if no newspaper is published in the municipality, publish in one newspaper published in the county and post the notice at the municipal building.*

The purchasing agent 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.

2. Request for Proposals. All notices of request for proposals shall be published in accordance with IC 5-3-1 in the _____ and the _____. (*Insert name of newspaper if only one newspaper is published in the municipality; otherwise, identify two newspapers*); *if no newspaper is published in the municipality, publish in one newspaper published in the county and post the notice at the municipal building.*

The purchasing agent 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.

3. Request for Specifications. All notices of request for specifications shall be published in accordance with IC 5-3-1 in the _____ and the _____. (*Insert name of newspaper if only one newspaper is published in the municipality; otherwise, identify two newspapers*); *if no newspaper is published in the municipality, publish in one newspaper published in the county and post the notice at the municipal building.*

The purchasing agent 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.

4. Electronic Notices. Whenever a notice or other material, including specifications, an invitation for bids, request for proposals or request for specifications, is sent by mail, the purchasing agent may also send the notice or other material by electronic means, provided that the transmission of the information is at least as efficient as mailing the information.

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 a request for proposals must be opened so as to avoid disclosure of the contents to competing offerors during the process of negotiation.
Proposals received in response to a request for specifications may be opened as specified in the request for specifications.
2. Electronic Receipt of Offers. The purchasing agency may receive electronic offers in response to an invitation to bid, request for proposals or request for specifications.
An electronic offer 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.
3. 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 were 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.
4. Cancellation of Solicitation. When the purchasing agent makes a written determination that it is in the county's best interests, the purchasing agent may cancel a solicitation or reject all offers, provided that the solicitation included information concerning the procedure for cancellation.

Small Purchases

The purchasing agent may purchase supplies with an estimated cost of less than \$50,000 on the open market without inviting or receiving quotes.

Appendix E: Forms and Checklists

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Register of Proposals

Date: _____

Supplies: _____

Attach a copy of the request for proposals and a list of all persons to whom copies of the request for proposals were given.

Please Type or Print Legibly

Name of Offeror	Address	Amount of Offer

Successful Proposal:

Name of Offeror: _____

Amount of Offeror: _____

Checklist for Invitation for Bids

Type of Supply: _____

Requesting Agency: _____

- Purchase Description
- Evaluation Criteria to Be Used (*Circle Selections*)
 - Inspection
 - Testing Quality
 - Workmanship
 - Delivery
- Requirements imposed on Trusts
- Applicable Contract Terms and Conditions
- Time and Place for Opening Bid
- Evidence of Financial Responsibility Required? (*Circle Selection*)
 - Certified Check
 - Bid Bond
 - Other _____ (*specify*)
- Performance Bond Required?
- Statement of Conditions under Which Invitation May Be Canceled
- Statement of Conditions under Which Bid May Be Rejected in Whole or in Part
- Notice of Invitation for Bids Published
 - First Date of Publication _____
 - Second Date of Publication _____
- Form of Non-Collusion Affidavit

Non-Collusion Affirmation

STATE OF INDIANA)
) SS:
_____ COUNTY)

The undersigned offeror or agent, duly swears, under penalties for perjury, that he has not, nor has any other member, representative, or agent of the firm, company, corporation or partnership represented by him, entered into any combination, collusion or agreement with any person relative to the price to be offered by any person nor to prevent any person from making an offer nor to induce anyone to refrain from making an offer and that this offer is made without reference to any other offer.

Offeror (Firm)

Signature of Offeror or Agent

Form for Offer or Proposal

Please print or type.

Date: _____

1. Governmental Unit: _____
2. County: _____
3. Offeror (Firm): _____
4. Address: _____
5. City/State: _____
6. Telephone Number: _____
7. Agent of Offeror (*if applicable*): _____

Pursuant to notices given, the undersigned offers to _____ (Governmental Unit) in accordance with the following attachment(s) which specify the class or item number or description, quantity, unit price and total amount.

The contract will be awarded by in accordance with specifications. Offeror promises that it has not offered nor received a less price than the price stated in its offer/proposal for the supplies included in its offer/proposal. Offeror further agrees that it will not withdraw its offer/proposal from the office in which it is filed. A certified check or bond shall be filed with each offer/proposal if required, and liability for breach shall be enforceable upon evidence of financial responsibility.

Signature of Offeror or Agent

Bid Record for Invitation for Bids

Date of Bid Opening: _____

Supplies Requested: _____

Requesting Agency: _____

Please Type or Print Legibly

Name	Address	Bid Amount	Other Information

SAMPLE

Public Works Performed by Unit's Workforce

[IC 36-1-12-3, IC 5-11-1-26(b)]

ENTITY NAME: _____

1. Project Name/Identifying Number: _____

2. Project End Date: _____

3. Description:

4. Are there employees on staff that are capable of performing project work? _____

5. Is steel used in this project? _____

6. If the steel in this project was manufactured in foreign country, what is your justification under IC 5-16-8-2(b) or IC 5-16-8-4?

7. Project cost:	<u>Estimated</u>	<u>Actual</u>
(A) Cost of materials	_____	_____
(B) Labor	_____	_____
(C) Equipment rental	_____	_____
(D) Other expenses	_____	_____
(E) Total project costs**	_____	_____

8. Project Authorized by: _____ Date: _____

9. I, _____, certify to the best of my knowledge that the information provided on this form is true and correct.

E-Mail Address _____

** 1. Total project costs must be less than \$250,000. 2. If project costs are more than \$100,000, notice must be published, and a decision must be reached at a public meeting on whether it is within the public's interest to do work with own work force. 3. The Board of Aviation Commissioners or Airport Authority have different provisions. See IC 36-1-12-3(d).

See instructions for form on next page.

Instructions

For "SAMPLE: Public Works Performed by Unit's Workforce"

A municipality is encouraged to use this form when it uses its own workforce for a public work project. A new form should be completed for each project in order to expedite compliance with IC 5-11-1-26. This form is to be completed and filed with the fiscal officer within 60 days after project completion.

1. Enter the project name or identifying number used by the entity.
2. Enter the last date of work on the project.
3. Enter a brief description of the project, i.e. "The purchase of materials and construction of shelter house #3 in West Park."
4. The answer to this question must be 'Yes' to proceed.
5. Answer yes or no as to whether steel will be purchased for this project. If the answer is "no", skip step 6. Go to step 7A.
6. If foreign steel is purchased for this project, describe the manner in which you complied with IC 5-16-8, including the use of provisions in IC 5-16-8-2(b) or IC 5-16-8-4.
7.
 - A) Enter all the estimated and actual costs of any materials used in the project.
 - B) Enter the estimated and actual costs of labor. Using the example in step 3 above you would calculate labor costs as follows. Each person that constructs the shelter earns \$10 an hour, and receives \$3 an hour in benefits (FICA, Pension, Health, and Dental) for a total of \$13 an hour. Additionally, each person on the crew spent 10 hours to construct the shelter house. The hours worked times the hourly rate with benefits equals the labor costs. $10 \text{ hours} \times \$13 = \$130$ for each crew member.
 - C) Enter the total estimated and actual cost of equipment rental.
 - D) Enter any other estimated and actual costs that are not included in 7(A) - 7(C)
 - E) Total the estimated and actual costs for 7(A) - 7(D)
8. Enter the name of the person or board that authorized this project and the date authorized.
9. Enter the name of the person that has sufficient knowledge of this project to answer questions about the project and its calculated costs. By entering their name this person is certifying the information presented is true and correct. Also enter an Email address for the person certifying this information.

This form should be on file with the fiscal officer and available for audit by the State Board of Accounts.