



**Town of Fishers – Procurement, Public Bidding
and Contract Manual
Town Council Ordinances and Adoptions**

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Town of Fishers Procurement, Public Bidding and Contracting Manual

This Town of Fishers Procurement, Public Bidding and Contracting Manual 2011 (the "Manual") formalizes the policies for the purpose of conducting procurement, bidding and contracting on behalf of the Town of Fishers ("Town"). The Manual is designed to comply with the current Indiana State Code. The Manual should be used as a reference resource for all Town employees who engage in procurement, public bidding and contracting on behalf of the Town in compliance with the stated purpose of Town's Procurement, Public Bidding and Contracting Policy:

.... to encourage competition among vendors and contractors, to provide for the fair and equitable treatment of all persons involved in public purchasing, public bidding and contracting by the Town, to maximize the purchasing, public bidding and contracting value of public funds in procurement, public bidding and contracting so that high quality goods and work may be obtained at the lowest possible price, and to increase public confidence in procurement, public bidding and contracting practices by providing safeguards for maintaining a procurement, public bidding and contracting system of quality and integrity.

Public bidding and contracting requirements were originally enacted to avoid the added expense to the taxpayers of the political spoils system. The public bidding and contracting process relies on competition and public scrutiny to insure that taxpayers pay a fair price for the value received. Public bidding and contracting procedures have evolved to preserve the positive impact of competition, while eliminating steps that provide little benefit compared to their cost. See <http://www.in.gov/legislative/ic/code/> for the full text of the statutes cited in this Manual. The procurement, public bidding and contracting system set forth in the following policy relies upon the cooperation and coordination of all Departments within the Town.

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I. MANUAL OVERVIEW

A. Public Purchasing - The purpose of this Procurement Policy is to further define purchasing policies that currently exist. The new policy will allow for a more effective and efficient purchasing process that will comply with the current State laws that pertain to procurement.

B. Desired Outcomes and Action Steps

1. A More Streamlined Purchasing Policy and Procedure

- Eliminate unnecessary Purchase Orders.
- Appoint a Purchasing Coordinator to execute process and policies.
- Appoint one (1) person from each department to be a Deputy Purchasing Agent.

2. Centralize Data Collection

- All contracts will be maintained by the Purchasing Coordinator.
- All Bid and Proposal Registers will be maintained by the Purchasing Coordinator.
- Vendor information will be kept and maintained by the Purchasing Coordinator and the Deputy Purchasing Agents.
- Deputy Purchasing Agents are required to maintain current records of all store cards and the individuals who have the authority to utilize them at each vendor.

3. Reduce Costs

- The Purchasing Coordinator will coordinate with all Deputy Purchasing Agents to gather common material needs to increase the Town's purchasing power.
- Local preference will only be given, when no reasonable financial benefit can be gained from other vendors or as required by law.

- The Purchasing Coordinator and his/her agents will work together on a frequent basis to find new and innovative ways to get the most value for the citizens' tax dollars.

4. New Authorities Vested in the Following Policy

- Town Manager approves any purchase under \$50,000.
- Department Head can approve any purchase under \$10,000.
- Deputy Purchasing Agent can approve any purchase under \$1,000.

5. Changes in State Laws that Affect Purchasing Policy

- Bids are required for any purchase over \$150,000.
- Quotes are required for any purchase over \$50,000.
- Local level decision to require Performance Bond and Payment Bond for public works projects \$200,000 and under

II. TOWN ORGANIZATIONAL AUTHORITY AND POLICIES

A. Organizational Authority

1. Town Council - Shall adopt an ordinance establishing the dollar amount that the Town Manager has the discretion to spend in which the Town participates as a buyer, **without** Town Council approval.
2. Town Manager
 - a. Shall establish and execute a Procurement Policy.
 - b. Shall establish and execute procurement procedures.
 - c. Shall appoint, in writing, the Purchasing Coordinator.
 - d. Shall review and be the final authority for all purchases pursuant to the Procurement Policy.
3. Purchasing Coordinator
 - a. Shall ensure that all Town purchases are in compliance with the current Procurement Policy.
 - b. Shall coordinate all designated Purchasing Agents.
 - c. Shall be responsible for contract and vendor information retention.
 - d. Shall, when it is deemed advantageous to the Town, compile the Supply needs for the entire Town in order to obtain better prices through enhanced purchasing and bargaining powers.
 - e. Shall ensure that purchases made by Bid or Quote are in compliance with Procurement Policy.
4. Department Heads
 - a. Shall appoint in writing to the Purchasing Coordinator a Designated Purchasing Agent.
 - b. Shall be responsible to compile and convey information regarding Specifications, needs, and funding to the Purchasing Coordinator and/or the Designated Purchasing Agent.

- c. Shall convey to the Purchasing Coordinator any dissatisfaction with a Purchase.
- d. Shall communicate any preference in vendor or Supply to the Purchasing Coordinator and Designated Purchasing Agent.
- e. Shall be responsible for the delegation of purchasing authority to department employees.

5. Designated Purchasing Agent

- a. Shall review and approve all Departmental purchases under \$1,000.
- b. Shall be responsible for the delegation of purchasing authority to department employees.
- c. Shall maintain up-to-date lists of all employees who have purchasing authority and the vendors that the individual has authority to buy from.
- d. Shall assist Department Heads and Purchasing Coordinator in developing Specifications and needs.
- e. Shall gather information annually on Department needs in order to collaborate with other Departments in collective purchasing.

B. General Purchasing Policies and Public Works Policies

1. Procurement Purchasing Policies (Excluding Public Works)

- a. Definition and Scope: The Procurement Policy pertains to any Purchase, contract, lease, or lease-purchase that the Town participate. Intergovernmental agreements are exempt from the policies and procedures set forth in the following Procurement Policy.

2. Purchases Under \$50,000

a. Purchases or Contracts of \$1,000 or Less

- 1) Shall be reviewed and approved by the Designated Purchasing Agent.

- 2) The Purchasing Coordinator, Department Head and Town Manager reserve the right to deny any Purchase.
 - 3) Contracts must be handled pursuant to Town policy (*See Contract and Information Retention*).
- b. Purchases or Contracts between \$1,000. and \$10,000
- 1) Shall be reviewed and approved via a Requisition Form by Designated Purchasing Agent and corresponding Department Head.
 - 2) The Purchasing Coordinator and Town Manager reserve the right to deny any Purchase.
 - 3) Contracts must be handled pursuant to Town policy (*See Contract and Information Retention*)
- c. Purchases or Contracts between \$10,000 and \$50,000
- 1) Shall be reviewed and approved via a Requisition Form by the Department Heads, Purchasing Coordinator, and Town Manager.
 - 2) The Requisition Form will have three (3) formal Quotes from different vendors or will have an explanation for their absence.
 - 3) The Town Manager reserves the right to deny any Purchase.
 - 4) Contracts must be handled pursuant to Town policy. (*See Contract and Information Retention*).
 - 5) Any new purchase that meets the asset requirements must be reported.
- d. Purchase of at Least \$50,000 and Less Than \$150,000
- 1) Shall be reviewed and approved by the Department Heads, Purchasing Coordinator, Town Manager, and the Town Council.
 - 2) The information presented to Town Council will contain three (3) formal quotes from different vendors

or will have an explanation for their absence. (See *Quote process*).

- 3) Contracts must be handled pursuant to Town policy. (See *Contract and Information Retention*).
- 4) Any new purchase that meets the asset requirements must be reported.

e. Purchases of \$150,000 or More

- 1) Shall be submitted to a formal bidding process.
- 2) Shall be reviewed and approved by Department Head, Purchasing Coordinator, Town Manager, and the Town Council.
- 3) Contracts must be handled pursuant to Town policy (see *Contract and Information Retention*).
- 4) Any new purchase that meets the asset requirements must be reported.

3. Public Works Policies

a. Public Works Limitations

- 1) Public Works with an estimated cost of less than \$25,000.
 - a) Shall be reviewed and approved via a Requisition Form by the Department Heads, Purchasing Coordinator, and Town Manager.
 - b) The Requisition Form will have three (3) informal Quotes by telephone or facsimile transmission from different vendors or will have an explanation for their absence.
 - c) The Town Manager reserves the right to deny any purchase.
 - d) Contracts must be handled pursuant to Town policy. (See *Contract and Information Retention*).

- e) Any new purchase that meets the asset requirements *must* be reported.
- 2) Public Works with an estimated cost of less than \$150,000 and greater than \$50,000.
 - a) Shall be reviewed and approved by the Department Heads, Purchasing Coordinator, and Town Manager.
 - b) The information presented to Town Manager will contain three (3) formal Quotes from different vendors or will have an explanation for their absence. (See Quote process)
 - c) Contracts must be handled pursuant to Town policy. (See Contract and Information Retention.
 - d) Any new purchase that meets the asset requirements must be reported.
 - 3) Public Works with an estimated cost of more than \$150,000.
 - a) Shall be submitted to a formal bidding process. (*See Public Works Bidding*).
 - b) Shall be reviewed and approved by Department Head, Purchasing Coordinator, Town Manager, and the Town Council.
 - c) Contracts must be handled pursuant to Town policy. (*See Contract and Information Retention*).
 - d) Any new Purchase that meets the asset requirements must be reported.

3. Contract & and Information Retention (IC 5-22-18-4)

a. Contracts

- 1) All signed and approved contracts will be scanned electronically and placed in an accessible location by the Designated Purchasing Agent or the Purchasing Coordinator.

- 2) All contracts will be subject to public review, if requested.
 - 3) The original copy will be attached to the initial invoice and will be kept in a central location located in the Clerk-Treasurer's Office.
- b. Bids - When a bidding process or a Request for Proposal is conducted, the Purchasing Coordinator must maintain an accurate Bid / Proposal Register that contains the following, (IC 5-22-7.3-9):
- 1) A copy of all documents that are included as part of the Invitation for Bids.
 - 2) A list of all persons to whom copies of the Invitation for Bids were given.
 - 3) A list of all Bids received, including the following information:
 - a) The name and address of each Bidder.
 - b) The dollar amount of all Bid prices received during the bidding process.
 - c) The name of the successful Bidder and the dollar amount of that Bidder's Bid.
 - 4) The basis on which the award was made.
 - 5) Documentation of the Purchasing Agency's negotiating process with Bidders. (IC 5-22-7.3-9). The documentation must include the following:
 - a) A log of the date and times of each meeting with a Bidder. The log must include the identity of the Bidder.
 - b) A description of the nature of all communication with each Bidder.
 - c) A copy, subject to the below, of all written communications, including electronic communications, with each Bidder. The entire

contents of the contract file except for proprietary information included with a Bid, such as trade secrets, manufacturing processes, and financial information that was not required to be made available for public inspection by the terms of the Invitation for Bids. (IC 5-22-7.3-9(b)(6)).

- 6) Except as provided herein, the Bid Register is subject to public inspection only after the contract award.

c. Special Purchases (IC 5-22-10-3)

- 1) A Purchasing Agent shall maintain the contract records for a Special Purchase in a separate file.
 - 2) A Purchasing Agent shall include in the contract file a written determination of the basis for:
 - a) The Special Purchase; and
 - b) The selection of a particular contractor.
 - 3) Notwithstanding any other law, the Town shall maintain a record listing all contracts made under this chapter for a minimum of five (5) years. The record must contain the following information:
 - a) Each contractor's name.
 - b) The amount and type of each contract.
 - c) A description of the Supplies purchased under each contract.
 - 4) The contract records for a Special Purchase are subject to annual audit by the State Board of Accounts.
4. Artificial Division of Purchases - Purchase requirements may not be artificially divided so as to constitute a small Purchase. (IC 5-22-8-1(b)).
 5. Contract Terms and Requirements - The following rules, with the exception of Intergovernmental Agreements, apply to all contracts entered into on behalf of the Town. (IC 5-22-17).

a. A Contract

- 1) That is a cost plus a percentage is not permitted.
- 2) That is a cost reimbursement contract may be entered into if the Town if the Purchasing Agent determines in writing that the contract will result in a substantial savings than by another contract type or is impractical to obtain the Supplies required under such a contract. (IC 5-22-17-2).
- 3) May be considered cancelled when the Town makes a written determination that funds are not appropriated or otherwise available to support continuation of a contract. (IC 5-22-17-5).
- 4) May allow for financial incentives for early completion. (IC 5-22-17-6).
- 5) May allow for financial penalties for late completion. (IC 5-22-17-6).
- 6) May include clauses providing for adjustments in prices or time of performance.
- 7) May include provisions dealing with changes in work and temporary stopping of the work or delaying performance.

6. Cooperative Purchasing

- a. Collective purchasing in the form of blanket Purchase Orders, Bids, and contracts should be pursued and coordinated by the Purchasing Coordinator when:
- 1) The Purchases are repetitive, specified services or items, or categories of items from the same vendor; which are purchased and paid in a predictable manner during a certain time period, usually one (1) year.
 - 2) Ordering standard materials or maintenance Supplies which require numerous shipments.
 - 3) It enables the Town to obtain more favorable pricing through volume commitments.

- b. Collective purchasing should **NOT** be used when:
 - 1) No benefit will be derived over and above use of a regular Requisition Form.
 - 2) It is used as a means to provide an open line of credit with a vendor.
 - 3) Prices are unknown at ordering time, or subject to change later without notice. There are certain exceptions when small-item Purchases are being made locally.
 - 4) Quality of vendor and/or Services is questionable.
 - 5) Control over Town expenditures would be weakened significantly.

7. Standards of Conduct - As a steward of public funds, it is important that the Town and all those associated with the Town; uphold the highest principles toward the use of tax-payer dollars. The following standards shall apply to all purchases entered into on behalf of the Town.

- a. All vendors, current and prospective, shall be treated equitably. Procurement decisions shall be based upon price, quality, delivery, references, and recommendation by Town consultants, written standards, previous service and other relevant factors promoting the interest of the Town.
- b. Employees are prohibited from sharing any information with a prospective Bidder that may give a vendor an unfair advantage over other perspective vendors.
- c. No Town employee will accept gifts, either monetary or material, of any significance from current or potential vendors.
- d. If a Purchase is denied by a superior, the item must be returned as soon as possible and the Purchase voided.

III. DEFINITIONS

- A. Absolute Preference: A requirement that the Town must Purchase Supplies regardless of price. (IC 5-22-15-2).
- B. Adjusted Offer: The offer price of an offeror for preferred Supplies. (IC 5-22-15-3).
- C. Cost Reimbursement Contract: A contract that entitles a contractor to receive reimbursements for costs that are allowable and allocable in accordance with the contract terms and a fee, if any.
- D. Designated Purchasing Agent: Those individuals who have been designated as such and appointed in writing by the Purchasing Coordinator or Department Head under the authority of the Town Manager. Designated Purchasing Agents are the primary purchasing agent for their respective Departments.
- E. Emergency Conditions: A situation when there exists a threat to public health, welfare, or safety. Special purchases are allowable during emergency conditions in accordance with *IC 5-22-10-4*.
- F. Invitation for Bid: All documents, whether attached or incorporated by reference, used for soliciting Bids.
- G. Preferred Supplies: Supplies that are given a Preference. (IC 5-22-15-4).
- H. Price Preference Percentage: The percentage Preference provided for a specified kind or item of Supplies. (IC 5-22-15-5).
- I. Public Works Project: The construction, reconstruction, alteration, or renovation of a public building, airport facility, or other structure that is paid for out of a special assessment; it includes such works performed on a highway, street, alley, bridge, sewer, drain, or other improvement, and also includes any Public Work leased by the Town under a lease containing an option to Purchase. (IC 36-1-12-2).
- J. Purchase: Includes buy, procure, rent, lease, or otherwise acquire; and, includes description of requirements, solicitation or selection of sources, preparation and award of contract, all phases of contract administration and all functions that pertain to purchasing. The buying, procuring, renting, leasing or otherwise acquiring supplies on behalf of the Town.
- K. Purchase Order: Purchase Order forms will only be used in the event that a Department requires the encumbrance of funds into the next fiscal year.

- L. Purchasing Agency: A Town designee that is authorized to enter into contract by rules adopted or by another law (The entity responsible for purchasing). The Town Council of the Town of Fishers is the Purchasing Agency. The Town Council will hire and/or designate the Purchasing Agent(s).
- M. Purchasing Agent: A Town designee that is authorized to enter into contracts by rules adopted or by another law.
- N. Purchasing Coordinator: This position will be formally authorized in writing by the Town Manger. The Purchasing Agent is responsible for the execution and compliance of the Purchasing Policy. The position will be located in the Administration Department under the supervision of the Town Manager.
- O. Purchasing Description: The words used in a solicitation to describe the Supplies to be purchased. The term includes Specifications attached to, or made a part of, the Solicitation.
- P. Request for Proposal or "RFP": All documents, whether attached or incorporated by reference, used for soliciting Proposals.
- Q. Requisition Form: A standardized form that communicates a desire to purchase an item, service, or contract. The Requisition Form does not encumber funds. It is a written record that demonstrates that designated authority levels have reviewed and consented to the Purchase.
- R. Reverse Auction: A method of purchasing in which offerors submit offers in an open and interactive environment through the Internet.
- S. Total Adjusted Offer: The sum of the offers and adjusted offers of an offeror for each item of Supplies. (IC 5-22-15-6).
- T. Service(s): The furnishing of labor, time or effort by a person not involved in the delivery of specific supplies other than printed documents or other items that are merely incidental to the service to be performed.
- U. Specifications: A description of the physical or functional characteristics of a Supply or the nature of the Supply. They include a description of any requirement for inspecting, testing, or preparing a Supply for delivery. Specifications may take the form of an applicable written specification, or an established catalog price, price list, or schedule.
- V. Solicitation: The procedure by which the Town invites persons to submit an offer to enter into a contract with the Town for the purchase or sale of

supplies by the Town. The term includes an Invitation for Bids, a Request for Proposals, and a Request for Quotes.

- W. Supplies: Any property, including, but not limited to, equipment, goods and materials, but excluding an interest in real property.

IV. PUBLIC PROCUREMENT AND PURCHASING – Executive Summary

A. Purchasing Statute Procedures

1. Definition and Scope - The Purchasing Statute applies to every expenditure of public funds by the Town, except Public Works Projects.
2. Specifications - A Purchasing Agent, an individual authorized by an authorized Town designee to act as an agent in the administration of the duties of the Town, shall prepare, issue, revise, maintain and monitor the use of Specification describing the physical or functional characteristics of a Supply or the nature of a Supply. The Specifications may include requirements for inspecting, testing, or preparing a Supply for delivery.
 - a. Alternate Procedure for Development of Specifications - The following procedures may be used when the Purchasing Agent makes a written determination that competitive bidding based on Town-prepared Specifications is not feasible and use of the alternative procedure is approved by the Town:
 - 1) The Purchasing Agent may issue a request for Specification that 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 evaluation factors.
 - c) A statement concerning whether discussions may be conducted with persons proposing Specifications to clarify the Specification requirements.
 - 2) The Purchasing Agent shall give public notice of the Request for Proposals in the manner required by IC 5-3-1.
3. Invitation for Bids - The Purchasing Agent, Department Head, or a Designated Agent will administer an Invitation for Bids. The Invitation for Bids must contain the following:
 - a. A purchase description.

- b. All contractual terms and conditions that apply to the Purchase.
 - c. A statement of the evaluation criteria that will be used, including inspection, testing, quality, workmanship, delivery, suitability for a particular purpose.
 - d. The time and the place for opening the Bids.
 - e. A statement concerning whether the Bid must be accompanied by a certified check or other evidence of financial responsibility (*Bid Bond*) that may be imposed in accordance with rules or policies of the Town.
 - f. A statement concerning the condition under which a Bid may be canceled or rejected in whole or in part.
 - g. *Non-Collusion Affidavit* to be completed and returned with Bid submission.
4. Notice of Invitation for Bid - An Invitation for Bids will be published in a designated newspaper and if applicable electronically in the manner required by IC 5-3-1.

F. Procedures for Request for Proposals

- 1. Definition and Scope - When a Purchasing Agent makes a written determination that the use of competitive bidding is either “**not practicable or not advantageous** to the Town,” the Town may use the “Request for Proposal” procedure instead of competitive bidding.
- 2. Request for Proposals must include:
 - a. The factors or criteria that will be used to evaluate the Proposals.
 - b. A statement concerning the relative importance of price and other evaluation factors.
 - c. A statement concerning whether the Proposal must be accompanied by a certified check or other evidence of financial responsibility (*Bid Bond*), which may be imposed in accordance with the rule of the Town.

d. A statement concerning whether discussions may be conducted with responsible offerors, who submit Proposals determined to be reasonably susceptible of being selected for award.

3. Notice of Request for Proposals - The Purchasing Agent shall give public notice of the Request for Proposals in the manner required by IC 5-3-1.

4. Evaluation and Award of Proposal

a. Proposals will only be evaluated on the criteria stated in the Invitation for Bids.

b. Discussions may be held with those vendors deemed most responsible and responsive to the Town's needs.

c. During the process of negotiations, Proposals received will be opened in a manner that does not disclose information to competing vendors.

d. The Town reserves the right to reject all submitted Proposals.

e. All documentation of the Proposal and Proposal process will be kept in accordance with this policy's contract and documentation retention policy. (See *Contracts and Information Retention*).

5. Registration of Proposal

a. A Register of Proposals must be prepared; and open for public inspection after contract award.

G. Request for Quote Procedures

1. Definition and Scope - Any general Purchase amounting to between \$50,000 and \$150,000 must be subject to the formal Quote process.

a. The Purchasing Agent must invite three (3) Quotes from persons known to deal in the lines or classes of Supplies to be purchased.

- b. The Invitation for Quotes must be mailed to the vendors no less than seven (7) days before the time set to receive the Bids.
- c. The Purchasing Agent may reject all Quotes.

H. Purchasing Policies

1. Bid Opening

- a. If the Bid was public and advertised; the Bid opening must take place at the designation location and time.
 - 1) There must be at least one (1) witness present at the opening of the Bids.
- b. Bids are public documents and information contained therein may be discussed with any interested parties who make a request to view.

2. Evaluation and Award of Bid

- a. Bids shall only be evaluated on the criteria stated in the Invitation for Bids.
- b. The Town reserves the right to reject all submitted Bids.
- c. If a Bid is accepted, *Notice of Award* will be given within a reasonable time to the chosen vendor.
- d. If the Bid award is for more than \$200,000, a public notice of the Bid register must be conducted no less than seven (7) days prior to award notification. (IC 5-22-7.3-10).
- e. All documentation of the Bid and Bid process will be kept in accordance with this Policy's contract and documentation retention policy (*See Contracts and Information Retention*).

3. Correction or Withdrawal of Bids - The Town has adopted rules and/or policies to address correction or withdrawal of inadvertently erroneous Bids before or after award.

4. Evidence of Financial Responsibility - The Town reserves the right to request evidence of financial responsibility when soliciting Bids or Proposals.

I. Other Purchasing Policies

1. Special Purchases

- a. A Special Purchase waives the need to follow the policies for competitive bidding, requesting Proposals, or inviting Quotes. It can be applied to any dollar amount. It can only be authorized by a written statement explaining the reasoning behind the use of a Special Purchase. (*IC 5-22-10-16*).
- b. Circumstances where Special Purchases are permitted:
 - 1) Emergency conditions. (See definition in Section III) (*IC 5-22-10-4*)
 - 2) A substantial savings to the Town.
 - 3) Auctions.
 - 4) Data processing contract or licensing agreements. (such as software programs).
 - 5) Concerns over compatibility of equipment.
 - 6) Purchasing method severely impairs the functioning of the agency.
 - 7) No offers received under the other purchasing methods.
 - 8) A governmental discount.
 - 9) Single source of supply or contract.

2. Reverse Auctioning

a. Use of Third-Party to Conduct Reverse Auctions

- 1) The Purchasing Agent is authorized to use a third-party to conduct Reverse Auction on behalf of the Town for the Purchase of Supplies and other items. The Purchasing Agent is authorized to select the third-party that will conduct the Reverse Auction, who must have prior experience in conducting Reverse Auctions.

V. PUBLIC BIDDING AND CONTRACTING Executive Summary

A. Bid Requirements

1. Public Work with Estimated Cost of **\$150,000** or more:

- a. Plans and Specs - The Town shall develop and file Plans and Specifications in a public place. All Plans and Specifications for public buildings must be approved by the State department of health, division of fire and building safety and other State agencies designated by statute. (IC 36-1-12-10).
 - 1) Architect / Engineer - Public Work performed or contracted for on a public building may be undertaken only in accordance with Plans and Specifications approved by licensed architect or engineer. (IC 36-1-12-7).
 - 2) The Town must, within sixty (60) days after the completion of the public building Work project, file in the division of fire and building safety a complete set of final record drawings for the Public Work project. (IC 36-1-12-11).
- b. Notice to Bidders - Upon the filing of the Plans and Specifications, the Town shall publish Notice to Bidders two (2) times at least one (1) week apart and no more than six (6) weeks apart. (IC 36-1-12-4(a)(3)).
- c. Bid Bond or Certified Check
 - May be required if the project is under **\$200,000**. The amount of the Bid Bond shall equal ten percent (10%) or less of estimated contract price. (IC 36-1-12-4.5).
- d. Form 96 - The Town shall require the bidder to submit with its Bid on Form 96 (Contractor's Bid for Public Work) and include:
 - Financial Statement,
 - Statement of Experience,

- Proposed plan or plans for performing the public work, and
 - Equipment List.
- e. Payment Bond
- May be required if the project is under **\$200,000**. Penal amount of Payment Bond equal to contract amount. (IC 36-1-12-13.1(a)(2)).
- f. Performance Bond
- May be required if project is **\$200,000** or under. Penal amount of Performance Bond equal to contract amount. (IC 36-12-1-14(e)).
- g. Wage Scale and Antidiscrimination
- All contracts by the Town for Public Work must conform to the wage scale provisions of IC 5-16-7 through December 31, 2011. After December 31, 2011 and before January 1, 2013 wage scale provisions required for Projects over **\$250,000**. After January 1, 2013 wage scale provisions required for Projects over **\$350,000**.
 - A contract by the Town for public work must conform with the antidiscrimination provisions of IC 5-16-6.
2. Public Work with Estimated Cost of **\$150,000**
- a. Plans and Specs - The Town shall develop and file Plans and Specifications in a public place. All Plans and Specifications for public buildings must be approved by the State department of health, division of fire and building safety and other State agencies designated by statute. (IC 36-1-12-10).
- b. Notice to Bidders - Publish Notice to Bidder two (2) times at least one (1) week apart and no more than six (6) weeks apart.

- c. Bid Bond or Certified Check
 - **May** be required if the project is under **\$200,000**. (IC 36-1-12-4.5). The amount of the Bid Bond shall equal ten percent (10%) or less of estimated contract price.
- d. Payment Bond
 - **May** be required if the project is under **\$200,000**. Penal amount of the Payment Bond equal to contract amount. (IC 36-1-12-13.1(a)(2)).
- e. Performance Bond
 - **May** be required if the project is under **\$200,000**. Penal amount of Performance Bond equal to contract amount. IC 36-12-1-14(e).
- f. Wage Scale and Antidiscrimination
 - All contracts by the Town for Public Work must conform to the wage scale provisions of IC 5-16-7 through December 31, 2011. After December 31, 2011 and before January 1, 2013 wage scale provisions required for Projects over **\$250,000**. After January 1, 2013 wage scale provisions required for Projects over **\$350,000**.
 - A contract by the Town for Public Work must conform with the antidiscrimination provisions of IC 5-16-6.

3. Additional Requirements - Public Work of **\$200,000** or more

- a. Plans and Specs - Town shall develop and file Plans and Specifications in a public place. All Plans and Specifications for public buildings must be approved by the State department of health, division of fire and building safety and other State agencies designated by statute. (IC 36-1-12-10).
 - 1) Architect / Engineer - Public Work performed or contracted for on a public building may be undertaken only in accordance with Plans and Specifications approved by licensed architect or engineer. (IC 36-1-12-7).

- 2) The Town must, within sixty (60) days after the completion of the public building work project, file in the division of fire and building safety a complete set of final record drawings for the Public Work project. (IC 36-1-12-11).
- b. Notice to Bidders - Publish Notice to Bidders two (2) times at least one (1) week apart and no more than six (6) weeks apart. (IC 36-1-12-4(a)(3)).
- c. Bid Bond or Certified Check
- **Shall** be required if the project is more than **\$200,000**. The amount of the Bid Bond or certified check shall equal ten percent (10%) or less of estimated contract price. (IC 36-1-12-4.5).
- d. Payment Bond
- **Shall** be required if the project is more than **\$200,000**. Penal amount of Payment Bond shall be equal to contract amount. (IC 36-1-12-13.1(a)(1)).
- e. Performance Bond
- **Shall** be required if the project is more than **\$200,000**. Penal amount of Performance Bond shall be equal to contract amount. (IC 36-12-1-14(e)).
- f. Retainage Optional
- Town may require retainage for Projects other than highways. (IC 36-1-12-14)
- g. Escrow Upon Contractor Request
- At the discretion of Contractor, retainage shall be held by the Town or shall be placed in an escrow account with a bank, savings and loan institution, or the State as the escrow agent. (IC 36-1-12-14(b)).
- h. Wage Scale and Antidiscrimination
- All contracts by the Town for Public Work must conform to the wage scale provisions of IC 5-16-7 through December 31, 2011. After December 31,

2011 and before January 1, 2013 wage scale provisions required for Projects over **\$250,000**. After January 1, 2013 wage scale provisions required for Projects over **\$350,000**.

- A contract by the Town for Public Work must conform with the antidiscrimination provisions of IC 5-16-6.

B. Quote Process – more than **\$50,000** and less than **\$150,000**

1. May be used if project is more than **\$50,000** and less than **\$150,000**. If a Public Works project costs at least **\$50,000**, the Town must:
 - a. Invite three (3) Quotes.
 - b. Except as permitted by allowed Price Preferences (IC 36-1-12-22) award the contract to the lowest Responsible and Responsive Quoter.
2. Projects over **\$100,000** - Additional Procedures
 - a. Plans and Specifications must be approved by licensed architect or engineer.
 - b. Bidder information Form 96 (Contractor's Bid for Public Works), including:
 - 1) Financial Statement,
 - 2) Statement of Experience,
 - 3) Proposed Plan for Performing Work and
 - 4) Equipment List.
3. Payment Bond
 - a. Optional if Public work is less than **\$200,000**.
4. Performance Bond
 - a. Optional if Public Work is less than **\$200,000**.
5. Filing of Record Drawings
6. Retainage Optional
7. Escrow upon Contractor Request

8. Wage Scale through December 31, 2011

All contracts by the Town for Public Work must conform to the wage scale provisions of IC 5-16-7 through December 31, 2011. After December 31, 2011 and before January 1, 2013 wage scale provisions required for Projects over **\$250,000**. After January 1, 2013 wage scale provisions required for Projects over **\$350,000**.

C. Quotes - Alternate Procedures for Projects costing less than **\$50,000**

1. The Town must proceed under the following provisions:

- a. The Town shall invite Quotes from at least three (3) persons known to deal in the class of work proposed to be done by mailing them a notice stating that plans and specifications are on file in a specified office. The notice must be mailed not less than seven (7) days before the time fixed for receiving quotes.
- b. The Town may not require a person to submit a quote before the meeting at which quotes are to be received. The meeting for receiving quotes must be open to the public. All quotes received shall be opened publicly and read aloud at the time and place designated and not before.
- c. The board shall award the contract for the public work to the lowest responsible and responsive quoter.
- d. The board may reject all quotes submitted.
 - 1) If the Town rejects all Quotes, the Town may negotiate and enter into agreements for the work in the open market without inviting or receiving quotes if the Town establishes in writing the reasons for rejecting the Quotes.
- e. The Town may not proceed for the resurfacing (as defined in IC 8-14-2-1) of a road, street, or bridge, unless:
 - 1) The weight or volume of the materials in the project is capable of accurate measurement and verification; and
 - 2) The specifications define the geographic points at which the project begins and ends.
 - 3) For the purposes of this section, if contiguous sections of a road, street, or bridge are to be

resurfaced in a calendar year, all of the work shall be considered to comprise a single public work project.

- f. The Town may perform the Public Work by means of its own workforce without awarding a Public Work contract.
 - 1) Before the Town may perform any work under this section by means of its own workforce, the Town must have a group of employees on its staff who are capable of performing the construction, maintenance, and repair applicable to that Public Work.

D. Quotes for Public Works projects costing less than **\$25,000**

- 1. May be obtained by soliciting at least three (3) quotes by telephone or facsimile transmission. The seven (7) day waiting period required by subsection does not apply to quotes solicited under this subsection.

E. Town's Own Work Force for Public Work Less Than **\$150,000**

- 1. The Town may perform any Public Work by means of its own work force, without awarding a contract whenever the cost of that Public Work project is estimated to be less than **\$150,000**. (IC 36-1-12-3(a)).
 - a. Before the Town may perform any Public Work by means of its own work force, the Town must have a group of employees on its staff who are capable of performing the construction, maintenance, and repair applicable to that work. (IC 36-1-12-3(a)).
 - b. The cost of Public Work includes (i) the actual cost of materials, labor, equipment, and rental, (ii) a reasonable rate for use of trucks and heavy equipment owned, and (iii) all other expenses incidental to the performance of the project. (IC 36-1-12-3(a)).
 - c. The work force of the Town may perform a Public Work only if:
 - 1) The work force, through demonstrated skills, is capable of performing the Public Work; and
 - 2) Notice Requirement. For Public Work whose cost is estimated to be more than **\$100,000**, the Town must

publish notice under IC 5-3-1 that describes the Public Work and sets forth the projected cost of each component of the Public Work. (IC 36-1-12-3(b)(2)).

- 3) And, the Town determines at a public meeting that it is in the public interest to perform the Public Work with its own workforce. A Public Work project performed by the Town's own workforce must be inspected and accepted as complete in the same manner as a Public work project performed under a contract awarded after receiving Bids. (IC 36-1-12-3(b)(2)(B)).
- 4) When the project involves the rental of equipment with an operator furnished by the Town, or the installation or application of materials by the supplier of the materials, the project is considered to be a Public Work project. However, an annual contract may be awarded for equipment rental and materials to be installed or applied during a calendar or fiscal year if the proposed project or projects are described in the Bid Specifications. (IC 36-1-12-3(c)).

F. Routine Maintenance Under \$150,000 - The Town may award a contract for Public Work for routine operations, routine repair, or routine maintenance of existing structures, buildings, or real property if the cost of the Public Work is estimated to be less than **\$150,000** as described in the general purchasing statutes. (See Section I). (IC 36-1-12-4.9)

G. Emergency Contracts - In case of an emergency, the Town may contract for a Public Work project without advertising for Bids if Bids or Quotes are invited from at least two (2) persons known to deal in the Public Work required to be done. The minutes of the Town must show the declaration of emergency and the names of the persons invited to Bid or provide Quotes. (IC 36-1-12-9).

VI. PUBLIC PROCUREMENT AND PURCHASING

- A. Public Purchasing - These requirements apply to every expenditure of public funds by the Town. (IC 5-22-1-1). These requirements do not apply to a Public Work Project. (IC 5-22-1-3).
- B. Purchasing Statute Procedures
1. Definition and Scope - The Purchasing Statute applies to every expenditure of public funds by the Town. (IC 5-22-1-1).
 2. Specifications - Under the Purchasing Statute, a Purchasing Agent, an individual authorized by the Town to act as an agent in the administration of the duties of the Town, shall prepare, issue, revise, maintain and monitor the use of Specification describing the physical or functional characteristics of a Supply or the nature of a Supply. The Specifications may include requirements for inspecting, testing, or preparing a Supply for delivery.
 - a. Alternate Procedure for Development of Specifications - The following procedures may be used when the Purchasing Agent makes a written determination that competitive bidding based on owner-prepared Specifications is not feasible and use of the alternative procedure is approved by the Town (IC 5-22-5-5):
 - 1) The Purchasing Agent may issue a request for Specification that 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 evaluation factors.
 - c) A statement concerning whether discussions may be conducted with persons proposing Specifications to clarify the Specification requirements.
 - 2) The Purchasing Agent shall give public notice of the Request for Proposals in the manner required by IC 5-3-1.
 - a) Two (2) times at least a week apart.

- b) The final notice must be given seven (7) days prior to the receiving of the bids.
 - c) Provide electronic access to the notice through the computer gateway administered by the office of technology.
 - 3) As provided in the request for Specifications, the Purchasing Agent may discuss proposed Specifications with persons proposing Specifications to clarify Specification requirements.
 - 4) Persons proposing Specifications must be accorded fair and equal treatment with respect to any opportunity for discussion and revisions of proposed Specifications. (IC 5-22-5-5).
- 3. Invitation for Bids - The Purchasing Agent, Department Head, or a Designated Agent will administer an Invitation for Bids. The Invitation for Bids must contain the following (IC 5-22-7-2):
 - a. A purchase description.
 - b. All contractual terms and conditions that apply to the Purchase.
 - c. A statement of the evaluation criteria that will be used, including inspection, testing, quality, workmanship, delivery, suitability for a particular purpose.
 - d. The time and the place for opening the bids.
 - e. A statement concerning whether the Bid must be accompanied by a certified check or other evidence of financial responsibility (*Bid Bond*) that may be imposed in accordance with rules or policies of the Town.
 - f. A statement concerning the condition under which a Bid may be canceled or rejected in whole or in part as specified.
 - g. *Non-Collusion Affidavit* to be completed and returned with Bid submission
- 4. Notice of Invitation for Bid - An Invitation for Bids will be published in a designated newspaper and if applicable electronically (IC 5-22-7-5):

- a. Two (2) times at least a week apart.
- b. The final notice must be given seven (7) days prior to the receiving of the Bids.

C. Procedures for Request for Proposals

1. Definition and Scope - When a Purchasing Agent makes a written determination that the use of competitive bidding is either **not practicable or not advantageous** to the Town, the Town may use the Request for Proposal procedure instead of competitive bidding. (IC 5-22-9-1).
2. Request for Proposals must include (IC 5-22-9-2):
 - a. The factors or criteria that will be used to evaluate the Proposals.
 - b. A statement concerning the relative importance of price and other evaluation factors.
 - c. A statement concerning whether the Proposal must be accompanied by a certified check or other evidence of financial responsibility (*Bid Bond*), which may be imposed in accordance with the rule of the Town.
 - d. A statement concerning whether discussions may be conducted with responsible offerors, who submit proposals determined to be reasonably susceptible of being selected for award.
3. Notice of Request for Proposals - The Purchasing Agent shall give public notice of the Request for Proposals in the manner required by IC 5-3-1. (IC 5-22-9-3).
 - a. Two (2) times at least a week apart.
 - b. The final notice must be given seven (7) days prior to the receiving of the Bids.
 - c. Provide electronic access to the notice through the computer gateway administered by the office of technology.
 - d. Proposal must be opened as to avoid disclosure of contents to competing offerors during the process of negotiation. (IC 5-22-9-4).

4. Evaluation and Award of Proposal

- a. Proposals will only be evaluated on the criteria stated in the Invitation for Bids.
- b. Discussions may be held with those vendors deemed most responsible and responsive to the Town's needs.
- c. During the process of negotiations, Proposals received will be opened in a manner that does not disclose information to competing vendors.
- d. The Town reserves the right to reject all submitted Proposals.
- e. All documentation of the Proposal and Proposal process will be kept in accordance with this policy's contract and documentation retention policy. (See *Contracts and Information Retention*).

5. Registration of Proposal

- a. A Register of Proposals must be prepared; and open for public inspection after contract award.
- b. The Register of Proposals must contain the following:
 - 1) A copy of the Request for Proposals.
 - 2) A list of all persons to whom copies of the Request for Proposals were given.
 - 3) A list of all Proposals received, which must include all of the following:
 - a) The names and addresses of all offerors.
 - b) The dollar amount of each offer.
 - c) The name of the successful offeror and the dollar amount of that offeror's offer.
 - 4) The basis on which the award was made.
 - 5) The entire contents of the contract file except for proprietary information included with an offer, such as

trade secrets, manufacturing processes, and financial information that was not required to be made available for public inspection by the terms of the Request for Proposals.

D. Request for Quote Procedures

1. Definition and Scope - Any general Purchase amounting to between \$50,000.01 and \$150,000.00 must be subject to the formal Quote process.
 - a. The Purchasing Agent must invite three (3) Quotes from persons known to deal in the lines or classes of Supplies to be purchased.
 - b. The Invitation for Quotes must be mailed to the vendors no less than seven (7) days before the time set to receive the Bids.
 - c. The Purchasing Agent may reject all Quotes.

E. Purchasing Policies

1. Bid Opening
 - a. If the Bid was public and advertised; the Bid opening must take place at the designation location and time.
 - b. There must be at least one (1) witness present at the opening of the Bids.
 - c. Bids are public documents and information contained therein may be discussed with any interested parties who make a request to view.
2. Evaluation and Award of Bid
 - a. Bids shall only be evaluated on the criteria stated in the Invitation for Bids.
 - b. The Town reserves the right to reject all submitted Bids.
 - c. If a Bid is accepted, *Notice of Award* will be given within a reasonable time to the chosen vendor.

- d. If the Bid award is for more than \$200,000, a public notice of the Bid register must be conducted no less than seven (7) days prior to award notification. (IC 5-22-7.3-10).
 - e. All documentation of the Bid and Bid process will be kept in accordance with this Policy's contract and documentation retention policy (*See Contracts and Information Retention*).
3. Correction or Withdrawal of Bids - The Town has adopted rules and/or policies to address the following (IC 5-22-7.3-11):
- a. Correction or withdrawal of inadvertently erroneous Bids before or after award:
 - 1) Correction - A Bidder may correct inadvertent errors on a Bid up to the time at which the Bids are received. Once the deadline for receipt of Bids as stated in the Invitation for Bids has expired the ability to withdrawal and submit a revised Bid terminates.
 - 2) Withdrawal - A Bidder may withdraw an erroneous Bid up until the deadline for the receipt of Bids stated in the Invitation for Bids.
 - b. Cancellation of Awards or Contracts based on an inadvertently erroneous Bid:
 - 1) When the Purchasing Coordinator makes a written determination that it is in the Town's best interest, the Purchasing Agent may cancel a solicitation or reject all Bids, provided that the Invitation for Bids includes a procedure for doing so. (IC 5-22-7.3-11)
 - c. A Bidder that includes terms not specified in the Invitation for Bids will be dealt with as follows:
 - 1) The Purchasing Agent may declare the Bidder unresponsive.
 - 2) The Purchasing Agent may allow the Bidder to withdraw those portions of the Bid that were not included in the Invitation for Bids.
 - 3) Accept any of the proposed additions to the contract.

- 4) However, if the proposed additions are prejudicial to the Town or to the other Bidders, the Purchasing Agent must reject the proposed additions. (IC 5-22-7.3-13).
4. Evidence of Financial Responsibility - The Town reserves the right to request evidence of financial responsibility when soliciting Bids or Proposals.
 - a. The evidence must be:
 - 1) File evidence of financial responsibility in the amount, at the time, and as specified by the Purchasing Agent in the Invitation for Bids.
 - 2) No more than ten percent (10%) of the contract price in the form of a (*Bid* Bond) or Certified Check.
 - 3) Returned to the offer or if they are not rewarded the Bid.

E. Other Purchasing Policies

1. Special Purchases

- a. A Special Purchase waives the need to follow the policies for competitive bidding, requesting Proposals, or inviting Quotes. It can be applied to any dollar amount. It can only be authorized by a written statement explaining the reasoning behind the use of a Special Purchase. (*IC 5-22-10-16*)
- b. Circumstances where Special Purchases are permitted:
 - 1) Emergency conditions. (See definition in Section III) (*IC 5-22-10-4*)
 - 2) A substantial savings to the Town.
 - 3) Auctions.
 - 4) Data processing contract or licensing agreements. (such as software programs).
 - 5) Concerns over compatibility of equipment.
 - 6) Purchasing method severely impairs the functioning

- 7) of the agency.
No offers received under the other purchasing methods.
 - 8) A governmental discount.
 - 9) Single source of Supply or contract.
2. Fixed Asset Policy Definition and Scope - Any Purchase of an item over \$1,000 will be subject to asset tracking. Contractual Services and Professional Services will not be included in asset inventories. Only those purchases that result in a physical item will be included.
- a. The Purchasing/Deputy Purchasing Agent will be responsible for:
 - 1) Complying with the Town's current asset policy.
 - 2) Complying with the Town's current surplus policy.
3. Purchase Orders
- a. Definition and Scope - Purchase Orders will only be used to encumber funding at the close of the current fiscal year.
 - b. Town Departments will be responsible for the following:
 - 1) Submitting the Purchase Order and the contract associated with it to the Clerk Treasurer's Department by their stated deadline.
 - 2) Purchase Order is required by the vendor, the Department will develop a generic Purchase Order form to use.
4. Reverse Auctioning
- a. Use of Third-Party to Conduct Reverse Auctions
 - 1) The Purchasing Agent is authorized to use a third-party to conduct Reverse Auction on behalf of the Town for the Purchase of Supplies and other items. The Purchasing Agent is authorized to select the third-party that will conduct the Reverse Auction, who must have prior experience in conducting Reverse Auctions.

b. Transmission of Notices, Solicitations and Specifications

- 1) Notices - The Town shall give notice of a Reverse Auction by:
 - a) Publishing notice of the Invitation for Bids two (2) times, at least one (1) week apart, with the second publication at least seven (7) days before the commencement of the Reverse Auction in accordance with;
 - b) If a third-party is conducting the Reverse Auction on behalf of the Purchasing Agent, by posting, or permitting to have posted, the Invitation for Bids on the third-party's website. The Town may also give notice of a Reverse Auction by electronic mail or faxes.
- 2) Solicitations and Specifications - The Town shall transmit Invitation for Bids and Specifications:
 - a) In accordance with the Invitation for Bids, identifying a designated location where, during regular business hours, the Invitation for Bids may be inspected and copied or copies may be obtained; and
 - b) If a third-party is conducting the Reverse Auction on behalf of the Purchasing Agent, making them available on the third-party's website.

c. Pre-Qualification of Bidders

- 1) All Bidders desiring to participate in a Reverse Auction must be pre-qualified by submitting materials to ensure that they meet the Specifications identified by the Town as to the types of Supplies to be offered for Purchase no later than twenty-four (24) hours prior to the time for the commencement of the Reverse Auction, as provided in the Invitation for Bids.
- 2) The pre-qualification process shall be used to determine whether the Bidder is Responsible and Responsive, whether there is any bidding or

purchasing preference or preferences applicable to a particular Bidder, and whether the Bidder has submitted evidence of financial responsibility, as required by the Purchasing Agent.

- a) In order to assist the Town in pre-qualifying Bidders, the Bidder must submit, in accordance with the Invitation for Bids, all documentation and other information relating to the Supplies being offered for Purchase, except for price, and any other information that may assist the Town in making its determination. Such documentation will include evidence of financial responsibility or a *Bid Bond* or Certified Check, as specified in the Invitation for Bids.
- 3) In determining whether a Bidder is Responsible, the Purchasing Agent may consider the following factors:
 - a) The ability and capacity of the Bidder to provide the Supplies.
 - b) The integrity, character, and reputation of the Bidder.
 - c) The competency and experience of the Bidder.
 - 4) In determining whether a Bidder is Responsive, a Purchasing Agent may consider the following factors:
 - a) Whether the Bidder has submitted information demonstrating that his offer for Supplies conforms in all material respects to the Specifications.
 - b) Whether the Bidder has submitted documentation that complies specifically with the Invitation for Bids.
 - c) Whether the Bidder has complied with all applicable statutes, ordinances, resolutions, or rules pertaining to the award of a public contract.
 - 5) The determination that a Bidder is not Responsive or not Responsible must be made in writing.

- 6) Pre-qualification of Bidders must be done by the Purchasing Agent or an authorized representative of the Purchasing Agency in the presence of one (1) or more witnesses and must be completed no later than twenty-four (24) hours prior to the commencement of the Reverse Auction bidding period.
- 7) The Town shall notify any Bidder determined to be not pre-qualified in writing, by facsimile, or electronic mail (as requested by the bidder) and shall exclude the bidder so notified from participation in the Reverse Auction.
- 8) The Town's determination that a Bidder is not pre-qualified is limited to the Reverse Auction for which the request for pre-qualification was received.

d. Invitation for Bids Contents

- 1) The Invitation for Bids must include:
 - a) A Purchase description.
 - b) A statement that Bids will be accepted by means of a Reverse Auction process.
 - c) A description of all contractual terms and conditions that apply to the purchase, including the requirement of a *Non-Collusion Affidavit* by the successful Bidder.
 - d) The criteria that will be used by the Purchasing Agent to pre-qualify Bidders to determine whether a Bidder is Responsive and Responsible.
 - e) The information and other documentation required to be submitted for prequalification, including a Bid Bond, Certified Check or other evidence of financial responsibility.
 - f) The location and manner in which Bidders must submit information for prequalification.
 - g) The deadline for submission of such information, and the deadline by which the

Town will determine whether a Bidder is pre-qualified.

- h) The location, including any websites, at which the Invitation for Bids may be inspected and copied or copies may be obtained, including, if a third-party is conducting the Reverse Auction, the procedures to be used by the third-party to conduct the Reverse Auction.
- i) A statement as to whether a third-party is conducting the Reverse Auction on behalf of the Town.
- j) A statement that offers submitted by pre-qualified Bidders will only be received through a third-party is conducting the Reverse Auction on behalf of the Town, through the third-party's secure website.
- k) The date and time at which the Reverse Auction bidding period will commence and the approximate length of time for which the Reverse Auction will be conducted, allowing automatic extensions based upon resulting competitive activity.
- l) The deadline by which pre-qualified Bidders must submit an initial price to a secure website for the purposes of establishing a Bidder's participation and initial ranking at the commencement of the Reverse Auction bidding period.
- m) A statement explaining that the bidding period during which the Reverse Auction is conducted may be extended based upon competitive activity, at predetermined periods determined by the Purchasing Agent.
- n) A statement identifying the circumstances, under which the Reverse Auction may be postponed, paused, rescheduled, or cancelled.
- o) The place and approximate time at which, following the close of the bidding period, offers

will be reviewed publicly by an authorized representative of the Purchasing Agent in the presence of one or more witnesses.

- p) A statement that the third-party conducting the auction on behalf of the Town, will collect a service charge from the successful Bidder for its participation in the Reverse Auction.
- q) The name, address, and telephone number of a representative of the Purchasing Agent who can provide additional information related to the Reverse Auction.
- r) If a third-party is conducting the Reverse Auction on behalf of the Town, the name, address, and telephone number of a representative of the third-party who can provide additional information related to the Reverse Auction, including the mandatory training required of all pre-qualified Bidders as a condition of participating in the Reverse Auction.
- s) The conditions under which the Invitation for Bids may be cancelled or postponed in accordance with IC 5-22-18-1.

e. Receiving Offers

- 1) The Town shall receive offers only from Bidders who have been pre-qualified, in accordance with the Invitation for Bids.
- 2) If a third-party conducts the Reverse Auction on behalf of the Town, all prequalified Bidders must receive training provided by the third-party in order to participate in the Reverse Auction.
- 3) Prior to receiving electronic offers, the Town must find that: (a) the Invitation for Bids for the Reverse Auction indicates the procedure for transmitting the electronic offer; and (b) the electronic system on which the offer is received has a security feature that protects the content of an electronic offer with the

same degree of protection as the content of an offer that is not transmitted by electronic means.

- 4) In accordance with the Invitation for Bids, offers submitted by pre-qualified Bidders will only be received:
 - a) If a third-party is conducting the Reverse Auction on behalf of the Town, through the third-party's secure website.

f. Reverse Auction Bidding Period

- 1) For each Reverse Auction, the Purchasing Agent must establish an initial bidding period during which Bidders may submit prices for which the Supplies being offered may be purchased. The initial bidding period shall not be less than one (1) hour. The Purchasing Agent may automatically extend the Reverse Auction bidding period for additional pre-determined periods based upon competitive activity.
- 2) During the bidding period for the Reverse Auction, information available for public display is limited to the ranking, price and name of Bidders of each price Bid relative to all other prices Bid.
- 3) The dollar amounts of the prices Bid by Bidders shall not be disclosed to the Bidders until the close of the bidding period.
- 4) All information received, obtained or retained during a Reverse Auction remains confidential and may not be disclosed until after the close of the Reverse Auction bidding period.

g. Opening Offers

- 1) Offers will be deemed to be opened when a computer generated record of the information contained in all Bids received from pre-qualified Responsive and Responsible Bidders is reviewed publicly at the close of the bidding period for the Reverse Auction in the presence of one or more witnesses at the time and place designated in the Invitation for Bids by the Purchasing Agent (or an authorized representative of

the Purchasing Agent, including the Purchasing Agent).

- 2) The Purchasing Agent and any of its agents or employees are prohibited from displaying for public viewing the amount of each initial Bid price until the close of the initial bidding period for the Reverse Auction. The Purchasing Agent is required to protect the identity of a Bidder and the prices which have been submitted by each Bidder until the initial Bid has been placed until the Reverse Auction begins, at which time Bids will be deemed opened.

h. Contract Award

- 1) The Purchasing Agent must award a contract for the purchase of Supplies with reasonable promptness by *Notice of Award* to the lowest Responsible and Responsive Bidder.
- 2) If the contract is not awarded to the lowest Bidder, the Purchasing Agent must indicate the reasons for the award in writing.
- 3) As provided in the Invitation for Bids, the third-party conducting the Reverse Auction may impose a fee as a term of the contract for a purchase made by means of a Reverse Auction.

i. Payments

- 1) Payments for supplies purchased in a Reverse Auction shall be made only after receiving properly submitted claims.

j. Documentation

- 1) The Purchasing Agent shall be required to maintain adequate documentation regarding its Reverse Auctions so that the transactions may be audited as provided by law. The Purchasing Agent shall maintain an indexed file of Specifications prepared by or under the authority of its Purchasing Agent for each Reverse Auction in which the Purchasing Agent participates.

VII. PUBLIC WORKS BIDDING

- A. The Public Works Law applies to all Public Work performed or contracted for by the Town; and its agencies; regardless of whether it is performed on property owned or leased by the Town or agency. (IC 36-1-12-1(a)).
1. A contract for Public Work by the Town or agency is void if not let in accordance with IC 36-1-12. (IC 36-1-12-16).
 2. Public Work means the construction, reconstruction, alteration, or renovation of a public building, airport facility, or other structure that is paid for out of a *public fund*¹ 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 the Town under a lease containing an option to Purchase. (IC 36-1-12-2).
- B. Alternate to Public Works Law - As an alternative to the Public Works Law, the Town or its agencies may (1) enter into a Design-Build Contract as permitted under IC 5-30, or (2) participate in a Utility Efficiency Program or enter into a Guaranteed Energy Savings Contract as permitted by IC 36-12.5 or (3) Public-Private Agreement under IC 5-23. (IC 36-1-12-1).
1. Design-Build Contract means a contract between the Town and a design-builder to furnish (1) architectural, engineering, and related design services as required for a public project; and (2) labor, materials, and other construction services for the same public project. (IC 5-30-1-13).
 2. Guaranteed Savings Contract refers to a contract in which a qualified provider enters into an agreement with the Town to: (1) evaluate and recommend to the Town conservation measures; and (2) provide for the implementation of at least one (1) conservation measure. (IC 36-1-12.5-2).
 3. Public-Private Agreement the Public Works Law does not apply to a person who has entered into an operating agreement with the Town or an agency of the Town under IC 5-23. (IC 36-1-12-1(e)).

¹ (9) "Public fund" means all funds that are derived from the established revenue sources of the Town or an agency of the Town; and deposited in a general or special fund of a municipal corporation, or another political subdivision or agency of the Town. The term does not include funds received by any person managing or operating a public facility under a duly authorized operating agreement under IC 5-23 or proceeds of bonds payable exclusively by a private entity. IC 36-1-12-1.2(9).

- C. Dividing Cost of Public Work Project into Two (2) or More Projects - The cost of a single Public Work project may **NOT** be divided into two (2) or more projects for the purpose of avoiding the Public Works Law. The cost of a Public Work project includes the cost of materials, labor, equipment rental, and all other expenses incidental to the performance of the Project. (IC 36-1-12-19).
1. Penalty - A Bidder or Quoter or a person who is a party to a Public Work contract who knowingly violates this section commits a Class A infraction and may not be a party to or benefit from any contract under this chapter for two (2) years from the date of the conviction. Any Town member or officer of the Town or agency who knowingly violates this section commits a Class A infraction. (IC 36-1-12-19(a)&(b)).
- D. \$150,000 Public Work for Which Advertising and Bidding is Required (IC 36-1-12-4)
1. Whenever the cost of a Public Work project will be at least \$150,000, the Town must comply with the following procedures:
 2. Plans and Specifications
 - a. The Town shall prepare general Plans and Specifications describing the kind of Public Work required, but shall avoid Specifications which might unduly limit competition. (IC 36-1-12-4(b)(1)).
 - 1) If the project involves the resurfacing (as defined in IC 8-14-2-1) of a road, street or bridge, the Specifications must show how the weight or volume of the materials will be accurately measured and verified. (IC 36-1-12-4(b)(1)).
 - b. The Town shall file the Plans and Specifications in a place reasonably accessible to the public, which shall be specified in the Notice to Bidders. IC 36-1-12-4(b)(2). All Plans and Specifications for public buildings must be approved by the State Department of Health, the Division of Fire and Building Safety, and other State agencies designated by statute. (IC 36-1-12-10).
 3. Notice to Bidders
 - a. Upon filing of the Plans and Specifications, the Town shall publish a *Notice to Bidders* in accordance with IC 5-3-1

calling for sealed proposals for the Work needed two (2) times, at least one (1) week apart, with the second publication made at least seven (7) days before the date the Bids will be received. (IC 36-1-12-4(b)(3)),

- b. The *Notice to Bidders* shall call for sealed Proposals for the Public Work. (IC 36-1-12-4(b)(3)).
- c. The period of time between the date of the first publication and the date of receiving Bids may not be more than six (6) weeks if the estimated cost of the Public Work is less than \$25,000,000, ten (10) weeks if the estimated cost of the Public Work is at least \$25,000,000. (IC 36-1-12-4(b)(5)).
- d. The *Notice to Bidders* shall specify: (1) the place where the Plans and Specifications are on file and (2) the date fixed for receiving Bids. (IC 36-1-12-4(b)(4)).

4. *Bid Bonds (Evidence of Financial Responsibility)*

- a. If the cost of the Public Work is estimated to be more than (\$200,000), the Town (1) shall require a *Bid Bond* or a certified check to be filed with each Bid by a Bidder in the amount determined and specified in the *Notice to Bidders*. (IC36-1-12-4.5).
- b. If the cost of the Public Work is estimated to be not more than (\$200,000), the Town may require a *Bid Bond* or a certified check to be filed with each Bid by a Bidder in the amount determined and specified by the Town in the *Notice to Bidders*. (IC 36-1-12-4.5)
- c. The amount of the *Bid Bond* or certified check may not be more than ten percent (10%) of the contract price. The *Bid Bond* or certified check shall be made payable to the Town. All *Bid Bonds* and checks of unsuccessful Bidders shall be returned by the Town upon selection of successful Bidders. Certified check and *Bid Bond* of successful bidder shall be held until delivery of the *Performance Bond*, *Payment Bond* and executed *Agreement* by the successful Bidder. (IC 36-1-12-4.5).

5. *Bidder's Non-Collusion Affidavit* - The Town shall require the Bidder to submit a *Non-Collusion Affidavit* that the Bidder has not entered into a combination or agreement, (IC 36-1-12-4(b)(12)).

- a. Relative to the price to be Bid by a person;
- b. To prevent a person from bidding; or
- c. To induce a person to refrain from bidding and that his Bid is made without reference to any other Bid.

6. Public Meeting

- a. The Town may not require a bidder to submit a Bid before the meeting at which Bids are to be received. (IC 36-1-12-4(b)(7)).
- b. The meeting for receiving Bids must be open to the public. (IC 36-1-12-4(b)(7)).
- c. All Bids received shall be opened publicly and read aloud at the time and place designated. Bids shall be submitted on prescribed *General Form 96 (Contractor's Bid for Public Work)*. (IC 36-1-12-4(b)(6)).

7. Award of Contract – only two (2) options

- a. Except as permitted by the allowed Price Preference (IC 36-1-12-22), the Town shall award the contract for Public Work or improvements to the lowest Responsible and Responsive bidder or the Town may reject all Bids submitted. (IC 36-1-12-4(b)(8)).
- b. Notwithstanding IC 36-1-12-4(b)(8), a county may award sand, gravel, asphalt paving materials, or crushed stone contracts to more than one (1) Responsible and Responsive bidder if Specifications allow for bids to be based on service to specific geographical areas and the contracts are awarded by geographic area. The geographic areas do not need to be prescribed by the Specifications. (IC 36-1-12-4(c)).
- c. Award of Bid Other than Lowest Bidder - If the Town awards the contract to a Bidder other than the lowest Bidder, the Town must state in the minutes or memoranda, at the time the award is made, the factors used to determine which bidder is the lowest Responsible and Responsive Bidder and to justify the award. The Town shall keep a copy of the minutes or memorandum available for public inspection. (IC 36-1-12-4(b)(9)).

- 1) Responsive Bidder - In determining whether a Bidder is responsive, the Town may consider whether the bidder has (1) submitted a Bid or Quote that conforms in all material respects to the Specifications; (2) submitted a Bid that complies specifically with the Notice to Bidders and the Instructions to Bidders; or (3) complied with all applicable statutes, ordinances, resolutions, or rules pertaining to the award of a public contract. (IC 36-1-12-4(b)(10)).
 - 2) Responsible Bidder - In determining whether a Bidder is a responsible Bidder, the Town may consider the (1) ability and capacity of the Bidder to perform the work; (2) integrity, character, and reputation of the Bidder; or (3) competence and experience of the Bidder. (IC 36-1-12-4(b)(11)).
 - 3) Price Preference - Notwithstanding the requirement that the award of a contract to the lowest responsive and Responsible Bidder or the lowest Responsive and Responsible Quoter, a contract shall be awarded to the lowest Responsive and Responsible Local Indiana Business that claims the Preference.
 - a) Notwithstanding, a contract shall be awarded to the lowest Responsive and Responsible Bidder or Quoter, regardless of the Preference provided, if the lowest Responsive and Responsible Bidder or Quoter is a Local Indiana Business.
 - b) A Bidder or Quoter that wants to claim the Preference must claim the Preference in the same manner that a business claims the Preference under IC 5-22-15-20.9(f).
8. Timing of Award - The Town shall award the contract and shall provide the successful Bidder with written Notice to Proceed within (1) sixty (60) days after the date on which Bids are opened; (2) if general obligation bonds are to be sold to finance the construction that is the subject of the Bid, the Town shall allow the Bidder ninety (90) days; or (3) if revenue bonds are to be issued and sold to finance the construction, the Town shall allow the Bidder one hundred fifty (150) days. (IC 36-1-12-6).

- a. A failure to award and execute the contract and to issue Notice to Proceed within the time required entitles the successful Bidder to:
 - 1) Reject the contract and withdraw his Bid without prejudice, or
 - 2) Extend the time to award the contract and provide Notice to Proceed at an agreed later date.
- b. If the successful Bidder elects to reject the contract and withdraw his Bid, notice of that election must be given to the Town in writing within fifteen (15) days of the sixty (60) day expiration date or any other extension date. (IC 36-1-12-6).

E. Contract Provisions and Limitations

- 1. Change Orders - If, in the course of construction, reconstruction or repair of a Public Work project, it becomes necessary to change or alter the original Specifications, a Change Order may be issued to add, delete, or change an item or items in the original contract. All Change Orders must be directly related to the original Public Work project. (IC 36-1-12-18).
 - a. Addendum - The Change Order becomes an addendum to the contract and must be approved and signed by the Town and the contractor.
 - b. Architect / Engineer - If a licensed architect or engineer is assigned to the Public Work the Change Order must be prepared by that person.
 - c. Change Order Limitations
 - 1) A Change Order may not be issued before commencement of the actual construction, reconstruction, or repairs, except in the case of an emergency.²
 - 2) The total of all Change Orders issued that increase the scope of the project may not exceed twenty percent (20%) of the amount of the original contract; however, a Change Order issued as a result of

² In that case, the Town must make a declaration, and the Town's minutes must show the nature of the emergency. IC 36-1-12-18.

circumstances that could not have been reasonably foreseen does not increase the scope of the project. All Change Orders must be directly related to the original Public Work project. (IC 36-1-12-18(d)).

- 3) Cost of Materials - If additional units of materials included in the original contract are needed, the cost of these units in the Change Order must be the same as those shown in the original contract.
 2. Installation of Plumbing - A person who submits a Bid for a Public Works contract that involves the installation of plumbing must submit evidence that the person is a licensed plumbing contractor under IC 25-28.5-1. (IC 36-1-12-21).
- F. Public Work Costing More Than \$100,000 - Additional Procedures. In addition to the foregoing items applying to Public Work projects, the following items apply to Public Work projects costing more than \$100,000:
1. Approval of Plans and Specifications - Public Works performed or contracted for on a Public Work, the costs of which is more than \$100,000 may be undertaken by the Town only in accordance with Plans and Specifications approved by an architect or engineer licensed under IC 25-4 or IC 25-31. (IC 36-1-12-7).
 - a. Public building only requirements - All Plans and Specification for public buildings must be approved by the State department of health, the division of fire and building safety, and other State agencies designated by statute. (IC 36-1-12-10).
 - b. Filing of Final Record Documents - If the cost of the work is greater than \$100,000, the Town must, within sixty (60) after completion of the Public Works project, file in the division of fire and building safety a complete set of final record drawings for the Public Work project. The filling of the drawings is required only if the project involves a public building. (IC 36-1-12-11).
 2. Financial Statement, Statement of Experience, Proposed Plan and Equipment List - If the cost of the Public Work is \$100,000 or more, the Town shall require the Bidder to submit a financial statement, a statement of experience, a proposed plan or plans for performing the public work, and the equipment that the bidder has available for the performance of the public work. The statement shall be

submitted on forms prescribed by the State Board of Accounts. (IC 36-1-12-4(b)(6)).

G. Public Work Costing More Than \$200,000 - Additional Procedures

1. Payment Bond

- a. If the cost of the Public Work is estimated to be more than (\$200,000), the Town **shall** require the contractor to execute a *Payment Bond* to the Town, approved by and for the benefit of the Town, in an amount equal to the contract price. (IC 36-1-12-13(a)(1)).
- b. If the cost of the Public Work is estimated to be not more than (\$200,000), the Town **may** require the contractor to execute a *Payment Bond* to the Town, approved by and for the benefit of the Town, in an amount equal to the contract price. (IC 36-1-12-13(a)(2)).
- c. The *Payment Bond* is binding on the contractor, the subcontractor, and their successors and assigns for the payment of all indebtedness to a person for labor and service performed, material furnished, or services rendered. The *Payment Bond* must state that it is for the benefit of the subcontractors, material suppliers, laborers, and those performing services.
- d. The *Payment Bond* shall be deposited with the Town and specify that (1) a modification, omission, or addition to the terms and conditions of the Public Work contract, Plans, Specifications, drawings, or profile; (2) a defect in the Public Work contract; or a defect in the proceeding preliminary to the letting and awarding of the Public Work contract; does not discharge the surety.
- e. The surety of the *Payment Bond* may not be released until one (1) year after the Town's final settlement with the contractor.

2. Performance Bonds

- a. The contractor **shall** furnish the Town with a *Performance Bond* equal to the contract price. If acceptable to the Town, the bond may provide for incremental bonding in the form of multiple or chronological bonds that, when taken as a whole, equal the contract price.

- b. The surety on the Performance Bond may not be released until one (1) year after the date of the Town's final settlement with the contractor. (IC 36-1-12-14(e)).
 - c. The Performance Bond must specify that (1) a modification, omission, or addition to the terms and conditions of the Public Work contract, Plans, Specifications, drawings, or profile; (2) a defect in the Public Work contract; or a defect in the proceeding preliminary to the letting and awarding of the Public Work contract; does not discharge the surety. (IC 36-1-12-14(e)).
3. Retainage Limitations - The section applies to Public Work contracts in excess of (\$200,000) for projects other than highways, roads, streets, alleys, bridges, and appurtenant structures situated on streets, alleys, and dedicated highway rights-of-way.
- a. The Town may require a contractor and subcontractor to include contract provisions for retainage for contracts that are not more than (\$200,000). (IC 36-1-12-14).
 - b. The Town that enters into a contract for Public Work, and a contractor who subcontracts part of that contract, shall include in their respective contracts provisions for the retainage of portions of payments by the Town to contractors, by contractors to subcontractors, and for the payment of subcontractors.
 - c. The Town shall not be required to pay interest on the amounts of retainage that it holds under this section. (IC 36-1-12-14(b)).
 - d. To determine the amount of retainage to be withheld, the Town shall:
 - 1) Withhold no more than ten percent (10%) nor less than six percent (6%) of the dollar value of all work satisfactorily completed until the Public Work is fifty percent (50%) completed, and nothing further after that; or
 - 2) Withhold no more than five percent (5%) or less than three percent (3%) of the dollar value of all work satisfactorily completed until the Public Work is substantially completed. (IC 36-1-12-14(c)).

- 3) If upon substantial completion of the Public Work minor items remain uncompleted, an amount computed under IC36-1-12-14 (f) shall be withheld until those items are completed. (IC 36-1-12-14(c)).
4. Escrow Agreement - At the request of the contractor, retainage shall be held by the Town or shall be placed in an escrow account, with a bank, savings and loan institution, or the state as the escrow agent. The escrow agent shall be selected by mutual agreement between Town and contractor or subcontractor under a written agreement among the bank or savings and loan institution and (1) the Town and the contractor; or (2) the subcontractor and the contractor. (IC 36-1-12-14(b)).
 - a. Ind. Code 36-1-12-14(f) provides the Town or escrow agent shall pay the contractor within sixty one (61) days after the date of Substantial Completion subject to Ind. Code 36-1-12-11 and Ind. Code 36-1-12-12.
 - b. Payment by the escrow agent shall include all escrowed principal and escrowed income.
 - c. The *Escrow Agreement* must require the escrow agent shall (1) invest all escrowed principal in obligations selected by the escrow agent; (2) hold the escrowed principal and income until receipt of notice from the Town and the contractor, or the contractor and the subcontractor, specifying the part of the escrowed principal to be released from the escrow and the person to whom that portion is to be released.
 - d. After receipt of the notice, the escrow agent shall remit the designated part of escrowed principal and the same proportion of then escrowed income to the person specified in the notice (3) be compensated for services, to be paid from the escrowed income. IC 36-1-12-14(d).
5. Final Payment - The Town or escrow agent shall pay the contractor within sixty-one (61) days after the date of substantial completion subject to conditions contained herein.
 - a. Payment by the escrow agent shall include all escrowed principal and escrowed income.
 - b. If within sixty one (61) days after the date of substantial completion there remain uncompleted minor items, an

amount equal to two hundred percent (200%) of the value of each item as determined by the architect-engineer shall be withheld until the item is completed.

- c. Required warranties begin not later than the date of substantial completion. (IC 36-1-12-14(f)).

H. Procedures For Accepting Quotes - \$50,000 - \$150,000.

1. Application

- a. This section applies whenever a Public Work project will be at least \$50,000 and less than \$150,000. (IC 36-1-12-4(a)).

2. Procedure - The Town must proceed under the following provisions:

- a. The Town shall invite Quotes from at least three (3) persons known to deal in the class of work proposed to be done by mailing before the time fixed for receiving Quotes.
- b. The Town may not require a person to submit a Quote before the meeting at which Quotes are to be received. The meeting for receiving Quotes must be open to the public. All quotes received shall be opened publicly and read aloud at the time and place designated and not before.
- c. Except as permitted by the allowed Price Preferences (IC 36-1-12-22), the Town shall award the contract for the Public Work to the lowest Responsible and Responsive Quoter.
- d. The Town may reject all Quotes submitted.

3. Plans and Specifications - All Plans and Specifications for public buildings must be approved by the State Department of Health, the Division of Fire and Building Safety, and other State agencies designated by statute. (IC 36-1-12-10).

4. Inviting Quotes - The Town shall invite Quotes from at least three (3) persons known to deal in the class of work proposed to be done by mailing them a notice stating that Plans and Specifications are on file in a specified office. The notice must be mailed not less than seven (7) days before the time fixed for receiving quotes. (IC 36-1-12-4.7(b)(1)).

5. Award of Contract - Except as permitted by the allowed Price Preferences (IC 36-1-12-22), the Town shall award the contract for Public Work to the lowest Responsible and Responsive Quoter. (IC 36-1-12-4.7(b)(3)).
- a. Public Meeting - The Town may not require a person to submit a Quote before the meeting at which quotes are to be received. The meeting for receiving Quotes must be open to the public. All Quotes received shall be opened publicly and read aloud at the time and place designated and not before. (IC 36-1-12-4.7(b)(2)).
- 1) "Responsible bidder or quoter" means one who is capable of performing the contract requirements fully and who has the integrity and reliability that will assure good faith performance. (IC 36-1-2-15.5).
- 2) "Responsive bidder or quoter" means one who has submitted a Bid or Quote conforming in all material respects to the Specifications.
- 3) Price Preference - Notwithstanding the requirement that the award of a contract to the lowest Responsive and Responsible Bidder or the lowest Responsive and Responsible Quoter, a contract shall be awarded to the lowest Responsive and Responsible Local Indiana Business that claims the Preference.
- a) Notwithstanding, a contract shall be awarded to the lowest Responsive and Responsible Bidder or Quoter, regardless of the Preference provided, if the lowest Responsive and Responsible Bidder or Quoter is a Local Indiana Business.
- b) A Bidder or Quoter that wants to claim the preference under this section must claim the preference in the same manner that a business claims the preference under IC 5-22-15-20.9(f).
- b. Rejection of All Quotes - The Town may reject all Quotes submitted. IC36-1-12-4.7(b)(4).

- I. Public Work Costing Less Than \$50,000 (IC 36-1-12-5)
 1. Application - This section applies whenever a Public Work is estimated to cost less than \$50,000.
 2. Procedure - If the Town wishes to award a contract for a Public Work costing less than \$50,000, the procedures outlined for Public Works costing \$50,000 or more contained in IC 36-1-12-4 may be used. If such procedures are not used, then the following procedures **must** be used:
 - a. Plans and Specifications - All Plans and Specifications for public buildings must be approved by the State Department of Health, The Division of Fire and Building Safety, and other State agencies designated by statute. (IC 36-1-12-10).
 - b. Inviting Quotes - The Town shall invite Quotes from at least three (3) persons known to deal in the class of work proposed to be done by mailing them a notice stating that Plans and Specifications are on file in a specified office. The notice must be mailed not less than seven (7) days before the time fixed for receiving Quotes. (IC 36-1-12-5(b)).
 - a. Under \$25,000 - Quotes for Public Works projects costing less than (\$25,000) may be obtained by soliciting at least three (3) Quotes by telephone or facsimile transmission. The seven (7) day waiting period required by subsection (b)(1) does not apply to Quotes solicited under this subsection. (IC 36-1-12-5).
 3. Award of Contract - Except as permitted by the allowed Price Preferences (IC 36-1-12-22), the Town shall award the contract for the Public Work to the lowest Responsible and Responsive Quoter. (IC 36-1-12-5).
 4. Public Meeting - The Town may not require a person to submit a Quote before the meeting at which Quotes are to be received. The meeting for receiving Quotes must be open to the public. All Quotes received shall be opened publicly and read aloud at the time and place designated. (IC 36-1-12-5(b)(2)).
 5. Rejection of All Quotes - The Town may reject all Quotes submitted. If the Town rejects all Quotes, the Town may negotiate and enter into agreements for the work in the open market without inviting or receiving Quotes if the Town establishes in writing the reasons for rejecting the Quotes. (IC 36-1-12-5(b)(4)&(5)).

6. Restrictions

- a. The Town may not proceed for the resurfacing (as defined in IC 8-14-2-1) of a road, street, or bridge, unless (1) the weight or volume of the materials in the project is capable of accurate measurement and verification; and (2) the specifications define the geographic points at which the project begins and ends. (IC 36-1-12-5(c)).
 - 1) For the purposes of this section, if contiguous sections of a road, street, or bridge are to be resurfaced in a calendar year, all of the work shall be considered to comprise a single Public Work project. (IC 36-1-12-5(d)).
- b. The Town may purchase or lease supplies in the manner provided in IC 5-22 and perform the Public Work by means of its own workforce without awarding a Public Work contract.
 - 1) Before the Town may perform any work by means of its own workforce, the Town or agency must have a group of employees on its staff who are capable of performing the construction, maintenance, and repair applicable to that work.

J. Quotes for Public Works projects costing less than **\$25,000**

- 1. May be obtained by soliciting at least three (3) quotes by telephone or facsimile transmission. The seven (7) day waiting period required by subsection does not apply to quotes solicited under this subsection.

K. Town's Own Work Force Less Than **\$150,000**

- 1. The Town may perform any Public Work by means of its own work force, without awarding a contract whenever the cost of that Public Work project is estimated to be less than **\$150,000**. (IC 36-1-12-3).
 - a. Before the Town may perform any work under this section by means of its own work force, the Town must have a group of employees on its staff who are capable of performing the construction, maintenance, and repair applicable to that work. (IC 36-1-12-3(a)).

- b. For purposes of this subsection, the cost of Public Work project includes the actual cost of materials, labor, equipment, and rental, a reasonable rate for use of trucks and heavy equipment owned, and all other expenses incidental to the performance of the project. (IC 36-1-12-3(a)).
- c. The work force of the Town may perform a Public Work only if:
 - 1) The work force, through demonstrated skills, is capable of performing the Public Work and
 - 2) Notice Requirement. For Public Work whose cost is estimated to be more than **\$100,000**, the Town must publish notice under IC 5-3-1 that describes the Public Work and sets forth the projected cost of each component of the Public Work. (IC 36-1-12-3(b)(2)).
 - 3) And the Town determines at a public meeting that it is in the public interest to perform the Public Work with its own workforce. A Public Work project performed by the Town's own workforce must be inspected and accepted as complete in the same manner as a Public work project performed under a contract awarded after receiving Bids. (IC 36-1-12-3(b)(2)(B)).
 - 4) When the project involves the rental of equipment with an operator furnished by the owner, or the installation or application of materials by the supplier of the materials, the project is considered to be a Public Work project. However, an annual contract may be awarded for equipment rental and materials to be installed or applied during a calendar or fiscal year if the proposed project or projects are described in the Bid Specifications. (IC 36-1-12-3(c)).

L. Emergency Contracts

- 1. In case of an emergency, the Town may contract for a Public Work project without advertising for Bids if Bids or Quotes are invited from at least two (2) persons known to deal in the Public Work required to be done. The minutes of the Town must show the declaration of emergency and the names of the persons invited to Bid or provide Quotes. (IC 36-1-12-9).

VIII. PROCEDURE FOR HIRING ARCHITECTS, ENGINEERS OR LAND SURVEYORS (IC 5-16-11.1)

- A. Whenever the Town decides to hire an architect, engineer, or land surveyor, the Town **may**:
1. Publish a Notice in accordance with the requirements of publishing legal notices as found in IC 5-3-1;
 2. Provide for Notice (other than notice in accordance with IC 5-3-1) as it determines is reasonably calculated to inform those performing professional services of the proposed project;
 3. Provide for Notice in accordance with both subdivision (1) and (2);
or
 4. Determine NOT to provide any Notice.
 5. If the Town provides for Notice in accordance with the above, each Notice must include:
 - a. The location of the project;
 - b. A general description of the project;
 - c. The general criteria to be used in selecting professional services firms for the project;
 - d. The place where any additional project description or specifications are on file;
 - e. The hours of business of the public agency; and
 - f. The last date for accepting statements of qualifications from interested parties.

IX. PUBLIC-PRIVATE AGREEMENTS

A. The Town may enter into a public-private agreement under IC 5-23. Those procedures must be specifically adopted by resolution or ordinance by the Town, or if the Town does not have a legislative body, the fiscal body of the Town. (IC 5-23-1-1). Definitions are contained in IC 5-23-2. Three (3) terms are defined below:

1. BOT Agreement - BOT Agreement means any agreement between a Town and an operator to construct, operate, and maintain a public facility and to transfer the public facility back to the Town at an established future date.
 - a. A Town may enter into a BOT agreement with an operator for the acquisition, planning, design, development, reconstruction, repair, maintenance, or financing of any public facility on behalf of the Town. Items which should be contained in the BOT Agreement are found in IC 5-23-3.
2. Operating Agreement - Operating Agreement means any agreement between an operator and the Town for the operation, maintenance, repair, or management of a public facility.
 - a. A Town may enter into an operating agreement with an operator for the operation, maintenance, repair, management, or any combination of operation, maintenance, repair, or management of any public facility for any public service to be performed on behalf of the Town.
 - b. Other provisions relating to operating agreements are located in IC 5-23-4.
3. Public Facility - Public Facility means a facility located on, or to be located on, real property owned or leased by a governmental body and upon which a public service is or may be provided.

X. GUARANTEED SAVINGS CONTRACTS; ENERGY EFFICIENCY PROGRAMS

- A. Guaranteed Savings Contract refers to a contract in which a qualified provider enters into an agreement with the Town to (1) evaluate and recommend to the Town conservation measures; and (2) provide for the implementation of at least one (1) conservation measure. (IC 36-1-12.5-2).
- B. Agreements to participate in programs or enter into contracts; necessary findings, notice, and provisions (IC 36-1-12.5-5).
1. The Town may enter into an agreement with a public utility to participate in a utility efficiency program or enter into a guaranteed savings contract with a qualified provider to increase the Town's billable revenues or reduce the Town's energy or water consumption, wastewater usage costs, or operating costs if, after review of the report, the Town finds:
 - a. In the case of conservation measures other than those that are part of a project related to the alteration of a water or wastewater structure or system, that the amount the Town would spend on the conservation measures under the contract and that are recommended in the report is not likely to exceed the amount to be saved in energy consumption costs and other operating costs over twenty (20) years from the date of installation if the recommendations in the report were followed;
 - b. In the case of conservation measures that are part of a project related to the alteration of a water or wastewater structure or system, that the amount the Town would spend on the conservation measures under the contract and that are recommended in the report is not likely to exceed the amount of increased billable revenues or the amount to be saved in energy and water consumption costs, wastewater usage costs, and other operating costs over twenty (20) years from the date of installation if the recommendations in the report were followed; and
 - c. In the case of a guaranteed savings contract, the qualified provider provides a written guarantee. (IC 36-1.12-5-5(d)).
 2. Notice Requirement - Before entering into an agreement to participate in a utility efficiency program or a guaranteed savings contract under this section, the Town must publish notice (c) indicating:

- a. That the Town is requesting public utilities or qualified providers to propose conservation measures through:
 - 1) A utility efficiency program; or
 - 2) A guaranteed savings contract; and
 - 3) The date, the time, and the place where proposals must be received.
- b. The notice required by subsection (b) must:
 - (1) Be published in two (2) newspapers of general circulation in the county where the Town is located;
 - (2) Be published two (2) times with at least one (1) week between publications and with the second publication made at least thirty (30) days before the date by which Proposals must be received; and
 - (3) Meet the requirements of IC 5-3-1.
- 3. An agreement to participate in a utility efficiency program or guaranteed savings contract under this section must provide that:
 - a. In the case of conservation measures other than those that are part of a project related to the alteration of a water or wastewater structure or system, all payments, except obligations upon the termination of the agreement or contract before the agreement or contract expires, may be made to the public utility or qualified provider (whichever applies) in installments, not to exceed the lesser of twenty (20) years or the average life of the conservation measures installed from the date of final installation;
 - b. In the case of conservation measures that are part of a project related to the alteration of a water or wastewater structure or system, all payments, except obligations upon the termination of the agreement or contract before the agreement or contract expires, may be made to the public utility or qualified provider (whichever applies) in installments, not to exceed the lesser of twenty (20) years or the average life of the conservation measures installed from the date of final installation;
 - c. In the case of the guaranteed savings contract:

- 1) Savings in energy and water consumption costs, wastewater usage costs, and other operating costs; and
 - 2) Increase in billable revenues; due to the conservation measures are guaranteed to cover the costs of the payments for the measures; and
- d. The qualified provider will reimburse the Town for the difference between the guaranteed savings and the actual savings; and
 - e. Payments are subject to annual appropriation by the fiscal body of the Town and do not constitute an indebtedness of the Town within the meaning of a constitutional or statutory debt limitation.
 - f. An agreement or a contract under this chapter is subject to IC 5-16-7.
- C. Certification of Subcontractor Required - A qualified provider may enter into a subcontract with a value of more than one hundred fifty thousand dollars (\$150,000); and for the performance of any part of a guaranteed energy savings contract or guaranteed savings contract; only if the subcontractor is certified under IC 4-13.6-4. (IC 36-1-12.5-5.3).
- D. Report Before Installation or Remodeling - Before the public utility or the qualified provider may install equipment in, make modifications to, or remodel a building or complex of buildings under a utility efficiency program or a guaranteed savings contract, the public utility or the qualified provider (whichever applies) must issue a report that includes estimates for (1) All costs attributable to the work stipulated in the agreement or the contract, including the costs of design, engineering, installation, maintenance, repairs, or debt service, (2) The amounts by which energy or water consumption, wastewater costs; or operating costs, will be reduced; and (3) The amounts by which billable revenues will be increased. The report must also contain a listing of contractors and subcontractors to be used by the public utility or the qualified provider with respect to the conservation measures. (IC 36-1-12.5-6).
- E. Installment payment contracts; maximum period
1. If the Town enters into an installment payment contract for the purchase and installation of conservation measures that are part of a project that is not related to the alteration of a water or wastewater structure or system, the balance of the payments must

be paid in installments not to exceed the lesser of twenty (20) years or the average life of the conservation measure installed from the date of final installation. Payments under an installment payment contract are subject to annual appropriation by the fiscal body of the Town and do not constitute an indebtedness of the Town within the meaning of a constitutional or statutory debt limitation.

2. If the Town enters into an installment payment contract for the purchase and installation of conservation measures that are part of a project that is related to the alteration of a water or wastewater structure or system, the balance of the payments must be paid in installments not to exceed the lesser of twenty (20) years or the average life of the conservation measure installed from the date of final installation. Payments under an installment payment contract are subject to annual appropriation by the fiscal body of the Town and do not constitute an indebtedness of the Town within the meaning of a constitutional or statutory debt limitation.
3. With respect to a conservation measure described annual revenues or savings from a guaranteed savings contract may be less than annual payments on the contract if during the length of the contract total savings and increased billable revenues occur as provided for by the contract.
4. The financing of a guaranteed savings contract may be provided by:
 - a. The vendor under the guaranteed savings contract; or
 - b. A third party financial institution or company.

F. Approval Required - Conservation measures installed under a utility efficiency program or a guaranteed savings contract must be approved by the (1) The State department of health, division of fire and building safety, and any other State agency designated by statute and (2) an architect or engineer licensed under IC 25-4 or IC 25-31 if the conservation measures have a cost of more than fifty thousand dollars (\$50,000). (IC 36-1-12.5-8).

G. Payroll Records Required; Inspection - The contractor and each subcontractor engaged in installing conservation measures under a guaranteed savings contract shall keep full and accurate records indicating the names, classifications, and work performed by each worker employed by the respective contractor and subcontractor in connection with the work, together with an accurate record of the number of hours worked by each worker and the actual wages paid. The payroll records

required to be kept under this section must be open to inspection by an authorized representative of the Town or the department of labor. (IC 36-1-12.5-9).

- H. Submission of contract and annual report to Lieutenant Governor - The Town shall (1) provide to the lieutenant governor not more than sixty (60) days after the date of execution of the guaranteed savings contract, a copy of the executed guaranteed savings contract; the (i) energy or water consumption costs; (ii) wastewater usage costs; and (iii) billable revenues, if any; before the date of execution of the guaranteed savings contract; and the documentation using industry engineering standards for (i) stipulated savings; and (ii) related capital expenditures; and (2) annually report to the lieutenant governor, in accordance with procedures established by the lieutenant governor, the savings resulting in the previous year from the guaranteed savings contract or utility efficiency program. (IC 36-1-12.5-10).
- I. Contracts That Include Stipulated Savings - A guaranteed savings contract that includes stipulated savings must specify the methodology used to calculate the savings using industry engineering standards. Stipulated savings may be used for conservation measures including Heating, Air conditioning, Ventilating, Lighting, Roofing, Windows, Water conservation, Fuel and power improvements, Wastewater generation, Billable revenue increases, Any work that is causally connected to the conservation measures listed. The guaranteed savings contract shall describe stipulated savings for conservation measures; and work causally connected to the conservation measures; and document assumptions by industry engineering standards. (IC 36-1-12.5-11).
- J. Improvements Not Causally Connected to Conservation Measure - An improvement that is not causally connected to a conservation measure may be included in a guaranteed savings contract if (1) the total value of the improvement does not exceed fifteen percent (15%) of the total value of the guaranteed savings contract; and (2) either the improvement is necessary to conform to a law, a rule, or an ordinance; or an analysis within the guaranteed savings contract demonstrates that (i) there is an economic advantage to the political subdivision in implementing an improvement as part of the guaranteed savings contract; and (ii) the savings justification for the improvement is documented by industry engineering standards. The information required under subsection (a) must be reported to the lieutenant governor. (IC 36-1-12.5-12).

XI. DESIGN-BUILD PUBLIC WORKS PROJECTS.

- A. Design-Build Contract means a contract between the Town and a design-builder to furnish: (1) Architectural, engineering, and related design services as required for a public project; and (2) Labor, materials, and other construction services for the same public project. (IC 5-30-1-11).
1. Before entering into a Design-Build Contract under this article for a public project, the Town must adopt a resolution authorizing the use of the design-build contracting method for the public project.
 - a. The resolution must identify the members of the technical review committee appointed.
 - b. The Town must adopt the resolution at a public meeting for which public notice has been provided. (IC 5-30-4-1).
 2. Before entering into a Design-Build Contract, a Town must appoint a technical review committee of at least three (3) individuals.
 - a. The members of the technical review committee must include the following:
 - 1) A representative of the public agency.
 - 2) At least two (2) of the following, but not more than one (1) under each clause:
 - a) An architect registered under IC 25-4.
 - b) A professional engineer registered under IC 25-31.
 - c) A qualified contractor under IC 4-13.6.
 - 3) A member of the technical review committee who is an architect or a professional engineer may be:
 - a) An employee of the public agency; or
 - b) An outside consultant retained by the public agency for the specific purpose of evaluating proposals submitted under this article.

- 4) The design criteria developer may serve as:
 - a) A full member; or
 - b) A nonvoting adviser; of the committee. (IC 5-30-4-3).
- b. The technical review committee shall do the following:
 - 1) Qualify potential design-builders as provided in IC 5-30-5.
 - 2) Rate and score qualitative proposals as provided in IC 5-30-6 and IC 5-30-7.
- c. The technical review committee may interview persons submitting proposals and conduct other business necessary to fulfill the purposes.

XII. ALLOWABLE STATE AND LOCAL BUSINESS PREFERENCES AND LIMITATIONS

A. Indiana State Business Preferences

1. An offeror may claim one (1) of the following types of preference for which the offeror is eligible an:
 - a. Indiana Business Preference under Rules adopted.
 - b. Preference for Supplies as provided.
 - c. Indiana small business Preference.
 - d. Indiana farm product Preference.
2. Rules - Preferences to Indiana Businesses
 - a. The Town may adopt rules to give a preference to an Indiana business that submits an offer for a purchase if:
 - 1) An out-of-state business submits an offer for the Purchase.
 - 2) The out-of-state business is a business from a state that gives Purchase Preferences unfavorable to Indiana businesses.
 - b. Rules adopted must establish criteria for determining:
 - 1) Whether an offeror qualifies as an Indiana business under the rules.
 - 2) When another state's Preference is unfavorable to Indiana businesses, and
 - 3) The method by which the Preference for Indiana businesses is to be computed.
 - c. Rules adopted may not give a Preference to an Indiana business that is more favorable to the Indiana business than the other state's Preference is to the other state's businesses.
 - d. Rules adopted must provide that a contract shall be awarded to the lowest Responsive and Responsible offeror,

regardless of the Preference provided under this section, if the offeror is an Indiana business; or the offeror is a business from a state bordering Indiana and the offeror's home state does not provide a Preference to the home state's businesses more favorable than is provided by Indiana law to Indiana businesses. (IC 5-22-15-20).

3. Process for Claiming Indiana State Preference

a. Offer must indicate preferred Supply or Service

- 1) An offeror who wants to claim a Preference for a given Supply item must indicate in the offer what supply item in the offer is a Preferred Supply. (IC 5-22-15-8(a)).

B. Local Indiana Business Preference

1. Definitions

- a. Affected County refers to a county in which the Town awarding a contract is located or a county that is adjacent to the county in which the Town is located. (IC 5-22-15-20.9(b)).
- b. Local Indiana Business refers to a business (1) whose principal place of business is located in an Affected County, (2) pays a majority of its payroll (in dollar volume) to residents of Affected Counties, (3) that employs residents of Affected Counties as a majority of its employees, (4) that makes significant capital investments in the Affected Counties as defined in rules adopted by the political subdivision and that has a substantial positive economic impact on the Affected Counties as defined by criteria in rules adopted by the political subdivision. (IC 5-22-15-20.9(c)).

2. Price Preferences for Supplies Purchased from a Local Indiana Business:

- a. Five percent (5%) for a Purchase expected by the Purchasing Agency to be less than fifty thousand dollars (\$50,000).
- b. Three percent (3%) for a Purchase expected by the Purchasing Agency to be at least fifty thousand dollars

(\$50,000) but less than one hundred thousand dollars (\$100,000).

- c. One percent (1%) for a Purchase expected by the Purchasing Agency to be at least one hundred thousand dollars (\$100,000).
3. A Purchasing Agency may award a contract to the lowest Responsive and Responsible offeror, regardless of the Preference provided, if the lowest Responsive and Responsible offeror is a Local Indiana Business. (IC 5-22-15-20.9(e)).
4. A business that wants to claim a Local Indiana Business Preference must do all the following:
- a. State in the business's bid that the business claims the preference provided by this section.
 - b. Provide the following information to the Purchasing Agency:
 - 1) The location of the business's principal place of business. If the business claims the Preference as a local Indiana business described in subsection (c)(1), a statement explaining the reasons the business considers the location named as the business's principal place of business.
 - 2) The amount of the business's total payroll and the amount of the business's payroll paid to residents of affected counties.
 - 3) The number of the business's employees and the number of the business's employees who are residents of affected counties.
 - 4) If the business claims the preference as a local Indiana business described in subsection (c)(4), a description of the capital investments made in the affected counties and a statement of the amount of those capital investments.
 - 5) If the business claims the Preference as a local Indiana business described in subsection (c)(5), a description of the substantial positive economic impact the business has on the affected counties.

C. Certification that Supply Meets Required Qualifications

1. A Purchasing Agent may require an offeror who claims a preference for a given Supply item to certify that the supply offered meets the qualifications set for Preferred Supplies under this chapter. (IC 5-22-15-9).

D. Computation of adjusted offer; formula

1. If an offeror offers a Preferred Supply for a given Supply item, the Purchasing Agent shall compute an adjusted offer for that item according to the following formula (IC 5-22-15-10):

STEP ONE: Determine the Price Preference Percentage.

STEP TWO: Multiply the offeror's offer by the percentage determined under STEP ONE.

STEP THREE: Subtract the number determined under STEP TWO from the offeror's offer.

E. Award to Offeror with Lowest Total Adjusted Offer

1. Notwithstanding any statute requiring the award of a contract to the lowest offeror, 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. (IC 5-22-15-11).
2. The price paid for a preferred purchased under a contract awarded shall be the price offered for the supplies and **not** the adjusted offer price of the supplies. (IC 5-22-15-14).

XIII. CONTRACTOR'S NEW E-VERIFY AND UNAUTHORIZED ALIEN REQUIREMENTS

A. After several years of legislative debate, Indiana has joined the growing number of states which have enacted immigration laws. As of July 1, 2011, the new law will have an effect on Indiana businesses, particularly those doing business with local government.

B. Required Contractor Affirmation

1. Under the new requirements, contractors will need to affirmatively represent in their agreements with Town that the contractor has enrolled in, and verified the work eligibility status of all newly hired employees through the E-Verify Program.

a. However, contractor is not required to verify the work eligibility status of all newly hired employees of the Contractor through the E-Verify program if the E-Verify program no longer exists and contractor signs an Affidavit affirming that the contractor does not knowingly employ an unauthorized alien.

C. Contractor / Subcontractor Violation, Town's 30-Day Notice Requirement

1. Contractor and its subcontractor(s) may not knowingly employ or contract with an unauthorized alien; or retain an employee or contract with a person that the Contractor or its subcontractor subsequently learns is an unauthorized alien.

2. If a contractor violates this requirement, the Town shall require in writing that the contractor remedy the violation not later than thirty (30) days after the date the Town notifies the Contractor of the violation.

3. There is a rebuttable presumption that a contractor did not knowingly employ an unauthorized alien if the contractor verified the work eligibility of the employee through the E-Verify Program.

D. Town's Requirement to Terminate Contractor's Agreement

1. If the contractor fails to remedy the violation within the thirty (30) day period, the Town shall terminate the Agreement with contractor for breach.

2. However, if Town determines that terminating the Agreement would be detrimental to the public interest or public property, the Town

may allow the Agreement to remain in effect until the Town procures a replacement contractor.

E. Liable for Town's Damages and Attorneys' Fees

1. If the Town terminates the Agreement, the Contractor shall be liable to the Town for any and all actual damages incurred, including but not limited to attorneys' fees.

F. Contractor's Subcontractor Requirements

1. Contractor's subcontractor(s) shall certify to Contractor in a manner consistent with federal law that the Contractor's subcontractor(s), at the time of certification does not knowingly employ or contract with an unauthorized alien; and has enrolled and is participating in the E-Verify Program.
2. Contractor shall maintain in its files a certification of each of its subcontractor(s) throughout the duration of the term of this Agreement and the term of Contractor's subcontract with its subcontractor(s).

G. Town's Termination of the Agreement Not a Breach

1. Termination of the Agreement for violation of this requirement may not be considered by the Contractor or its subcontractor(s) as a breach of contract by the Town.

XIV. CONTRACTING REQUIREMENTS FOR RELATIVES OF ELECTED OFFICIALS

A. The Town shall comply with all requirements and restrictions associated with *IC 36-1-21*.

B. Contracting with Relatives of Elected Officials

1. The Town may enter into a contract or renew a contract for the procurement of goods and services or a contract for public works with:
 - a. An individual who is a relative of an elected official (as defined in *IC 36-1-21, Section 3*); or
 - b. a business entity that is wholly or partially owned by a relative of an elected official; only if the requirements of this section are satisfied and entering into or renewing the contract does not otherwise constitute a violation of *IC 35-44.1-1-3*
2. The Town may enter into a contract or renew a contract with an individual or business entity described in XIV.B.1. if:
 - a. The elected official files with the Town a full disclosure, which must:
 - i. be in writing;
 - ii. describe the contract or purchase to be made by the unit;
 - iii. describe the relationship that the elected official has to the individual or business entity that contracts or purchases;
 - iv. be affirmed under penalty of perjury;
 - v. be submitted to the legislative body of the unit and be accepted by the legislative body in a public meeting of the unit prior to final action on the contract or purchase; and
 - vi. be filed, not later than fifteen (15) days after final action on the contract or purchase, with the State Board of Accounts and the Clerk of the Hamilton County Circuit Court.
 - b. The Department procuring the good or service must:
 - i. Make a certified statement that the contract amount or purchase price was the lowest responsive and responsible bid or offer; or

- ii. Make a certified statement of the reasons why the vendor or contractor was selected
 - c. The purchase satisfies any other requirements under *IC 5-22* or *IC 36-1-12*.
- 3. Each elected officer of the Town shall annually certify in writing, subject to the penalties of perjury, that the officer has not knowingly or intentionally violated State nepotism and contracting laws.