

## **ORDINANCE 2019-35**

An ordinance to amend Chapter 266 of the Monroe County Code by removing the notary requirement on the Annual Certification form in Chapter 266-17.

WHEREAS, the form currently in Section 266 of the Monroe County Code is a State prescribed form asking purchasing agents to certify compliance with State and County Anti-nepotism requirements.

WHEREAS, the County has adopted a more stringent code than the State, requiring all employees with access to County funds to complete the certification.

WHEREAS, the notary requirement has proven to hinder compliance to the County certification requirement.

WHEREAS, the statute does not require notarization, and the State Board of Accounts has stated they would take audit exception to notarization of the forms.

WHEREAS, the Monroe County Commissioners desire to revise Chapter 266 of the Monroe County Code by removing the notary requirement on the Anti-nepotism Certification form in Section 266-17.

NOW, THEREFORE, BE IT ORDAINED by the Monroe County Commissioners and the Monroe County Council as follows:

Section 1. Section 266-17 shall be, and hereby is, added to the Monroe County Code, as follows:

### **CHAPTER 266**

#### **PURCHASE OF SUPPLIES AND SERVICES**

##### **266-1. Establishment**

WHEREAS, IC 5-22 (the "Act") applies to every expenditure of public funds by a governmental body;

WHEREAS, Monroe County (the "County") is a governmental body under the Act;

WHEREAS, the Act authorizes the County to establish a purchasing agency for the County, and to establish rules for the purchase of supplies and services.

**266-2.**

**Purchasing Agency**

The Board of Commissioners hereby determines that it is the Purchasing Agency for the County.

**266-3.**

**Purchasing Agents**

The Board of Commissioners hereby designates the following persons to serve as Purchasing Agents for the County:

- (A) each elected County official;
- (B) each elected circuit court judge;
- (C) the director of Court Services;
- (D) the county highway superintendent and engineer;
- (E) each appointed county department head;
- (F) each employee who is designated by his or her department head on a register maintained by the County Auditor.

**266-4.**

**General Requirements for Purchasing**

Except as provided in this Ordinance, IC 5-22, as amended from time to time, shall govern the manner in which supplies and services are purchased by the County.

**266-5.**

**Purchase of Services**

- (A) "Services" means the furnishing of labor, time or effort by a person, not involving the delivering of specific supplies other than printed documents or other items that are merely incidental to the required performance.
- (B) Services providers may be selected by the Purchasing Agent through any process (e.g., request for proposals, inviting quotes, calling a specialist, etc.) the agent deems to be reasonable.
- (C) A contract for services must be reduced to writing and approved by the Board of Commissioners, during a public meeting, prior to work being performed. It shall be unlawful for a person, either individually or as part of an entity or business, to act on Monroe County's behalf, to informally or formally act in a representative capacity or as an agent of Monroe County, or to hold himself/herself/itself out as having authority of Monroe County unless and until a written contract authorizing such agency has been approved by the Board of Commissioners. A violation of this subsection of the Monroe County Code constitutes a Class A ordinance Violation, as described in Monroe County Code 115-3(A)(1), and may result in the debarment of the violator (entity and/or individual) from

Monroe County service contracts for up to a year.

- (D) All service contracts shall be subject to the relevant provisions of the Monroe County Code of Ethics and to the contract assurances required by the Monroe County Title VI and ADA transition plans.
- (E) All service contracts shall identify the County officer or employee who shall be contacted by any service provider and/or subcontractor, regarding notices, progress reports, clarifications, requests, and matters requiring County input or approval.

**266-6. Purchases Less Than Fifty Thousand Dollars (\$50,000).**

A Purchasing Agent may purchase supplies or services with an estimated cost of less than Fifty Thousand Dollars (\$50,000) on the open market, without inviting or receiving bids or quotes.

**266-7. Purchases Thousand Dollars (\$50,000) and One Hundred Fifty Thousand Dollars (\$150,000).**

A Purchasing Agent shall follow the procedure described in IC 5-22-8-3 in awarding a contract for supplies, unless another purchasing method is required or authorized by IC 5-22 or this Ordinance.

**266-8. Purchases greater than One Hundred Fifty Thousand Dollars (\$150,000).**

A Purchasing Agent shall follow the procedure described in IC 5-22-7 in awarding a contract for supplies unless another purchasing method is authorized by I.C. 5-22 or this Ordinance.

**266-9 Evidence of Financial Responsibility.**

- (A) The Purchasing Agent may include in a solicitation that an offeror provide evidence of financial responsibility in the form of a bid bond, certified check or other evidence. The amount of a bond or certified check may not be set to exceed ten percent (10%) of the estimated cost of the purchase.
- (B) This section does not preclude the use of a performance bond in addition to the evidence of financial responsibility started above if the amount of the performance bond is stated in the solicitation.

## **266-10. Receiving Offers**

### **(A) Opening of Offers.**

Bids or quotes received in a response to a solicitation must be opened publicly in the presence of one or more witnesses at the time and place designated in the solicitation.

### **(B) Correction and Withdrawal of Bid or Quote.**

An offeror may correct inadvertent errors in a bid or quote up to the time at which bids will be opened by withdrawing the bid, or by supplementing the erroneous bid and submitting a revised bid.

### **(C) Cancellation of Solicitation.**

When the Purchasing Agent makes a written determination that it is in the County's best interest, the Purchasing Agent may cancel a solicitation or reject all offers, provided that the solicitation included information concerning the procedures for cancellation.

## **266-11. Request for Proposals**

**(A)** The Purchasing Agent may make a written determination that the use of competitive bidding is not practicable or not advantageous for purchasing certain types of supplies, and that receiving proposals is the preferred method of purchasing.

**(B)** The following types of supplies may be purchased by making a request for proposals:

**(1)** computer hardware or software.

**(2)** communications equipment.

**(C)** The Purchasing Agent may conduct discussions with, and best and final offers may be obtained from responsible offerors who submit proposals determined to be reasonably susceptible of being selected for a contract award.

**(D)** Public Record Status of Proposals:

In order to avoid disclosure of contents to competing offerors during the process of negotiation, proposals are not open to public inspection prior to award of a contract. The Purchasing Agent may provide for the protection of vendors' proprietary information in the request for

proposals.

- (E) The request for proposals shall be conducted in the manner prescribed by IC 5-22-9.

## **266-12. Modification and Termination of Contracts**

- (A) Price Adjustments.

The Purchasing Agent may include provisions to permit price adjustments in a purchase contract. The following provisions for price adjustments may be included:

- (1) Price adjustments must be computed by agreement on a fixed price adjustment before the beginning of the pertinent performance or as soon after the beginning of performance as possible;
- (2) Price adjustments must be computed by unit prices specified in the contract or subsequently agreed upon;
- (3) Price adjustments must be computed by costs attributable to the events or situations under such clauses with adjustment of profit or fee, all as specified in the contract or subsequently agreed upon;
- (4) Price adjustments must be computed in such other manner as the contracting parties may mutually agreed upon; or
- (5) in the absence of agreement by the parties, price adjustments must be computed by a unilateral determination by the governmental body of the costs attributable to the events or situations under such clauses with adjustment of profit or fee, all as computed by the governmental body in accordance with applicable rules adopted by the governmental body.

- (B) Adjustments in Time of Performance. The Purchase Agent may include provisions in a purchase contract concerning adjustments for time of performance under the contract.

- (C) Unilateral Rights of County. The Purchasing Agent may include in a purchase contract provisions dealing with the unilateral right of the County to order changes in the work within the scope of the contract or to order temporary work stoppage or delays in time of performance.

- (D) Quantity Variations. The Purchasing Agent may include in a purchase contract provisions dealing with variations between the estimated

quantities of work in a contract and the actual quantity delivered.

### **266-13. Required Sources of Purchase**

**(A) United States Manufacturer.**

The Purchasing Agent shall purchase supplies which are manufactured in the United States. For purposes of this requirement, an item is deemed to be of United States manufacture if 50% or more of its component costs (excluding the cost of assembly) are manufactured in the United States. This requirement shall not apply if the Purchasing Agent makes any of the following determinations:

- (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.
- (5) the cost of the item exceeds Twenty-five Thousand Dollars (\$25,000), and no offeror bids an item of United States manufacture.

**(B) Department of Correction.**

A Purchasing Agent shall purchase supplies and services produced or manufactured by the Indiana Department of Correction as listed in the Department's printed catalog unless the Agent makes any of the following written determinations:

- (1) the supplies or services cannot be furnished within a reasonable time as designated by the Purchasing Agent.
- (2) the supplies and services do not meet the specifications and needs of the County.
- (3) the supplies and services exceed a fair market price.

(C) Indiana Rehabilitation Center.

Unless supplies or services are produced by and purchased from the Department of Correction, the Purchasing Agent shall purchase supplies and services from the Indiana Rehabilitation Center as listed in the Center's printed catalogue unless the Agent makes any of the following determinations:

- (1) the supplies or services cannot be furnished within a reasonable time as designated by the Purchasing Agent.
- (2) the supplies and services do not meet the specifications and needs of the County.
- (3) the supplies and services exceed a fair market price.

**266-14. Special Purchasing Methods**

A Purchasing Agent may make a purchase of supplies and services without soliciting bids or proposals in the following circumstances, provided, however, that the Purchasing Agent complies with the provisions of IC 5-22-10-2 and 5-10-22-10-3:

- (A) emergency conditions as authorized by IC 5-22-10-4.
- (B) savings to governmental body as authorized by IC 5-22-10-5.
- (C) auctions as authorized by IC 5-22-10-6.
- (D) data processing contract or license agreements as authorized by IC 5-22-10-7.
- (E) single source for supply as authorized by IC 5-22-10-8.
- (F) purchasing method impairs functioning of agency as authorized by IC 5-22-10-9.
- (G) no offer received under other purchasing method as authorized by IC 5-22-10-10.
- (H) evaluation of supplies or system containing supplies as authorized by IC 5-22-10-11.
- (I) governmental discount as authorized by IC 5-22-10-12.
- (J) single source for supply; award of contract as authorized by IC 5-22-10-13.
- (K) efficiency and economic advantages as authorized by IC 5-22-10-14.
- (L) purchase from a person who has a contract with a federal agency as authorized by IC 5-22-10-15.
- (M) acquisition of supplies through transfer from federal government as authorized by IC 5-22-10-16.
- (N) acquisition of supplies through an acceptance of gift as authorized by IC 5-22-10-17.

**266-15. Rule Making**

The Board of Commissioners may, from time to time, adopt rules to govern and facilitate the purchase of supplies and services which are not inconsistent with this Ordinance or IC 5-22.

**266-16. Effective Date**

This Ordinance is effective upon passage.

**266-17. Anti-nepotism requirements**

- (A) All purchases of supplies and services shall be conducted in accordance with the terms and provisions of IC 36-1-21, the terms and provisions of which are incorporated in this section by reference.
- (B) Each year, between December 15<sup>th</sup> and December 31<sup>st</sup>, each elected official, department head, and employee who acts as a purchasing agent, shall certify to the Board of Commissioners, in writing, the purchasing agent's compliance with this section and IC 36-1-21. The annual certification shall be made in the following form:

**SECTION 266-17 ANNUAL CERTIFICATION FORM**

I, \_\_\_\_\_, a purchasing agent for the following office or department of Monroe County, Indiana: \_\_\_\_\_, being first duly sworn, affirm and certify, subject to the penalties for perjury, that, during the calendar year \_\_\_\_\_, I did not violate the terms and provisions of Monroe County Code Section 266-17, and Indiana Code Chapter 36-1-21.

Dated this \_\_\_\_\_ day of December, \_\_\_\_\_.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Office)



- (C) It is the intent of this section to require full compliance with Indian Code 36-1-21. Where a term or provision set forth in this chapter differs from the incorporated terms and provisions of Indiana Code 36-1-21, the more restrictive or limiting term or provision shall take precedence.

[end of chapter]

Monroe County Ordinance 2019-35 is approved this 25 day of Sept, 2019, by the Board of Commissioners of Monroe County, Indiana.


**Monroe County Board of Commissioners**

“AYES”

“NAYS”

  
Julie Thomas, President

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Julie Thomas, President

  
Lee Jones, Vice-President

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Lee Jones, Vice-President

  
Penny Githens, Commissioner

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Penny Githens, Commissioner

ATTEST:

  
Catherine Smith, Auditor