

## **IC 5-22-15**

### **Chapter 15. Purchasing Preferences**

#### **IC 5-22-15-1**

##### **Applicability of chapter**

Sec. 1. This chapter applies to the following:

(1) A purchase of supplies under this article by any of the following:

- (A) A governmental body.
- (B) A state educational institution.
- (C) An instrumentality of the state that performs essential governmental functions on either a statewide or local basis.
- (D) The state lottery commission created by IC 4-30-3-1.

(2) A purchase made under IC 5-17-1.

*As added by P.L.49-1997, SEC.1. Amended by P.L.79-2008, SEC.1; P.L.133-2012, SEC.36.*

#### **IC 5-22-15-2**

##### **"Absolute preference"**

Sec. 2. As used in this chapter, "absolute preference" means a requirement that a governmental body must purchase supplies described under this chapter, regardless of price.

*As added by P.L.49-1997, SEC.1.*

#### **IC 5-22-15-3**

##### **"Adjusted offer"**

Sec. 3. As used in this chapter, "adjusted offer" means the offer price of an offeror for preferred supplies as determined under section 10 of this chapter.

*As added by P.L.49-1997, SEC.1. Amended by P.L.79-2008, SEC.2; P.L.133-2012, SEC.37.*

#### **IC 5-22-15-4**

##### **"Preferred supplies"**

Sec. 4. As used in this chapter, "preferred supplies" means supplies that are given a preference under this chapter.

*As added by P.L.49-1997, SEC.1.*

#### **IC 5-22-15-5**

##### **"Price preference percentage"**

Sec. 5. As used in this chapter, "price preference percentage" means the percentage preference provided by this chapter for a specified kind or item of supplies.

*As added by P.L.49-1997, SEC.1. Amended by P.L.79-2008, SEC.3; P.L.133-2012, SEC.38.*

#### **IC 5-22-15-6**

##### **"Total adjusted offer"**

Sec. 6. As used in this chapter, "total adjusted offer" means the

sum of the offers and adjusted offers of an offeror for each item of supplies.

*As added by P.L.49-1997, SEC.1.*

#### **IC 5-22-15-7**

##### **Allowable preferences; limitations**

Sec. 7. (a) An offeror may claim one (1) of the following types of preference for which the offeror is eligible:

(1) An Indiana business preference under rules adopted under section 20 of this chapter or IC 4-13.6-6-2.5.

(2) A preference for supplies as provided by sections 16, 18, 19, and 24 of this chapter.

(3) An Indiana small business preference as provided by section 23 of this chapter.

(4) An Indiana farm product preference as provided by section 23.5 of this chapter.

(b) An offeror may not claim more than one (1) preference as provided by sections 16, 18, 19, and 24 of this chapter for a given supply item.

(c) This section does not:

(1) apply to; or

(2) limit;

action of the Indiana department of administration under rules adopted under section 21 of this chapter.

*As added by P.L.49-1997, SEC.1. Amended by P.L.153-1999, SEC.2; P.L.209-2001, SEC.1; P.L.122-2011, SEC.2.*

#### **IC 5-22-15-8**

##### **Offer must indicate preferred supply or service**

Sec. 8. An offeror who wants to claim a preference provided under this chapter for a given supply item must indicate in the offer what supply item in the offer is a preferred supply.

*As added by P.L.49-1997, SEC.1. Amended by P.L.79-2008, SEC.4; P.L.133-2012, SEC.39.*

#### **IC 5-22-15-9**

##### **Certification that supply meets required qualifications**

Sec. 9. A purchasing agent may require an offeror who claims a preference for a given supply item under section 8 of this chapter to certify that the supply offered meets the qualifications set for preferred supplies under this chapter.

*As added by P.L.49-1997, SEC.1.*

#### **IC 5-22-15-10**

##### **Computation of adjusted offer; formula**

Sec. 10. (a) This section does not apply to an absolute preference.

(b) 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:

STEP ONE: Determine the price preference percentage for the supply item under this chapter.

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

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

*As added by P.L.49-1997, SEC.1. Amended by P.L.79-2008, SEC.5; P.L.133-2012, SEC.40.*

#### **IC 5-22-15-11**

##### **Award to offeror with lowest total adjusted offer**

Sec. 11. Notwithstanding any statute requiring the award of a contract to the lowest offeror, but subject to section 12 of this chapter, a purchasing agent shall award a contract to the offeror whose total adjusted offer is lower than the total adjusted offer of each other offeror.

*As added by P.L.49-1997, SEC.1.*

#### **IC 5-22-15-12**

##### **Award of contract; requirements**

Sec. 12. Award of a contract under section 11 of this chapter is subject to the following:

- (1) A requirement of an applicable statute to award a contract to a responsible and responsive bidder.
- (2) A requirement of an applicable statute to award a contract:
  - (A) to the best bidder; or
  - (B) in the case of a purchase under IC 5-22-9, to the offeror whose offer is most advantageous to the governmental body.
- (3) The authority of the purchasing agent under IC 5-22-17-12 to award contracts separately or for a combination of a line or class of supplies.

*As added by P.L.49-1997, SEC.1. Amended by P.L.7-1998, SEC.6.*

#### **IC 5-22-15-13**

##### **Contracts awarded separately; combination of line or class of supplies**

Sec. 13. If a purchasing agent awards contracts separately, or for a combination of a line or class of supplies under an applicable law, the purchasing agent shall compute total adjusted offers and award contracts as if each combination of lines or classes of supplies to be awarded a contract had been solicited separately.

*As added by P.L.49-1997, SEC.1.*

#### **IC 5-22-15-14**

##### **Price**

Sec. 14. The price paid for preferred supplies purchased under a contract awarded under this chapter shall be the price offered for the supplies and not the adjusted offer price of the supplies.

*As added by P.L.49-1997, SEC.1.*

#### **IC 5-22-15-15**

##### **Rules**

Sec. 15. A governmental body may adopt rules to implement this chapter.

*As added by P.L.49-1997, SEC.1.*

#### **IC 5-22-15-16**

##### **Price preference for supplies that contain recycled or post-consumer materials**

Sec. 16. (a) This section does not apply when the purchase description is limited to a supply that meets the description set forth in subsection (b).

(b) There is a price preference for supplies that contain recycled materials or post-consumer materials.

(c) The amount of the price preference and the recycled materials' composition of the supplies must be set by one (1) of the following:

- (1) Rules adopted by the governmental body.
- (2) Policies established by the purchasing agency.
- (3) The solicitation.

The preference shall be set to maximize the use of recycled materials when economically practical.

(d) A price preference set under subsection (c) may not be less than ten percent (10%) or exceed fifteen percent (15%).

*As added by P.L.49-1997, SEC.1. Amended by P.L.153-1999, SEC.3.*

#### **IC 5-22-15-17**

##### **Repealed**

*(As added by P.L.49-1997, SEC.1. Repealed by P.L.153-1999, SEC.6.)*

#### **IC 5-22-15-18**

##### **Price preference for soybean oil based ink**

Sec. 18. (a) Notwithstanding section 1 of this chapter, this section does not apply to a purchase of supplies by any of the following:

- (1) A political subdivision.
- (2) A state educational institution.

(b) This section does not apply when the purchase description is limited to soybean oil based ink.

(c) There is a price preference of ten percent (10%) for soybean oil based ink.

*As added by P.L.49-1997, SEC.1.*

#### **IC 5-22-15-19**

##### **Price preference for soy diesel/bio diesel**

Sec. 19. (a) This section does not apply when the purchase description is limited to a fuel of which at least twenty percent (20%) by volume is soy diesel/bio diesel.

(b) As used in this section, "soy diesel/bio diesel" includes fuels (other than alcohol) that are primarily esters derived from biological

materials, including oilseeds and animal fats, for use in compression and ignition engines.

(c) There is a price preference of ten percent (10%) for soy diesel/bio diesel.

(d) The price preference under this section applies to a purchase of fuel of which at least twenty percent (20%) by volume is soy diesel/bio diesel.

*As added by P.L.49-1997, SEC.1.*

#### **IC 5-22-15-20**

##### **Preferences to Indiana businesses; rules**

Sec. 20. (a) This section does not apply to the state lottery commission created by IC 4-30-3-1.

(b) As used in this section, "out-of-state business" refers to a business that is not an Indiana business.

(c) A governmental body may adopt rules to give a preference to an Indiana business that submits an offer for a purchase under this article if all of the following apply:

- (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.

(d) Rules adopted under subsection (c) must establish criteria for determining the following:

- (1) Whether an offeror qualifies as an Indiana business under the rules.
- (2) When another state's preference is unfavorable to Indiana businesses.
- (3) The method by which the preference for Indiana businesses is to be computed.

(e) Rules adopted under subsection (c) 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.

(f) Rules adopted under subsection (c) must provide that a contract shall be awarded to the lowest responsive and responsible offeror, regardless of the preference provided under this section, if:

- (1) the offeror is an Indiana business; or
- (2) 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.

*As added by P.L.49-1997, SEC.1. Amended by P.L.66-2004, SEC.3.*

#### **IC 5-22-15-20.5**

##### **"Indiana business"; criteria; price preferences; awarding of contracts; exception**

Sec. 20.5. (a) This section applies only to a contract awarded by a state agency.

(b) As used in this section, "Indiana business" refers to any of the following:

(1) A business whose principal place of business is located in Indiana.

(2) A business that pays a majority of its payroll (in dollar volume) to residents of Indiana.

(3) A business that employs Indiana residents as a majority of its employees.

(4) A business that makes significant capital investments in Indiana.

(5) A business that has a substantial positive economic impact on Indiana as defined by criteria developed under subsection (c).

(c) The Indiana department of administration shall consult with the Indiana economic development corporation in developing criteria for determining whether a business is an Indiana business under subsection (b). The Indiana department of administration may consult with the Indiana economic development corporation to determine whether a particular business meets the requirements of this section and the criteria developed under this subsection.

(d) There are the following price preferences for supplies purchased from an Indiana business:

(1) Five percent (5%) for a purchase expected by the state agency to be less than five hundred thousand dollars (\$500,000).

(2) Three percent (3%) for a purchase expected by the state agency to be at least five hundred thousand dollars (\$500,000) but less than one million dollars (\$1,000,000).

(3) One percent (1%) for a purchase expected by the state agency to be at least one million dollars (\$1,000,000).

(e) If an Indiana business offers to provide supplies manufactured, assembled, or produced in Indiana, and if two (2) or more bids submitted were the same, the following price preference is available to the Indiana business, in addition to the price preference available under subsection (d):

(1) Three percent (3%) for a purchase expected by the state agency to be less than five hundred thousand dollars (\$500,000).

(2) Two percent (2%) for a purchase expected by the state agency to be at least five hundred thousand dollars (\$500,000) but less than one million dollars (\$1,000,000).

(3) One percent (1%) for a purchase expected by the state agency to be at least one million dollars (\$1,000,000).

The Indiana department of administration shall adopt rules under IC 4-22-2 to establish guidelines for determining when supplies are manufactured or assembled in Indiana.

(f) A business that wants to claim a preference provided under this section must do all of the following:

(1) State in the business's bid that the business claims the preference provided by this section.

(2) Provide the following information to the department:

(A) The location of the business's principal place of business.

If the business claims the preference as an Indiana business described in subsection (b)(1), a statement explaining the

reasons the business considers the location named as the business's principal place of business.

(B) The amount of the business's total payroll and the amount of the business's payroll paid to Indiana residents.

(C) The number of the business's employees and the number of the business's employees who are Indiana residents.

(D) If the business claims the preference as an Indiana business described in subsection (b)(4), a description of the capital investments made in Indiana and a statement of the amount of those capital investments.

(E) If the business claims the preference as an Indiana business described in subsection (b)(5), a description of the substantial positive economic impact the business has on Indiana.

*As added by P.L.66-2004, SEC.4. Amended by P.L.4-2005, SEC.33; P.L.123-2009, SEC.1; P.L.122-2011, SEC.3.*

#### **IC 5-22-15-20.7**

##### **Repealed**

*(As added by P.L.79-2008, SEC.6. Repealed by P.L.133-2012, SEC.41.)*

#### **IC 5-22-15-20.9**

##### **Price preferences for local Indiana businesses**

Sec. 20.9. (a) This section applies only to a contract awarded by a political subdivision if the political subdivision provides in the solicitation that this section applies to the purchase.

(b) As used in this section, "affected county" refers to an Indiana county:

(1) in which the political subdivision awarding a contract under this article is located; or

(2) that is adjacent to the county described in subdivision (1).

(c) As used in this section, "local Indiana business" refers to any of the following:

(1) A business whose principal place of business is located in an affected county.

(2) A business that pays a majority of its payroll (in dollar volume) to residents of affected counties.

(3) A business that employs residents of affected counties as a majority of its employees.

(4) A business that makes significant capital investments in the affected counties as defined in rules adopted by the political subdivision.

(5) A business that has a substantial positive economic impact on the affected counties as defined by criteria in rules adopted by the political subdivision.

(d) There are the following price preferences for supplies purchased from a local Indiana business:

(1) Five percent (5%) for a purchase expected by the purchasing

agency to be less than fifty thousand dollars (\$50,000).

(2) 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).

(3) One percent (1%) for a purchase expected by the purchasing agency to be at least one hundred thousand dollars (\$100,000).

(e) Notwithstanding subsection (d), a purchasing agency may award a contract to the lowest responsive and responsible offeror, regardless of the preference provided in this section, if the lowest responsive and responsible offeror is a local Indiana business.

(f) A business that wants to claim a preference provided under this section must do all the following:

(1) State in the business's bid that the business claims the preference provided by this section.

(2) Provide the following information to the purchasing agency:

(A) 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.

(B) The amount of the business's total payroll and the amount of the business's payroll paid to residents of affected counties.

(C) The number of the business's employees and the number of the business's employees who are residents of affected counties.

(D) 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.

(E) 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.

*As added by P.L.172-2011, SEC.22. Amended by P.L.17-2012, SEC.1; P.L.67-2012, SEC.1.*

#### **IC 5-22-15-21**

#### **Promotion of purchase of supplies manufactured in the United States; rules**

Sec. 21. (a) This section does not apply to the state lottery commission created by IC 4-30-3-1.

(b) A governmental body shall adopt rules to promote the purchase of supplies manufactured in the United States.

(c) Rules adopted under subsection (b) shall provide that supplies manufactured in the United States shall be specified and purchased unless the governmental body determines that any of the following apply:

(1) The supplies are not manufactured in the United States in



reasonably available quantities.

(2) The price of the supplies manufactured in the United States exceeds by an unreasonable amount the price of available and comparable supplies manufactured outside the United States.

(3) The quality of the supplies is substantially less than the quality of comparably priced available supplies manufactured outside the United States.

(4) The purchase of supplies manufactured in the United States is not in the public interest.

*As added by P.L.49-1997, SEC.1.*

#### **IC 5-22-15-22**

##### **Absolute preference to coal mined in Indiana**

Sec. 22. (a) This section does not apply to the state lottery commission created by IC 4-30-3-1.

(b) This section does not apply if federal law requires the use of low sulphur coal in the circumstances for which the coal is purchased.

(c) Whenever a purchasing agent purchases coal for use as fuel, the purchasing agent shall give an absolute preference to coal mined in Indiana.

*As added by P.L.49-1997, SEC.1.*

#### **IC 5-22-15-23**

##### **Price preference for supplies to Indiana small business**

Sec. 23. (a) A governmental body shall give a fifteen percent (15%) preference for supplies to an Indiana small business (as defined in IC 5-22-14-1) that submits an offer for purchase under this article.

(b) The governmental body may adopt rules to establish criteria to carry out this section.

*As added by P.L.153-1999, SEC.4.*

#### **IC 5-22-15-23.5**

##### **Price preference for Indiana agricultural products**

Sec. 23.5. (a) A governmental body may give up to a ten percent (10%) price preference for agricultural products grown, produced, or processed in Indiana.

(b) A governmental body may adopt rules to establish criteria to carry out this section.

*As added by P.L.122-2011, SEC.4.*

#### **IC 5-22-15-24**

##### **Purchasing agents for government entities to give high calcium foods preference**

Sec. 24. (a) This section applies in addition to any requirements placed upon a governmental entity by the United States Department of Agriculture under the National School Lunch Program or the School Breakfast Program.

(b) This section applies to:

- (1) a governmental entity listed in section 1 of this chapter; or
- (2) a business that contracts with a governmental entity listed in section 1 of this chapter;

that purchases food or beverages to be processed and served in a building or room owned or operated by the governmental entity.

(c) High calcium foods and beverages are preferred supplies. A purchasing agent shall give a preference to foods and beverages that:

- (1) contain a higher level of calcium than products of the same type and quality; and
- (2) are equal in price to or lower in price than products of the same type and quality.

(d) Notwithstanding subsection (c), if the director of a state institution (as defined in IC 12-7-2-184) determines that a high calcium food or beverage that is preferred under subsection (c) would interfere with the proper treatment and care of a patient of the state institution, the purchasing agent for the state institution is not required to purchase the high calcium food or beverage for that patient.

*As added by P.L.209-2001, SEC.2.*

#### **IC 5-22-15-24.2**

##### **Forced labor; supplies prohibition**

Sec. 24.2. (a) As used in this section, "forced labor" has the meaning set forth in 19 U.S.C. 1307.

(b) If an offeror offers to furnish supplies made in a country other than the United States, a governmental body may not award a contract to the offeror for those supplies if the supplies were made using forced labor.

(c) A governmental body shall inform offerors in the solicitation of the provisions of this section.

*As added by P.L.194-2001, SEC.1.*

#### **IC 5-22-15-25**

##### **Steel products**

Sec. 25. (a) As used in this section, "steel products" means products rolled, formed, shaped, drawn, extruded, forged, cast, fabricated, or otherwise similarly processed, or processed by a combination of two (2) or more such operations, by the open hearth, basic oxygen, electric furnace, Bessemer, or other steel making process.

(b) As used in this section, "United States" includes all territory, continental or insular, subject to the jurisdiction of the United States.

(c) Unless the head of the purchasing agency makes a written determination described in subsection (d), a solicitation must require that if any steel products are used in:

- (1) the manufacture of the supplies required under the contract;
- or
- (2) supplies used in the performance of the services under the

contract by the contractor or a subcontractor of the contractor; the steel products must be manufactured in the United States.

(d) Subsection (c) does not apply if the:

(1) head of the purchasing agency determines in writing that:

(A) the cost of the contract with the requirements of subsection (c) would be greater than one hundred fifteen percent (115%) of the cost of the contract without the requirements of subsection (c); and

(B) failure to impose the requirements of subsection (c) would not in any way:

(i) harm the business of a facility that manufactures steel products in Indiana; or

(ii) result in the reduction of employment or wages and benefits of employees of a facility described in item (i); or

(2) purchase is:

(A) less than ten thousand dollars (\$10,000); and

(B) made under the small purchase policies (as described in IC 5-22-8-2(b)) established by the purchasing agency or under rules adopted by the governmental body.

(e) A purchasing agency shall inform offerors in the solicitation of the provisions of this section.

*As added by P.L.194-2001, SEC.2.*