

**TRANSPORTATION DEPARTMENT[761]**

**Notice of Intended Action**

**Proposing rulemaking related to quotation process for governmental entities for public improvement for vertical infrastructure and providing an opportunity for public comment**

The Transportation Department hereby proposes to rescind Chapter 180, “Quotation Process for Governmental Entities for Public Improvement for Vertical Infrastructure,” Iowa Administrative Code, and to adopt a new chapter with the same title.

*Legal Authority for Rulemaking*

This rulemaking is proposed under the authority provided in Iowa Code sections 307.12(1)“j” and 314.1A.

*State or Federal Law Implemented*

This rulemaking implements, in whole or in part, Iowa Code sections 26.2, 26.14, 314.1A, 314.1B, 573.2 and 573.28.

*Purpose and Summary*

This rulemaking proposes to repromulgate Chapter 180 in compliance with Executive Order 10. Proposed Chapter 180 establishes the process by which governmental entities are to obtain and evaluate competitive quotations relating to public improvement projects for vertical infrastructure. The intended benefit is to ensure competition and equal opportunity through a standardized process and to keep vendors accountable by permitting retained funds.

*Regulatory Analysis*

A Regulatory Analysis for this rulemaking was published in the Iowa Administrative Bulletin on September 18, 2024. A public hearing was held on the following date(s):

- October 11, 2024

The Department received no comments.

*Fiscal Impact*

This rulemaking has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rulemaking, no impact on jobs has been found.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 761—Chapter 11.

*Public Comment*

Any interested person may submit written comments concerning this proposed rulemaking, which must be received by the Department no later than 4:30 p.m. on January 8, 2025. Comments should be directed to:

Tracy George  
Department of Transportation  
DOT Rules Administrator, Government and Community Relations

800 Lincoln Way  
Ames, Iowa 50010  
Email: [tracy.george@iowadot.us](mailto:tracy.george@iowadot.us)

### *Public Hearing*

Public hearings at which persons may present their views orally will be held as follows:

January 8, 2025 9 to 9:30 a.m.	<a href="#">Microsoft Teams link</a> Or dial: 515.817.6093 Conference ID: 260 760 222
January 8, 2025 1 to 1:30 p.m.	<a href="#">Microsoft Teams link</a> Or dial: 515.817.6093 Conference ID: 952 817 462

Persons who wish to make oral comments at a public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking.

Any persons who intend to attend a public hearing and have special requirements, such as those related to hearing impairments, should contact Tracy George and advise of specific needs.

### *Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind 761—Chapter 180 and adopt the following **new** chapter in lieu thereof:

## CHAPTER 180 QUOTATION PROCESS FOR GOVERNMENTAL ENTITIES FOR PUBLIC IMPROVEMENT FOR VERTICAL INFRASTRUCTURE

### **761—180.1(26,314) Purpose and contact information.**

**180.1(1)** The purpose of these rules is to prescribe the manner by which governmental entities are to administer competitive quotations for contracts pertaining to a public improvement for vertical infrastructure in accordance with Iowa Code section 26.14.

**180.1(2)** Questions regarding this chapter may be directed to the Resources and Acquisitions Bureau, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010; telephone 515.239.1170.

### **761—180.2(26,314) Definitions.**

*“Estimated total cost”* means the same as defined in Iowa Code section 26.2.

*“Governmental entity”* means the same as defined in Iowa Code section 26.2.

*“Public improvement for vertical infrastructure”* is a “public improvement” as defined in Iowa Code section 26.2(3)“a” and “b” but excludes those improvements in Iowa Code section 26.2(3)“b”(1) through 26.2(3)“b”(6).

*“Responsible quotation”* means a quotation submitted by a contractor who is capable of performing the work. To be considered responsible, the contractor must possess the necessary financial and technical capability to perform the work as well as the ability to complete the work as demonstrated by past performance or other appropriate considerations.

“*Responsive quotation*” means a quotation in which the contractor agrees to do everything required by the governmental entity’s solicitation of quotations and by the plans and specifications and other related documents without any conditions, qualifications or exclusions.

**761—180.3(314,573) Solicitation of quotations.**

**180.3(1)** A governmental entity is to solicit competitive quotations for a public improvement for vertical infrastructure when the estimated total cost of the public improvement for vertical infrastructure exceeds the competitive quotation threshold established in Iowa Code section 26.14, as adjusted pursuant to Iowa Code section 314.1B, but is less than the competitive bid threshold established in Iowa Code section 26.3, as adjusted pursuant to Iowa Code section 314.1B. The adjusted thresholds are published on the department’s website at [www.iowadot.gov](http://www.iowadot.gov).

**180.3(2)** The governmental entity is to make a good-faith effort to obtain quotations for the work from at least two contractors regularly engaged in such work prior to letting a contract. Quotations are to be obtained by means of either an oral or a written solicitation directed to not less than two contractors.

**180.3(3)** Each solicitation is to include a description of the work to be performed, and plans and specifications for the work prepared by an architect or engineer if required by Iowa Code chapter 542B or 544A (additional guidelines can be found in 193B—Chapter 5 or rule 193C—1.5(542B)). In its solicitation, the governmental entity is to advise each contractor that it has an opportunity to inspect the work site. Each contractor requesting to inspect the work site is to be provided an equal and adequate opportunity to do so.

**180.3(4)** Additional information deemed pertinent by the governmental entity, or requested by a contractor, may be provided by the governmental entity if the same information is provided to all contractors from which quotations are solicited. If the information is provided in written form to a contractor, it is to be provided in the same form to all contractors from which quotations are solicited.

**180.3(5)** In its solicitation, the governmental entity is to:

*a.* Specify the required form and content of quotations (more information can be found in rule 761—180.5(314)).

*b.* Request quotations to be filed by a particular time, at a particular location and with a particular office or representative of the governmental entity.

*c.* Establish the acceptable method(s) for delivery of quotations. The governmental entity may specify any or all of the following methods of delivery: mail, electronic mail, or delivery in-hand.

**180.3(6)** In accordance with Iowa Code section 573.2, the governmental entity is to utilize the solicitation to inform quoting contractors that the awarded contractor is to provide a performance and payment bond to secure the performance and timely completion of the work and to secure the payment of subcontractors and suppliers.

**180.3(7)** In its solicitation, the governmental entity may stipulate that each quoting contractor:

*a.* Provide along with its quotation a bid bond, or other bid security or evidence of its responsibility, to ensure that it will enter into a contract to perform the work and that it will provide the necessary performance and payment bond.

*b.* Commit to the execution of a contract for the work.

*c.* Commit to commencement and completion dates for the work as directed by the governmental entity.

*d.* File evidence of insurance, as specified by the governmental entity, with its quotation, or commit to filing such evidence of insurance upon award of the contract to perform the work.

**180.3(8)** In its solicitation, the governmental entity may provide that it will issue special sales tax exemption certificates to contractors and subcontractors pursuant to Iowa Code section 423.3(80).

**761—180.4(314) Submission of competitive quotation by governmental entity.** The governmental entity may itself file a competitive quotation to perform the work. The governmental entity’s quotation is to be filed in the same manner as quotations are to be filed by contractors except as provided in subrule 180.5(3).

**761—180.5(314) Form and content of competitive quotations.**

**180.5(1)** A competitive quotation filed by a contractor or by the governmental entity is to be in writing and include the total price for labor, equipment, materials and supplies necessary to perform the work. A contractor may include in its quotation or in individual quotation items a breakdown of costs for labor, materials, equipment and supplies. Competitive quotations filed by contractors are to include all other information, documentation or commitments requested by the governmental entity in its solicitation of quotations.

**180.5(2)** If the governmental entity in its solicitation indicates its intention to file a competing quotation, contractors are to also separately identify in their quotations the premium cost for the necessary performance and payment bond and an estimate of the sales and fuel taxes they will incur in performing the work. However, if in its solicitation the governmental entity provides for the issuance of sales tax exemption certificates to the contractor and subcontractors performing the work, quoting contractors are not to include or separately identify estimated sales tax in their quotations.

**180.5(3)** A quotation submitted by a governmental entity need not include the information, documents or commitments in subrule 180.3(7). A performance and payment bond is not mandatory for a governmental entity.

**180.5(4)** The governmental entity may insist that quotations from contractors be submitted on a form prescribed by the governmental entity, provided the form complies with these rules.

**761—180.6(314) Evaluation of competitive quotations.**

**180.6(1)** If a quoting contractor does not file a quotation in the form specified by the governmental entity, or does not provide all information or documentation or make all commitments requested by the governmental entity, or does not sign the quotation if required by the governmental entity, the quotation will be determined to be nonresponsive and be rejected by the governmental entity.

**180.6(2)** If the governmental entity submits a quotation to perform the work, paragraphs 180.6(2) “a” through “c” are applicable. If the governmental entity does not submit a quotation, these paragraphs do not apply.

*a.* Because the governmental entity is not required to pay sales tax or fuel tax or to submit a performance and payment bond in connection with work performed by governmental employees using governmental equipment, each contractor’s total quotation is to be adjusted to deduct the amounts identified in the quotation for estimated sales and fuel taxes and the bond premium. The amount of each contractor’s adjusted quotation is to then be compared to the amount of the quotation submitted by the governmental entity for the purpose of determining if the governmental entity’s quotation is the lowest responsive, responsible quotation.

*b.* If in its solicitation the governmental entity provides for the issuance of sales tax exemption certificates to the contractor and subcontractors performing the work, quoting contractors are not to include or separately identify estimated sales tax in their quotations, and the governmental entity is not to deduct estimated sales tax from the contractors’ quotations for the purpose of determining if the governmental entity’s quotation is the lowest responsive, responsible quotation.

*c.* The governmental entity may request that the contractor to which the work is awarded provide documentation of the premium cost incurred by it for the performance and payment bond and of all sales and fuel taxes paid by it and its subcontractors in connection with the work. The governmental entity may decline to pay the amounts identified by the contractor in its quotation for the bond premium and estimated sales and fuel taxes if these amounts are not properly documented as having been paid.

**761—180.7(314) Award of contract and subsequent procedures.**

**180.7(1)** Except as provided in subrule 180.7(3), the governmental entity is to award the contract for the work to the contractor submitting the lowest responsive, responsible quotation, subject to Iowa Code section 26.9, or the governmental entity may reject all of the quotations. A contract is to be considered awarded when the governmental entity unconditionally accepts and approves the lowest responsive, responsible quotation. The governing body of the governmental entity is to record the approved quotation in its meeting minutes.

**180.7(2)** The governing body of a governmental entity may delegate the authority to award and execute contracts, or to award contracts and authorize the work to proceed, to an officer or employee of the governmental entity, provided that an award approved outside a meeting of the governing body is to be reported in the meeting minutes of the next regular meeting of the governing body.

**180.7(3)** If no quotations are received from contractors to perform the work or if the governmental entity's estimated cost to do the work with its employees, as reflected in its quotation, is less than the lowest responsive, responsible quotation received from a contractor, the governmental entity may authorize its employees to perform the work.

**180.7(4)** Upon the submission of the necessary performance and payment bond by the contractor to which the contract has been awarded and upon approval of the bond by the governmental entity, the governmental entity is to execute a contract to perform the work or shall authorize the contractor to proceed with the work.

**180.7(5)** Upon execution of the contract by the contractor and the governmental entity or upon authorization to proceed by the governmental entity and acknowledgment thereof by the contractor, the governmental entity releases the bid bonds or other quotation security submitted with the quotations received.

**180.7(6)** If the governmental entity is a city and the cost of the work will exceed the amount provided for in Iowa Code section 380.4, the governing body is to pass a resolution approving the expenditure.

**761—180.8(314,573) Retained funds.** In addition to requiring the contractor to submit a performance and payment bond, the governmental entity also retains funds from each payment to the contractor for the benefit of subcontractors and suppliers, and applies or releases such funds, in accordance with Iowa Code chapter 573.

These rules are intended to implement Iowa Code sections 26.2, 26.14, 314.1A, 314.1B, 573.2, and 573.28.