

IC 8-23-10

Chapter 10. Qualifications of Bidders for Contracts

IC 8-23-10-0.1

Application of certain amendments to chapter

Sec. 0.1. The amendments made to section 4 of this chapter by P.L.92-2004 apply only to subcontracts entered into after June 30, 2004.

As added by P.L.220-2011, SEC.207.

IC 8-23-10-0.5

Applicability of qualification requirement under IC 5-16-13; exemption for local unit projects

Sec. 0.5. (a) The definitions in IC 5-16-13 apply to this section.

(b) For purposes of IC 5-16-13-10(c) and this section, a contractor must be qualified under this chapter before doing any work on a public works project that is the construction, improvement, alteration, repair, or maintenance of a road (as defined by IC 8-23-1-23), highway, street, or alley.

(c) Notwithstanding the applicability date specified in IC 5-16-13-10(c) and subject to subsection (d), the requirement that a contractor must be qualified under this chapter before doing any work on a public works project applies to a public works contract awarded after December 31, 2016.

(d) This subsection applies to a public works project awarded after December 31, 2016, by a local unit. A contractor in any contractor tier is not required to be qualified under this chapter before doing any work on a public works project awarded by a local unit whenever:

- (1) the total amount of the contract awarded to the contractor for work on the public works project is less than three hundred thousand dollars (\$300,000); and
- (2) the local unit complies with IC 36-1-12 in awarding the contract for the public works project.

As added by P.L.144-2016, SEC.3.

IC 8-23-10-1

Qualified bidders required; exception

Sec. 1. It is unlawful to award a contract to any person other than a bidder previously qualified in compliance with this chapter, except for the award of a contract for a public works project by a local unit whenever section 0.5(d) of this chapter applies.

As added by P.L.18-1990, SEC.219. Amended by P.L.144-2016, SEC.4.

IC 8-23-10-2

Qualification applications; investigation; certificates of qualification; revocation of certificates

Sec. 2. (a) A bidder desiring to submit to the department a bid for the performance of a contract the department proposes to let must apply to the department for qualification and must use for that purpose the forms prescribed and furnished by the department. All applications must be verified by the applicant.

(b) The department shall act within thirty (30) days upon an application for qualification. Upon the receipt of an application for qualification, the department shall examine and may investigate the application and shall determine whether the applicant is competent and responsible and possesses the financial resources that satisfy this chapter.

(c) If the applicant is found to possess the qualifications prescribed by this chapter and by the rules adopted by the department, the department shall issue a certificate of qualification, which shall be valid for the period of one (1) year, or a shorter period of time that the department prescribes, unless revoked by the department for cause. The certificate of qualification must contain a statement fixing the aggregate amount of uncompleted work that the applicant will be permitted to have at any time under a contract with the department and may also, in the discretion of the department, contain a statement limiting a bidder to the submission of bids upon a certain class or classes of work. Subject to any restrictions as to amount or class of work, the certificate of qualification authorizes its holder to bid on all work on which bids are taken by the department during the period of time specified.

(d) A certificate of qualification may be revoked by the department only after notice to the qualified bidder and an opportunity to be heard. The notice must be in writing and must state the grounds of the proposed revocation.

As added by P.L.18-1990, SEC.219.

IC 8-23-10-2.5

Public availability of certificates of qualification

Sec. 2.5. The department shall make available for public inspection during regular office hours and on the Internet a list of the contractors holding a valid certificate of qualification issued by the department under this chapter.

As added by P.L.144-2016, SEC.5.

IC 8-23-10-3

Financial statements of applicants

Sec. 3. (a) A bidder may not be given a certificate of qualification unless the bidder's financial statement and the investigation made by the department show that the bidder possesses net current assets sufficient in the judgment of the department to render it probable that the bidder can satisfactorily execute contracts and meet obligations incurred. All applications for qualification must expressly authorize the department to obtain all information considered pertinent with

respect to the financial worth and assets and liabilities of the applicant from banks or other financial institutions, surety companies, dealers in material, equipment, or supplies, or other persons having business transactions with an applicant and must expressly authorize all financial institutions or other persons to furnish information requested by the department.

(b) The financial statement furnished by an applicant for qualification of more than one million dollars (\$1,000,000) must be prepared and attested as audited by an independent:

- (1) certified public accountant registered and in good standing in any state; or
- (2) public accountant registered and in good standing in Indiana.

(c) The financial statement furnished by an applicant for qualification of more than two hundred thousand dollars (\$200,000) but not more than one million dollars (\$1,000,000) must be prepared and attested as reviewed by an independent:

- (1) certified public accountant registered and in good standing in any state; or
- (2) public accountant registered and in good standing in Indiana.

(d) A qualification of two hundred thousand dollars (\$200,000) or less may be granted by the department if the financial statement furnished by the applicant is certified as correct by an officer of the company. The department may require all qualified bidders to file financial statements from time to time at intervals it prescribes.

(e) This chapter shall be administered without reference to the residence of applicants, and its provisions and the rules of the department adopted under this chapter apply equally to residents and nonresidents of Indiana. This chapter does not apply to the purchase of material, equipment, and supplies or to the construction and maintenance of buildings.

(f) Notwithstanding IC 5-14-3-4(a)(5), a financial statement submitted to the department under this chapter is considered confidential financial information for the purposes of IC 5-14-3.

As added by P.L.18-1990, SEC.219. Amended by P.L.111-1993, SEC.1; P.L.119-1995, SEC.1.

IC 8-23-10-4

Subcontractors; qualification

Sec. 4. It is unlawful for a successful bidder to enter into a subcontract with any other person involving the performance of any part of any work upon which the bidder may be engaged for the department in an amount in excess of three hundred thousand dollars (\$300,000) unless the subcontractor has been properly qualified under the terms of this chapter for the work sublet to the subcontractor. However, the department may reduce this amount based on the subcontractor's performance with the department and

others. The prequalification requirements of this section do not apply to the following:

(1) Professional services.

(2) Hauling materials or supplies to or from a job site.

As added by P.L.18-1990, SEC.219. Amended by P.L.92-2004, SEC.1.

IC 8-23-10-5

Notice of action on application; reapplication

Sec. 5. (a) All applicants for qualification shall be promptly notified by the department of its final action on their applications. An applicant aggrieved by the decision of the department may, within ten (10) days after receiving notification of the decision, request in writing a reconsideration of the application by the department, and may submit additional evidence bearing on qualifications. The department shall again consider the matter and may either adhere to or modify its previous decision. The department shall act upon any request for reconsideration within fifteen (15) days after the filing of the request and shall notify the applicant of the action taken.

(b) An applicant who has been refused qualification, or who is dissatisfied with the department's decision as to the aggregate amount of uncompleted work to be permitted under contract at any one time, or with any limitation as to the class or classes of work on which the bidder is authorized to bid, may at any time after the expiration of ninety (90) days from the date of the department's decision on the last application file a new application for qualification. The new application shall be promptly considered and acted upon by the department.

As added by P.L.18-1990, SEC.219.

IC 8-23-10-6

Unqualified bidders; rejection of bids

Sec. 6. The department may not consider a bid filed with it by a person who has not been qualified under this chapter. Bids from unqualified bidders discovered by the department before the reading of the bids shall be returned without being read. If the department finds subsequent to the opening of bids that facts exist that would disqualify the lowest bidder, or that the bidder is not competent and responsible, the department shall reject the bid despite the fact of prior qualification of the bidder. It is unlawful to award a contract to a bidder not qualified to bid at the time fixed for receiving bids.

As added by P.L.18-1990, SEC.219.

IC 8-23-10-7

Revenue department; access to names of bidders, contractors, and subcontractors; bidders on tax warrant list

Sec. 7. (a) The department may allow the department of state revenue access to the name of each person who is either:

- (1) bidding on a contract to be awarded under this chapter; or
- (2) a contractor or a subcontractor under this chapter.

(b) If the department is notified by the department of state revenue that a bidder is on the most recent tax warrant list, the department may not award a contract to that bidder until:

- (1) the bidder provides to the department a statement from the department of state revenue that the bidder's delinquent tax liability has been satisfied; or
- (2) the department receives a notice from the commissioner of the department of state revenue under IC 6-8.1-8-2(k).

(c) The department of state revenue may notify:

- (1) the department; and
- (2) the auditor of state;

that a contractor or subcontractor under this chapter is on the most recent tax warrant list, including the amount that the person owes in delinquent taxes. The auditor of state shall deduct from the contractor's or subcontractor's payment the amount owed in delinquent taxes. The auditor of state shall remit this amount to the department of state revenue and pay the remaining balance to the contractor or subcontractor.

As added by P.L.18-1990, SEC.219.

IC 8-23-10-8

False statements; penalty

Sec. 8. It is a Class C infraction for an applicant for qualification to knowingly make a false statement with respect to the applicant's financial worth in an application for qualification, financial statement, or other written instrument filed by the applicant with the department under this chapter or rules adopted under this chapter. A person who violates this section is disqualified from submitting bids on contracts advertised for letting by the department for a period of two (2) years following the date of conviction.

As added by P.L.18-1990, SEC.219.