



Reprinted
January 31, 2018

SENATE BILL No. 383

DIGEST OF SB 383 (Updated January 30, 2018 2:48 pm - DI 75)

Citations Affected: IC 36-1.

Synopsis: Specifications for local public work contracts. Provides that specifications for a local public work contract must be written to encourage competition for each product or system furnished under the contract. Provides that for a local public work project for a school corporation that has an estimated cost greater than \$1,000,000, the designer must specify at least three products or systems that are acceptable as substantially equal in terms of quality, durability, appearance, and functionality. Establishes a procedure for the specification of a single approved source for a product or system when it is considered to be in the best interest of the public to do so.

Effective: July 1, 2018.

Messmer, Randolph Lonnie M

January 8, 2018, read first time and referred to Committee on Local Government.
January 25, 2018, amended, reported favorably — Do Pass.
January 30, 2018, read second time, amended, ordered engrossed.

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Second Regular Session 120th General Assembly (2018)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2017 Regular Session of the General Assembly.

SENATE BILL No. 383

A BILL FOR AN ACT to amend the Indiana Code concerning state and local government.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 36-1-12-4, AS AMENDED BY P.L.67-2012,
2 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2018]: Sec. 4. (a) This section applies whenever the cost of a
4 public work project will be:
5 (1) except as provided in subdivision (2), at least one hundred
6 fifty thousand dollars (\$150,000); or
7 (2) in the case of a board of aviation commissioners or an airport
8 authority board, at least one hundred thousand dollars (\$100,000).
9 (b) The board must comply with the following procedure:
10 (1) The board shall prepare general plans and specifications
11 describing the kind of public work required, but shall avoid
12 specifications which might unduly limit competition.
13 **Specifications shall be written to encourage competition for**
14 **each product or system furnished under the contract.** If the
15 project involves the resurfacing (as defined by IC 8-14-2-1) of a
16 road, street, or bridge, the specifications must show how the
17 weight or volume of the materials will be accurately measured

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- 1 and verified.
- 2 (2) The board shall file the plans and specifications in a place
- 3 reasonably accessible to the public, which shall be specified in the
- 4 notice required by subdivision (3).
- 5 (3) Upon the filing of the plans and specifications, the board shall
- 6 publish notice in accordance with IC 5-3-1 calling for sealed
- 7 proposals for the public work needed.
- 8 (4) The notice must specify the place where the plans and
- 9 specifications are on file and the date fixed for receiving bids.
- 10 (5) The period of time between the date of the first publication
- 11 and the date of receiving bids shall be governed by the size of the
- 12 contemplated project in the discretion of the board. The period of
- 13 time between the date of the first publication and receiving bids
- 14 may not be more than:
- 15 (A) six (6) weeks if the estimated cost of the public works
- 16 project is less than twenty-five million dollars (\$25,000,000);
- 17 and
- 18 (B) ten (10) weeks if the estimated cost of the public works
- 19 project is at least twenty-five million dollars (\$25,000,000).
- 20 (6) The board shall require the bidder to submit a financial
- 21 statement, a statement of experience, a proposed plan or plans for
- 22 performing the public work, and the equipment that the bidder has
- 23 available for the performance of the public work. The statement
- 24 shall be submitted on forms prescribed by the state board of
- 25 accounts.
- 26 (7) The board may not require a bidder to submit a bid before the
- 27 meeting at which bids are to be received. The meeting for
- 28 receiving bids must be open to the public. All bids received shall
- 29 be opened publicly and read aloud at the time and place
- 30 designated and not before. Notwithstanding any other law, bids
- 31 may be opened after the time designated if both of the following
- 32 apply:
- 33 (A) The board makes a written determination that it is in the
- 34 best interest of the board to delay the opening.
- 35 (B) The day, time, and place of the rescheduled opening are
- 36 announced at the day, time, and place of the originally
- 37 scheduled opening.
- 38 (8) Except as provided in subsection (c), the board shall:
- 39 (A) award the contract for public work or improvements to the
- 40 lowest responsible and responsive bidder; or
- 41 (B) reject all bids submitted.
- 42 (9) If the board awards the contract to a bidder other than the



1 lowest bidder, the board must state in the minutes or memoranda,
 2 at the time the award is made, the factors used to determine which
 3 bidder is the lowest responsible and responsive bidder and to
 4 justify the award. The board shall keep a copy of the minutes or
 5 memoranda available for public inspection.

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

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

10 (B) Whether the bidder has submitted a bid that complies
 11 specifically with the invitation to bid and the instructions to
 12 bidders.

13 (C) Whether the bidder has complied with all applicable
 14 statutes, ordinances, resolutions, or rules pertaining to the
 15 award of a public contract.

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

18 (A) The ability and capacity of the bidder to perform the work.

19 (B) The integrity, character, and reputation of the bidder.

20 (C) The competence and experience of the bidder.

21 (12) The board shall require the bidder to submit an affidavit:

22 (A) that the bidder has not entered into a combination or
 23 agreement:

24 (i) relative to the price to be bid by a person;

25 (ii) to prevent a person from bidding; or

26 (iii) to induce a person to refrain from bidding; and

27 (B) that the bidder's bid is made without reference to any other
 28 bid.

29 (c) Notwithstanding subsection (b)(8), a county may award sand,
 30 gravel, asphalt paving materials, or crushed stone contracts to more
 31 than one (1) responsible and responsive bidder if the specifications
 32 allow for bids to be based upon service to specific geographic areas and
 33 the contracts are awarded by geographic area. The geographic areas do
 34 not need to be described in the specifications.

35 SECTION 2. IC 36-1-12-4.6 IS ADDED TO THE INDIANA CODE
 36 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 37 1, 2018]: **Sec. 4.6. (a) This section applies only if both of the
 38 following apply:**

39 **(1) The public work project is for a school corporation.**

40 **(2) The estimated cost of the public work project is greater
 41 than one million dollars (\$1,000,000).**

42 **(b) The design professional shall specify at least three (3)**



1 products or systems that are acceptable as substantially equal in
2 terms of quality, durability, appearance, and functionality.

3 (c) Products or systems for consideration for substitution as
4 substantially equal must be submitted to the design professional for
5 review and evaluation as prescribed in the contract documents.
6 The design professional shall use its professional judgment in the
7 determination of acceptable substitutions.

8 (d) Notwithstanding subsection (b), the board may specify a
9 single approved source for a particular product or system when, in
10 its opinion, it is in the best interest of the public to do so. The board
11 must adopt a resolution in a public meeting:

12 (1) not later than fourteen (14) days before the date scheduled
13 for receipt of bids; and

14 (2) describing the reasons for the necessity of a single source
15 specification for the particular product or system.

16 (e) If the board specifies a single source specification for more
17 than one (1) product or system, the board must:

18 (1) describe the reasons for the necessity of a single source
19 specification for each particular product or system; and

20 (2) approve each single source specification by a distinct vote
21 of the board.



COMMITTEE REPORT

Madam President: The Senate Committee on Local Government, to which was referred Senate Bill No. 383, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, delete the title and insert the following:

A BILL FOR AN ACT to amend the Indiana Code concerning state and local government.

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 5-32-1-3 IS REPEALED [EFFECTIVE JULY 1, 2018]. ~~Sec. 3: This article expires July 1, 2020.~~".

Page 3, delete lines 35 through 39, begin a new paragraph and insert:

"SECTION 3. IC 36-1-12-4.6 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2018]: **Sec. 4.6. (a) This section applies only if both of the following apply:**

(1) The public work project is for a school corporation.

(2) The estimated cost of the public work project is greater than one million dollars (\$1,000,000)."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 383 as introduced.)

BUCK, Chairperson

Committee Vote: Yeas 6, Nays 0.

 SENATE MOTION

Madam President: I move that Senate Bill 383 be amended to read as follows:

Page 1, delete lines 1 through 2.

Renumber all SECTIONS consecutively.

(Reference is to SB 383 as printed January 26, 2018.)

MESSMER

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