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Insights

Emergency Public Works Project? In Addition to Obtaining Bids, Declare the Emergency on the Record.

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Political subdivisions and their agencies occasionally find themselves faced with an emergency public works project. Because time is of the essence during an emergency, it may be difficult, if not impossible, for the political subdivision or agency to comply with the typical bidding processes required by the public works statute, Indiana Code § 36-1-12-1 *et seq*. (the "Public Works Statute").

However, fear not, because the Public Works Statute – specifically Indiana Code § 36-1-12-9 – contemplates such a situation, and contains an emergency exception (the "Emergency Exception") to the traditional bidding process. Specifically, the Emergency Exception provides:

> (a) The board,[1] 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.

Ind. Code § 36-1-12-9.

Few cases analyze the Emergency Exception. In fact, over the last twenty-eight years, only one appellate decision was rendered on the topic. That case, *Brademas v. St. Joseph Cty. Comm'rs*, 621 N.E.2d 1133 (Ind. Ct. App. 1993) is instructive. In *Brademas*, the county discovered a leaking underground fuel storage tank. Fearing contamination, the county declared an emergency to have it removed. Bids were obtained and the tank removed, but, as a precautionary measure, a county commissioner also completed IDEM forms for four other underground fuel tanks, and those were likewise removed pursuant to the county's emergency powers.

A citizen filed a lawsuit, claiming the removal of the additional four tanks under the emergency exception was in violation of the public works statute. While the court ultimately held for the county on other grounds, it still determined a public works violation *could have* been found had the plaintiff properly brought his lawsuit. That's because the county did not declare an emergency as to the four additional tanks. Specifically, the court noted, "[b]oards and commissions speak or act officially only through the minutes and records made at duly organized meetings," and the county's lack of declaration of emergency, under different circumstances, could have entitled plaintiff to relief.

While the Emergency Exception's directives seem simple enough, as highlighted in the foregoing caselaw, it is important to comply with both obligations set forth in the Public Works Statute when facing an emergency public works project – (1) invite bids or quotes from at least two persons known to deal in the work, and (2)

reflect this information and the declaration of emergency in the meeting minutes.

If you have any questions about the Emergency Exception, or have questions concerning other provisions of the Public Works Statute, please contact **Christopher W. Bloomer**.

Disclaimer. The contents of this article should not be construed as legal advice or a legal opinion on any specific facts or circumstances. The contents are intended for general informational purposes only, and you are urged to consult with counsel concerning your situation and specific legal questions you may have.

[1] The “board” means the board or officer of a political subdivision or an agency having the power to award contracts for public work. Ind. Code § 36-1-12-1.2.