

ORDINANCE No. 1446
of the
TOWN of HIGHLAND, INDIANA

An Ordinance to Amend Title XVII, Creating Chapter 177 of the Highland Municipal Code, regarding Public Works Projects, all pursuant to I.C. 36-1-4, IC 36-1-5 and IC 36-9-25 et sequitur.

Whereas, The Town of Highland, is a Municipal Government which may pass and codify ordinances for the operation of the government, all pursuant to IC 36-1-4 and IC 36-1-5;

Whereas, The Town of Highland, is a municipality located in Lake County which operates a Government, which is governed by the provisions of IC 36-5 et seq.; and,

Whereas, The Town of Highland, through its Town Council now wishes to still further perfect its own organization make certain amendments to the Highland Municipal Code, regarding public works and contractors , pursuant to IC 36-1-12 and other relevant law,

Now, Therefore, Be it hereby ordained by the Town Council of the Town of Highland, Lake County, Indiana, as follows:

Section 1. That the subchapter of the Highland Municipal Code that is called **Procedures for the Selection of Professional Consulting Services**, which is comprised of Sections § 31.60 through § 31.64, is hereby amended by the restatement of that subchapter to be comprised of Sections §177.04 through § 177.08, the text of which shall be included in the chapter created by Section 2 of this ordinance.

Section 2. That the Highland Municipal Code is amended by the creation of a new chapter in Title XVII of the Highland Municipal Code, to be numbered Chapter 177 which shall be called *Public Works Projects and Contractors*, which shall read as follows:

PUBLIC WORKS PROJECTS and CONTRACTORS

§ 177.01 DEFINITIONS.

(A) The definitions set forth in IC 36-1-12-1.2 shall apply throughout this chapter.

(B) *Public Work Defined.* As used in this chapter, "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 or out of a special assessment. The term includes the construction, alteration, or repair of a highway, street, alley, bridge, sewer, drain, or other improvement that is paid for out of a public fund or out of a special assessment. The term also includes any public work leased by a political subdivision under a lease containing an option to purchase.

~~(C) The term may also include rehabilitating, refinishing, refurbishing, remodeling, remediating, renovating, custom fabricating, improving, moving, wrecking, painting, decorating, and adding to or subtracting from any public building, structure, highway, roadway, street, alley, bridge, sewer, drain, ditch, sewage disposal plant, water work, parking facility, or other project, development, real property, or improvement, or to do any part thereof, whether or not the performance of the work herein described involves the addition to, or fabrication into, any structure, project or development, real property or improvement herein described of any material or article of merchandise, which is paid for out of a public fund or out of a special assessment, or leased by a political subdivision under a lease containing an option to purchase.~~

§ 177.02 PUBLIC WORKS PROJECTS.

(A) The board may purchase or lease materials in the manner provided in IC 5-22 and perform any public work, by means of its own workforce, without awarding a contract whenever the cost of that public work project *is estimated to be less than one hundred thousand dollars (\$100,000)*. Before a board may perform any work under this section by means of its own workforce, the political subdivision 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. For purposes of this subsection, the cost of a public work project includes the actual cost of materials, labor, equipment, rental, a reasonable rate for use of trucks and heavy equipment owned, and all other expenses incidental to the performance of the project.

(B) 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 and subject to this chapter. 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. **(Confer with IC 36-1-12-3.)**

§ 177.03 CONTRACTS FOR ENGINEERING, ARCHITECTURAL, OR ACCOUNTING SERVICES; APPLICABILITY OF RESTRICTIONS OF GENERAL STATUTES.

When any public work is proposed to be performed and the board determines by a two-thirds (2/3) vote that it is expedient and in the best public interest to employ professional engineering, architectural, or accounting services for the planning and financing of the public work and the preparation of plans and specifications, then the limitations and restrictions in the general statutes with respect to invalidity of contracts without an appropriation therefore, payment of fees solely from the proceeds of bonds or assessments when and if issued, and payment of fees solely from a special fund or funds to be provided in the future, do not apply to contracts for those professional services to the extent that such limitations and restrictions might otherwise prevent the payment of fees for services actually rendered in connection with those contracts or affect the obligation to pay those fees. *(Confer with IC 36-1-12-3.5)*

PROCEDURES FOR THE SELECTION OF PROFESSIONAL CONSULTING SERVICES

§ 177.04 ADDITIONAL DEFINITIONS.

For the purpose of this subchapter, *in addition to the definitions set forth in Section § 177.01*, the following definitions shall apply, unless the context clearly indicates or requires a different meaning.

CONSULTANT. An individual, partnership, limited liability company, corporation, association, joint venture, firm or any other form of unincorporated enterprise which performs professional services.

FIRM. An individual, partnership, limited liability company, corporation, association, joint venture, or any other form of unincorporated enterprise.

PROFESSIONAL SERVICES. Services that are:

(1) Within the scope of practices specified by I.C. 25-4 for architecture, I.C. 25-31 for professional engineering, or I.C. 25-21.5 for land surveying; or (2) Performed by any licensed architect, professional engineer, or land surveyor in connection with his professional employment or practice.

PUBLIC AGENCY. Includes a:

- (1) Political subdivision of the town, as defined in I.C. 36-1-2-13;
- (2) Municipally-owned utility;
- (3) Lessor corporation constructing a public facility to be leased to a political subdivision;
- (4) Any of the above acting as a local participating agency (LPA) in connection with a public works contract involving federal participation.

PUBLIC WORKS. The construction, reconstruction, alteration, or renovation of a public building, airport facility, or other structure that is paid for out of a public fund or out of a special assessment. The term includes the construction, alteration, or repair of a highway, street, alley, bridge, sewer, drain, or other improvement that is paid for out of a public fund or out of a special assessment. The term also includes any public work leased by a political subdivision under a lease containing an option to purchase.

Statutory reference:

Procurement of services of Architects, Engineers and Land Surveyors, see I.C. 5-16-11.1;
Public work, see I.C. 36-1-12-2

§177.05 NOTICE OF REQUIREMENT OF PROFESSIONAL SERVICES.

(A) When professional services are required for a project, a public agency may:

- (1) Publish notice in accordance with I.C. 5-3-1;
- (2) Provide for notice (other than notice in accordance with I.C. 5-3-1) as it determines is reasonably calculated to inform those performing professional services of a proposed project;
- (3) Provide for notice in accordance with both divisions (A)(1) and (A)(2); or
- (4) Determine not to provide any notice.

(B) If the public agency provides for notice under divisions (A)(1), (A)(2), or (A)(3), each notice must include:

- (1) The location of the project;
- (2) A general description of the project;
- (3) The general criteria to be used in selecting professional services firms for the project file;

- (4) The place where any additional project description or specifications are on file;
- (5) The hours of business of the public agency; and
- (6) The last date for accepting statements of qualifications from interested parties.

§ 177.06 BASIS FOR CONTRACTS; COMPENSATION.

A public agency may make all contracts for professional services on the basis of competence and qualifications for the type of services to be performed, and negotiate compensation that the public agency determines to be reasonable.

(Ord. 1145, passed 7-24-00)

§ 177.07 REQUIREMENT TO COMPLY WITH STATE LAW.

All consultants in public works projects will comply with the provisions of I.C. 5-16-11 et seq., regarding certain disclosures against conflicts of interest.

(Ord. 1145, passed 7-24-00)

§ 177.08 SPECIAL PROCEDURES FOR SELECTION OF PROFESSIONAL SERVICES CONSULTING CONTRACTS INVOLVING FEDERAL PARTICIPATION.

(A) Applicability. In addition to the foregoing, this section shall apply for the retaining of professional services on contracts involving federal participation so that selection procedures are compatible with appropriate regulations and guidelines of the *U.S. Department of Transportation*.

- (1) Public agencies shall comply with the applicable provisions of this subchapter for all public works projects involving participation by the United States Department of Transportation;
- (2) Public agencies may comply with the applicable provisions of this subchapter for all other public works projects.

(B) Necessity for use of professional services (consultant). Professional services may be requested for a project where:

- (1) The in-house capabilities of the public agency are insufficient to accomplish the project within the desirable time; or
- (2) The complexity or nature of the project requires specialized expertise; or
- (3) It is more economical to engage such services; or
- (4) It is otherwise in the public interest.

(C) Authorization for employment of consultant. When determined at regular meeting of the public agency that professional consulting services are to be used, the minutes shall show that the public agency has decided to use the services of a consultant.

(D) Record of consultants. The public agency will develop and keep records according to the following:

- (1) The public agency will maintain files and records of consultants who have expressed interest in providing professional services and who have submitted information as to the qualifications of their firm;
- (2) The record of consultants will be based upon information provided by each consultant in a manner which may be prescribed, supplemented with such other information as is considered necessary to provide current

data about the firm. The information shall include the name, address, list of principals, list of professional-technical-supportive staff, the qualifications and experience of individuals, the history and experience of the firm, the extent of involvement in noteworthy projects and technical and financial references. From time to time, supplemental information may be submitted by the consultant to keep their file current;

- (3) The record of listing of consultants will include the firms previously and currently satisfactorily employed by the municipality, and all MBE (Minority Business Enterprises) Firms currently listed in a directory on file with the Indiana Department of Administration Minority Business Development Division. The tabulation should produce a listing of four to eight firms for each type of work.

(E) *Selection of consultants.* The selection of consultants for specific projects will be made by a majority vote of the relevant governing body of the public entity.

(F) *Requests for proposals.* Prior to the consultant selection, the public agency will do the following:

- (1) The public agency will prepare a notice of projects for which consultant proposals are being requested that will include the scope of the work that reflects a clear, accurate and detailed description of the technical requirements for the services to be rendered. A list of identifying the evaluation factors and their relative importance must be included. The listing is to be posted for 30 days in the office of the public agency;
- (2) The notices will be sent to all firms that have met the requirements outlined in division (D) of this section, and which have requested in writing that notices covering specific types of projects be sent to them with the firm's request being renewed annually;
- (3) The public agency or the Indiana Department of Transportation will provide a cost estimate before negotiations of fees for the proposed work, considering like projects, risk and complexity, except for contracts awarded under small purchase procedures. This is to be used during negotiations.

(G) *Submission of proposals.* Any consultant having information of the firm's qualification on file in the public agency's office or submitting it with a proposal may submit proposal(s) for items noted in the notice of request for proposals during the period of time specified in the notice. The proposal must include:

- (1) Description of the proposed project;
- (2) Description of the anticipated work elements;
- (3) Proposed staffing for the work, including designation of project manager;
- (4) Proposed schedule of work; and
- (5) Information concerning current overhead rate as prepared by a CPA or a registered accountant, or as approved by the Indiana Department of Transportation.

(H) *Selection of consultant.* The public agency, after a review of the proposals received for a project, will decide which firm, in its opinion, is found to be most suitable for employment for that project. In keeping with the intent of Indiana's Affirmative Action Plan and Federal Regulations concerning employment of MBE Firms, the greatest possible consideration

for use of these firms will be given during the selection process.

(I) *Reasons for selection.* The minutes of the meeting of the public agency will note the reasons for the selection of the recommended consultant.

(J) *Further technical review.* Upon the public agency's approval, the proposal received from the selected consultant, together with any necessary added information of breakdown of scope, schedule and proposed compensation, with man-hour estimates - overhead rate - direct costs, and the like, will undergo a further technical review by the public agency. As required, preliminary discussions between the consultant and the public agency will take place during these assessments.

(K) *When pre-award audit is required.* In those instances where 23 CFR 172.5(c)(1) requires pre-award audit evaluation on selected consultants which are expected to exceed \$250,000, or insufficient knowledge of the consultant's accounting system or the contract involves procurement of new equipment, the financial review will be made by the public agency in conjunction with the Indiana Department of Transportation's Accounting and Control Division.

(L) *Negotiations for contract.* Upon completion of the assessment of the consultant's proposal, the public agency will comply as follows:

- (1) Negotiations of the contract for the work will take place with the public agency and the group negotiating the contract, with documentation of the use of the evaluations during negotiations and a preliminary agreement developed and submitted from any necessary reviews and approvals. Upon receipt of needed approvals, including local, public agency and Indiana Department of Transportation approvals, a final contract will be executed.
- (2) If agreement cannot be reached during negotiations of a contract with reasonable efforts to reach an agreement, either the public agency or consultant may terminate the discussions. In such event, the selection and negotiations with an alternate firm may then be undertaken.

(M) *Exceptions to procedure.* In accordance with 23 CFR 172.7(b)(c), exceptions to the procedures are provided when the project-related expenses do not exceed \$25,000, or when specialized qualifications of a single consulting firm are required for the project, or when the project is considered to be an emergency, a particular consultant may be selected with concurrence of the Indiana Department of Transportation. In such cases, the public agency will prepare and submit a preliminary agreement to the Indiana Department of Transportation for review and approval.

(N) *Notice to proceed with work.* When approvals have been received by the Indiana Department of Transportation on the contract along with "Authorization to Proceed," a written notice to proceed with the work will be given to the consultant by the public agency. No compensation will be made for work undertaken prior to such notice to proceed.

(Ord. 1145, passed 7-24-00)

§ 177.09 PARTICULAR PROCEDURES INVOLVING PUBLIC WORKS THAT COST AT LEAST \$50,000; ADDED RULES FOR PROJECT OF \$100,000 OR MORE

(A) The board shall prepare general plans and specifications describing the kind of public work required, but shall avoid specifications which might unduly limit competition. If the project involves the resurfacing (as defined by IC 8-14-2-1) of a road, or street the specifications must show how the weight or volume of the materials will be accurately measured and verified.

(B) The board shall file the plans and specifications in a place reasonably accessible to the public, which shall be specified in the notice required by subdivision (C).

(C) Upon the filing of the plans and specifications, the board shall publish notice in accordance with IC 5-3-1 calling for sealed proposals for the public work needed.

(D) The notice must specify the place where the plans and specifications are on file and the date fixed for receiving bids.

(E) The period of time between the date of the first publication and the date of receiving bids shall be governed by the size of the contemplated project in the discretion of the board, but it may not be more than six (6) weeks.

(F) If the cost of a project is one hundred thousand dollars (\$100,000) or more, the board 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.

(G) The board may not require a bidder to submit a bid before the meeting at which bids are to be received. The meeting for receiving bids must be open to the public. All bids received shall be opened publicly and read aloud at the time and place designated and not before.

(H) The board shall either: (1) award the contract for public work or improvements to the lowest responsible and responsive bidder; or (2) reject all bids submitted.

(I) If the board awards the contract to a bidder other than the lowest bidder, the board 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 board shall keep a copy of the minutes or memoranda available for public inspection. *(Section 5 in draft ordinance is covered here)*

(J) In determining whether a bidder is responsive, the board may consider the following factors:

- (1) Whether the bidder has submitted a bid or quote that conforms in all material respects to the specifications.

- (2) Whether the bidder has submitted a bid that complies specifically with the invitation to bid and the instructions to bidders.
- (3) Whether the bidder has complied with all applicable statutes, ordinances, resolutions, or rules pertaining to the award of a public contract.

(K) In determining whether a bidder is a responsible bidder, the board may consider the following factors:

- (1) The ability and capacity of the bidder to perform the work.
- (2) The integrity, character, and reputation of the bidder.
- (3) The competence and experience of the bidder.

(L) The board shall require the bidder to submit an affidavit: (1) that the bidder has not entered into a combination or agreement: (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 (2) that the bidder's bid is made without reference to any other bid. (Confer IC 36-1-12-4)

§ 177.10 ADDITIONAL PROVISIONS REGARDING RESPONSIBLE AND RESPONSIVE BIDDERS (Confer Sections 2 and 3 of draft ordinance)

(A) In addition to the provisions of Section § 177.09 (J) and (K), in order to determine whether a contractor is a "responsible and responsive bidder" for the award of a public works contract, the contractor must submit the following information and supporting documentation verified under oath on a form designated by the Town, in order for the bid to be accepted:

- (1) Documents evidencing compliance with all applicable laws and ordinances pre-requisite to doing business in Indiana;
- (2) A valid federal employer tax identification number or, if an individual, a valid social security number;
- (3) A statement of compliance with provisions of Section 2000e of Chapter 21, Title 42 of the United States Code and Federal Executive Order No. 11246 as amended by Executive Order No. 11375 (known as the Equal Opportunity Employer provisions);
- (4) Disclosure of the name and address of each subcontractor from whom the contractor has accepted a bid and/or intends to hire on any part of the project. Further, each such subcontractor shall be required to adhere to the requirements set forth herein as though it were bidding directly to the Town. Each contractor shall submit all subcontractors' information and supporting documentation to the Town no later than the date and time of the contract award;
- (5) Certificates of insurance showing the following coverage necessary for the project:
 - (a) General liability (\$1 million minimum coverage);
 - (b) Worker's compensation (statutory limits); and
 - (c) Automobile liability.

Amounts not herein listed shall be determined by the awarding agency and set forth in the bid specifications;

- (6) The following statement of compliance:
 - (a) A statement of compliance with all provisions of the Indiana Common Construction Wage law (Indiana Code 5-16-7-1 et seq.), and all rules and regulations therein, for the past five (5) years.
 - (b) Such statement shall also provide that the contractor has reviewed the Common Construction Wage law (or federal Davis-Bacon and related Acts), has reviewed and agrees to pay the applicable common construction wage (or prevailing wage rate) as set forth in the common construction wage rate schedule (or prevailing wage determination) attached to the bid specifications, and will strictly comply with the Common Construction Wage law (or federal Davis-Bacon and related Acts) and related requirements.
- (7) Evidence of participation in apprenticeship and training programs applicable to the work to be performed on the project which are approved by and registered with the United States Department of Labor's Office of Apprenticeship, or its successor organization. The required evidence includes a copy of all applicable apprenticeship standards and Apprenticeship Agreement(s) for any apprentice(s) who will perform work on the public works project;
- (8) A copy of a written plan for employee drug testing;
- (9) A statement that individuals who will perform work on the public works project on behalf of the contractor are properly classified as either (i) an employee or (ii) an independent contractor under all applicable state and federal laws and local ordinances;
- (10) A statement that all employees are (i) covered under a current worker's compensation insurance policy and (ii) properly classified under such policy. If the contractor is insured with a carrier, the evidence of worker's compensation insurance shall be a copy of the "Information Page" of the contractor's worker's compensation policy and any continuation of that Information Page which include the name and address of the insured, as well as the class codes the compensation premium is based on and the total estimated remuneration per class code;
- (11) A statement listing all employees who will perform work on the public works project and evidence that all listed employees are covered by a health and welfare plan and a retirement plan. The required evidence includes a copy of the summary plan description(s) or similar document(s); and

- (12) Documents evidencing any professional or trade license required by law or local ordinance for any trade or specialty area in which the contractor is seeking a contract award. Additionally, the contractor must disclose any suspension or revocation of such license held by the company, or of any director, officer or manager of the company.
- (B) Any material changes to the contractor's status, at any time, must be reported in writing to the Town within fourteen (14) days of its occurrence. Failure to comply with this requirement is grounds for the contractor to be deemed a non-responsible and non-responsive bidder.
- (C) A contractor who has been found by the Indiana Department of Labor to be in violation of the Common Construction Wage law twice within a three (3) year period *shall be deemed not to be a Responsible and Responsive Bidder for two (2) years from the date of the latest finding;*
- (D) If all of the above criteria are otherwise satisfied the Town may also consider the following factors, in its discretion, in awarding the project if such information is requested:
- (1) Statements as to past performance, which shall give an accurate and complete record of all public works projects completed in the past three (3) years by the contractor. Such statements shall include the names and addresses of the projects, original contract price, final contract price, and the names of all subcontractors used, if applicable, and a statement as to compliance with completion deadlines; and/or
 - (2) Any determinations by a court or governmental agency for violations of federal, state, or local laws including but not limited to violations of contracting or antitrust laws, tax or licensing laws, environmental laws, the Occupational Safety and Health Act (OSHA), the National Labor Relations Act (NLRA), or federal Davis-Bacon and related Acts. **(Confer Sections 2 and 3 of draft ordinance)**

§ 177.11 INCOMPLETE SUBMISSIONS BY BIDDERS AND SUBCONTRACTORS (Confer Section 4 draft ordinance)

It is the sole responsibility of the contractor to comply with all submission requirements at the time it submits its bid to the Town. The submission requirements also apply to all subcontractors, except that the contractor shall submit all subcontractor submissions to the Town no later than the date and time of the contract award. Contractor and/or subcontractor submissions deemed inadequate or incomplete may result in a determination that the contractor is not a responsible and responsive bidder.

§ 177.12 MULTIPLE LOW BIDS (Confer Section 6 draft ordinance)

When two or more responsible and responsive bidders submit the same low bid, the contract award shall be determined by drawing lots at a public meeting of the Town Council, unless one bidder is a local contractor and one is a non-local contractor, in which event the local contractor shall be awarded the contract.

§ 177.13 CERTIFIED PAYROLL (Confer Section 7 draft ordinance)

All contractors and subcontractors working on a public works project, the value of which meets or exceeds the threshold levels set by the State of Indiana in the Indiana Common Construction Wage law, shall submit a weekly certified payroll identifying each of its employees by name, the employee's job classification, hourly rate of pay and hourly fringe benefits rate. Each shall utilize the federal form now known as a WH-347 (or a successor form or a State of Indiana certified payroll form if and when such a form is adopted) which must be submitted on a weekly basis within five (5) days after the end of each week which the contractor or subcontractor performed its work on the public works project.

§ 177.14 RECORDS AND DOCUMENTS SUBMITTED TO BE PUBLIC RECORDS (Confer Section 8 draft ordinance)

All information submitted by a contractor or sub-contractor pursuant to this Ordinance, including certified payrolls, are public records subject to review pursuant to the Indiana Access to Public Records law (Indiana Code 5-14-3-1 et seq.).

§ 177.15 MATERIALITY (Confer Section 9 draft ordinance)

The requirements of this Chapter, set forth in Sections §177.10 to §177.14 are a material part of the bid documents and the contract and the successful bidder shall insert this Chapter in all subcontracts.

§ 177.16 BOND or CERTIFIED CHECK; FILING BY BIDDERS

(A) If the cost of the public work is estimated to be more than two hundred thousand dollars (\$200,000), the Town and its political subdivisions **shall require a bond** or a certified check to be filed with each bid by a bidder in the amount determined and specified by the board in the notice of the letting; and

(B) If the cost of the public work is estimated to be not more than two hundred thousand dollars (\$200,000), the Town and its political subdivisions **may** require a bond or a certified check to be filed with each bid by a bidder in the amount determined and specified by the board in the notice of the letting.

(C) The amount of the bond or certified check may not be set at more than ten percent (10%) of the contract price. The bond or certified check shall be made payable to the Town, the Department or the political subdivision.

(D) All checks of unsuccessful bidders shall be returned to them by the board upon selection of successful bidders. Checks of successful bidders shall be held until delivery of the performance bond, as provided in IC 36-1-12-14(e). **(Confer with IC 36-1-12-4.5)**

§ 177.17 PROCEDURE FOR ACCEPTING QUOTES

(A) This section applies whenever a public work project is estimated to cost at least twenty-five thousand dollars (\$25,000) and less than fifty thousand dollars (\$50,000).

(B) The board must proceed under the following provisions:

- (1) The board 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.

- (2) The board 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.
- (3) The board shall award the contract for the public work to the lowest responsible and responsive quoter.
- (4) The board may reject all quotes submitted. (Confer with IC 36-1-12-4.7)

§ 177.18 ALTERNATIVE PROCEDURE FOR PROJECTS COSTING LESS THAN \$150,000.

(a) For a public work for the routine operation, routine repair, or routine maintenance of existing structures, buildings, or real property in which the cost of the public work is estimated to be less than one hundred fifty thousand dollars (\$150,000), the board may award a contract for that public work in the manner provided in IC 5-22. (Confer with IC 36-1-12-4.9)

§ 177.19 ALTERNATIVE PROCEDURE FOR PROJECTS COSTING LESS THAN \$50,000.

(A) Whenever a public work project is estimated to cost less than fifty thousand dollars (\$50,000), and a contract is to be awarded, the board may proceed under Section §177.09 or under subsection (b) or (c).

(B) The board must proceed under the following provisions:

- (1) The board 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.
 - (2) The board 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.
 - (3) The board shall award the contract for the public work to the lowest responsible and responsive quoter.
 - (4) The board may reject all quotes submitted.
 - (5) If the board rejects all quotes under subdivision (4) of this section, the board may negotiate and enter into agreements for the work in the open market without inviting or receiving quotes if the board establishes in writing the reasons for rejecting the quotes.
- (C) The board may not proceed under subsection (B) 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.

(D) 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.

(E) The board 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.

(F) Before the board may perform any work under this section by means of its own workforce, the political subdivision 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.

(G) Quotes for public works projects costing less than twenty-five thousand dollars (\$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. **(Confer with IC 36-1-12-5)**

§ 177.20 CONTRACTS; NOTICE TO PROCEED; FAILURE TO AWARD AND EXECUTE CONTRACT AND TO ISSUE NOTICE; ELECTION BY BIDDER TO REJECT CONTRACT.

(A) Except as provided in subsections (B) and (C), the board shall award the contract and shall provide the successful bidder with written notice to proceed within sixty (60) days after the date on which bids are opened.

(B) If general obligation bonds are to be sold to finance the construction that is the subject of the bid, the board shall allow the bidder ninety (90) days.

(C) If revenue bonds are to be issued, when approved by the utility regulatory commission, or if special taxing district, special benefit, or revenue bonds are to be issued and sold to finance the construction, the board shall allow the bidder one hundred fifty (150) days.

(D) A failure to award and execute the contract and to issue notice within the time required by this section 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.

If the successful bidder elects to reject the contract and withdraw his bid, notice of that election must be given to the board in writing within fifteen (15) days of the sixty (60) day expiration date or any other extension date. **(Confer with IC 36-1-12-6)**

§ 177.21 PUBLIC BUILDINGS;APPROVAL OF PLANS AND SPECIFICATIONS BY LICENSED ARCHITECT OR ENGINEER

Public work performed or contracted for on a public building, the cost of which is more than one hundred thousand dollars (\$100,000) may be undertaken by the board only in accordance with plans and specifications approved by an architect or engineer licensed under IC 25-4 or IC 25-31. (Confer with IC 36-1-12-7)

§ 177.22 ROAD or STREET WORK;OPEN PRICE PROVISIONS; PRICE ADJUSTMENTS OF MATERIALS;LIMITATIONS

The board may award a public work contract for road, street, or bridge work subject to the open price provisions of IC 26-1-2-305. The contract may provide that prices for construction materials are subject to price of materials adjustment. When price adjustments are part of the contract, the method of price adjustments shall be specified in the contract. However, this section does not authorize the expenditure of money above the total amount of money appropriated by the Town for road, street, or bridge contracts. (Confer with IC 36-1-12-8)

§ 177.23 EMERGENCIES;CONTRACTS BY INVITATION

(A) The board, upon a declaration of emergency, 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.

(B) The minutes of the board must show the declaration of emergency and the names of the persons invited to bid or provide quotes. (Confer with IC 36-1-12-9)

§ 177.24 PLANS AND SPECIFICATIONS;APPROVAL BY VARIOUS AGENCIES

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. (Confer with IC 36-1-12-10)

§ 177.25 COMPLETION OF PROJECT;PROCEDURE

(A) The board must, within sixty (60) days after the completion of the public work project, file in the division of fire and building safety a complete set of final record drawings for the public work project. However, this requirement does not apply to a public work project constructed at a cost less than one hundred thousand dollars (\$100,000). In addition, the filing of the drawings is required only if the project involves a public building.

(B) The division of fire and building safety shall provide a depository for all final record drawings filed, and retain them for inspection and loan under regulated conditions. The fire prevention and building safety commission may designate the librarian of Indiana as the custodian of the final record drawings. The librarian shall preserve the final record drawings in the state archives as public documents. (Confer with IC 36-1-12-11)

§ 177.26 FINAL PAYMENT;CLAIMS BY SUBCONTRACTORS,LABORERS, OR SUPPLIERS.

(A) When a public work project is to be performed, the board shall withhold final payment to the contractor until the contractor has paid the subcontractors,

material suppliers, laborers, or those furnishing services. However, if there is not a sufficient sum owed to the contractor to pay those bills, the sum owed to the contractor shall be prorated in payment of the bills among the parties entitled.

(B) To receive payment the subcontractor or subcontractors, material suppliers, laborers, or those furnishing services shall file their claims with the board within sixty (60) days after the last labor performed, last material furnished, or last service rendered by them, as provided in Section § 177.27 of this Chapter or IC 36-1-12-13.

(C) If there is no dispute between the parties claiming to be entitled to the money withheld, the board shall pay the claim from the money due the contractor and deduct it from the contract price. The board shall take a receipt for payment made on a claim.

(D) If there is a dispute between the parties claiming to be entitled to the money withheld, the board shall retain sufficient money to pay the claims until the dispute is settled and the correct amount is determined. However, the board may make a final and complete settlement with the contractor after thirty (30) days after the date of the completion and acceptance of the public work if the board is furnished with satisfactory evidence indicating the payment in full of all subcontractors, material suppliers, laborers, or those furnishing services.

(E) A claim form must be signed by an individual from the political subdivision or agency who is directly responsible for the project and who can verify:

- (1) the quantity of a purchased item; or
- (2) the weight or volume of the material applied, in the case of a road, street, or bridge project. (Confer with IC 36-1-12-12)

§ 177.27 CONTRACT PROVISION FOR PAYMENT OF SUBCONTRACTORS, LABORERS, OR SUPPLIERS.

A contract for public work must contain a provision for the payment of subcontractors, laborers, material suppliers, and those performing services. The board shall withhold money from the contract price in a sufficient amount to pay the subcontractors, laborers, material suppliers, and those furnishing services. (Confer with IC 36-1-12-13)

§ 177.28 CONTRACTOR'S PAYMENT BOND FOR PUBLIC WORKS PROJECTS IN EXCESS OF \$200,000.

(A) The Town, Department or appropriate political subdivision:

- (1) shall require the contractor to execute a payment bond to the appropriate political subdivision or agency, approved by and for the benefit of the political subdivision or agency, in an amount equal to the contract price if the cost of the public work is estimated to be more than two hundred thousand dollars (\$200,000); and
- (2) may require the contractor to execute a payment bond to the appropriate political subdivision or agency, approved by and for the benefit of the political subdivision or agency, in an amount equal to the contract price if

the cost of the public work is estimated to be not more than two hundred thousand dollars (\$200,000).

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, laborers, material suppliers, and those performing services.

(B) The payment bond shall be deposited with the board. The payment 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
- (3) a defect in the proceedings preliminary to the letting and awarding of the public work contract;

does not discharge the surety. The surety of the payment bond may not be released until one (1) year after the board's final settlement with the contractor.

(C) A person to whom money is due for labor performed, material furnished, or services provided shall, within sixty (60) days after the completion of the labor or service, or within sixty (60) days after the last item of material has been furnished, file with the board signed duplicate statements of the amount due. The board shall forward to the surety of the payment bond one (1) of the signed duplicate statements. However, failure of the board to forward a signed duplicate statement does not affect the rights of a person to whom money is due. In addition, a failure to forward the statement does not operate as a defense for the surety.

(D) An action may not be brought against the surety until thirty (30) days after the filing of the signed duplicate statements with the board. If the indebtedness is not paid in full at the end of that thirty (30) day period the person may bring an action in court. The court action must be brought within sixty (60) days after the date of the final completion and acceptance of the public work. (Confer with IC 36-1-12-13.1)

§ 177.29 CONTRACTS IN EXCESS OF \$200,000; ESCROW AND RETAINAGE; PERFORMANCE BONDS.

The provisions set forth in IC 36-1-12-14 shall apply to public works contracts of the Town and its political subdivisions. At the discretion of the contractor, the retainage shall be held by the board 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 board and contractor or contractor and subcontractor under a written agreement among the bank or savings and loan institution and: (1) the board and the contractor; or (2) the subcontractor and the contractor. The board shall not be required to pay interest

on the amounts of retainage that it holds under this section. (Confer with IC 36-1-12-14)

§ 177.30 WAGE SCALE AND ANTIDISCRIMINATION PROVISIONS.

(A) A contract by the board for public work must conform to the wage scale provisions of IC 5-16-7.

(B) A contract by the board for public work must conform with the antidiscrimination provisions of IC 5-16-6. The board may consider a violation of IC 5-16-6 a material breach of the contract, as provided in IC 22-9-1-10. (Confer with IC 36-1-12-15)

§ 177.31 NECESSITY OF COMPLIANCE WITH PUBLIC WORKS LAW.

A contract for public work by this Town or a political subdivision is void if it is not let in accordance with this chapter or IC 36-1-12. (Confer with IC 36-1-12-16)

§ 177.32 ROAD OR STREET WORK CONTRACTS;TIMELY PAYMENT OF CLAIMS;FINAL PAYMENT;INTEREST FOR LATE PAYMENT.

(A) A contract for road or street work must contain a provision for the timely payment of claims made by the contractor.

(B) Each contract must provide for final payment within one hundred twenty (120) days after final acceptance and completion of the contract. Final payment may not be made on any amount that is in dispute, but final payment may be made on that part of a contract or those amounts that are not in dispute.

(C) For each day after one hundred twenty (120) days, the board shall pay to the contractor interest for late payment of money due to the contractor. However, interest may not be paid for those days that the delay in payment is not directly attributable to the board. The annual percentage rate of interest that the board shall pay on the unpaid balance is twelve percent (12%). (Confer with IC 36-1-12-17)

§ 177.33 CHANGE OR ALTERATIONS OF SPECIFICATIONS;CHANGE ORDERS.

(A) If, in the course of the 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. The change order becomes an addendum to the contract and must be approved and signed by the board and the contractor.

(B) If a licensed architect or engineer is assigned to the public work project, the change order must be prepared by that person.

(C) A change order may not be issued before commencement of the actual construction, reconstruction, or repairs except in the case of an emergency. In that case, the board must make a declaration, and the board's minutes must show the nature of the emergency.

(D) 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. A

change order issued as a result of circumstances that could not have been reasonably foreseen does not increase the scope of the project.

(E) All change orders must be directly related to the original public work project.

(F) 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. **(Confer with IC 36-1-12-18)**

§ 177.34 DIVIDING COST OF A SINGLE PUBLIC WORK PROJECT INTO TWO OR MORE PROJECTS PROHIBITED.

(A) For purposes of this section, 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.

(B) The cost of a single public work project may not be divided into two (2) or more projects for the purpose of avoiding the requirement to solicit bids.

(C) A bidder or quoter or a person who is a party to a public work contract who knowingly violates this section commits the infraction described in IC 36-1-12-19 (c) 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.

(D) Any board member or officer of a political subdivision or agency who knowingly violates this section commits the infraction described in IC 36-1-12-19 (c). **(Confer with IC 36-1-12-19)**

§ 177.35 TRENCH SAFETY SYSTEMS.

(A) This section applies to a public works project that may require creation of a trench of at least five (5) feet in depth.

(B) IOSHA regulations 29 C.F.R. 1926, Subpart P, for trench safety systems shall be incorporated into the contract documents for a public works project.

(C) The contract documents for a public works project shall provide that the cost for trench safety systems shall be paid for:

(1) as a separate pay item; or

(2) in the pay item of the principal work with which the safety systems are associated. **(Confer with IC 36-1-12-20)**

§ 177.36 PLUMBING INSTALLATIONS; PROOF OF LICENSURE.

(A) A person who submits a bid for a public works contract under this chapter that involves the installation of plumbing must submit evidence that the person is a licensed plumbing contractor under IC 25-28.5-1.

(B) If a public works contract under this chapter is awarded to a person who does not meet the requirements of subsection (A), the contract is void. **(Confer with IC 36-1-12-21)**

§ 177.37 SEVERABILITY.


If any portion of this chapter or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other portions or applications of this chapter which can be given effect without the invalid portions or applications and, to this end, the portions of this Chapter are severable.

Section 3. Schedule of Implementation. The provisions of this ordinance shall become and be in full force and effect from and after the date of its passage and adoption upon its signature by the executive in the manner prescribed by IC 36-5-2-10(a) and its publication in the manner provided by IC 36-1-5 and IC 5-3-1, if applicable.

Introduced and Filed on the 14th day of December 2009. Consideration on same day or at same meeting of introduction was not considered, all pursuant to IC 36-5-2-9.8.

ADOPTED this 19th day of July 2010 by the Town Council of the Town of Highland, Lake County, Indiana, by a vote of 4 in favor of adoption and 0 opposed.

TOWN COUNCIL of the TOWN of
HIGHLAND, INDIANA



Mark A. Herak, President (IC 36-5-2-10)

Attest:



Michael W. Griffin, IAMC/MMC/CPFA
Clerk-Treasurer (IC 33-16-4-1; IC 36-5-6-5)

