Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 561—Chapter 8
"Contracts for Services and Public Improvements"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 17A.3, 455A, 456A and 573

State or federal law(s) implemented by the rulemaking: Iowa Code section 17A.3 and chapters 455A, 456A and 573

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows. Please contact Kelli Book at kelli.book@dnr.iowa.gov for sign-in information.

September 24, 2024 2 p.m.	Via video/conference call

Public Comment

Any interested person may submit written comments concerning this Regulatory Analysis. Written comments in response to this Regulatory Analysis must be received by the Department of Natural Resources no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

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Purpose and Summary

Proposed Chapter 8 sets forth the Department's process for soliciting and awarding contracts for services, contracts for public improvements, and contracts for sale of timber. Specifically, the proposed new chapter reduces and consolidates these long-standing rules consistent with Executive Order 10 (January 10, 2023). This is accomplished by rescinding outdated provisions and by removing those redundant to statute. The proposed new chapter sets out how the Department will interact with other parties to enter into contracts and to accomplish the contract's scope of work and specific tasks.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

- Classes of persons that will bear the costs of the proposed rulemaking:

There are no costs to the public associated with the proposed rule. To the extent there are compliance costs, these would be borne by the agency via staff time.

- Classes of persons that will benefit from the proposed rulemaking:

The contracts set out how the Department will interact with the other party or parties to enter into contracts and to accomplish the tasks set out in the contracts. The contracts allow for clarity of expectations on both sides. The contracts facilitate the Department's ability to conduct its work. The contracts also create a public record of the Department's agreements for work to be performed by contractors.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

The proposed rulemaking does not have an economic impact or cost associated with it.

- Qualitative description of impact:

The proposed chapter was made easier to read and understand by removing unnecessary provisions and by updating to current law and policy regarding contracting with the Department. Additionally, provisions were deleted that were duplicative of statute. The proposed chapter has been streamlined as much as possible to provide a statement of the conduct and business operations of the Department contracting process more succinctly and clearly.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

The proposed chapter does not have any direct costs to the Department or any other agency.

- Anticipated effect on state revenues:

The proposed chapter does not have any effect on state revenue.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

There are no costs associated with the proposed chapter. However, the benefit of the proposed chapter is to provide a succinct overview of the Department's contracting processes.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

There are no costs associated with this proposed chapter, except costs to the Department in personnel time. However, the changes in the proposed chapter that make the process more succinct will require less personnel time than previously spent on the contracting process.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

None.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

Not applicable.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

The proposed rule supports the Department's use of Iowa statutes and rules regarding Department contracting with small businesses.

Text of Proposed Rulemaking

ITEM 1. Rescind 561—Chapter 8 and adopt the following **new** chapter in lieu thereof:

CHAPTER 8
CONTRACTS FOR SERVICES AND PUBLIC IMPROVEMENTS

561—8.1(8A) Contract policy. All service and public improvements contracts with the department shall be awarded on a competitive basis to the maximum practical extent. All contracts shall be in written form.

561—8.2(8A,26,455B,573) Contracts for public improvements.

8.2(1) *Definition.* As used in these rules, "public improvement" means public improvement as defined in Iowa Code section 26.2. Iowa Code section 73.3, relating to reciprocal resident bidder preference, shall apply to department contracts for public improvements.

8.2(2) *Bidding process.* The department shall use the bidding processes identified in Iowa Code chapter 26.

8.2(3) *Approval and award of contracts.* All contracts for public improvements in excess of $100,000 shall be approved by the director and the appropriate commission.

8.2(4) *Change orders and extra work orders.* All change orders and extra work orders shall be approved by the director before the work is performed, except in emergency situations. In addition, any order or accumulation of orders that increases the amount of the original contract by more than $50,000 or 10 percent of the original contract, whichever is greater, shall also be approved by the appropriate commission.

8.2(5) *Interest on retained funds.*

a. Scope. This rule implements Iowa Code section 573.12(3) regarding payment to a contractor of interest earned on retained funds. This rule does not address payment of interest under Iowa Code section 573.14.

b. General requirements.

(1) Interest shall be paid pursuant to Iowa Code section 573.12.

(2) Interest shall be paid on retained funds of a contract only if the accrued interest on those funds is at least $25. This dollar threshold reflects the cost to the department of processing an interest payment on retained funds in contracts for the construction of public improvements.

(3) Interest shall not be paid on retained funds of a contract declared in default.

c. Procedures.

(1) Interest shall begin to accrue on retained funds on the date the first progress payment is issued. An interest rate shall be established on this date in accordance with Iowa Code section 12C.6. This interest rate shall apply for the duration of the contract.

(2) In general, interest shall continue to accrue on retained funds until the date final payment is approved by the chief engineer. Final payment is payment of retained funds less assessed liquidated damages, if applicable.

(3) Notwithstanding paragraph 8.2(5)*"b,"* interest shall cease to accrue on retained funds:

1. Upon the expiration of 60 days following field acceptance of a project if the contractor has failed to submit to the department the documentation necessary for final payment, as specified in the contract provision.

2. Upon the court obtaining jurisdiction of the retained funds pursuant to Iowa Code section 573.16. Retained funds turned over to the court will include the interest accrued on those funds to the date the action was filed, if the interest has not been paid to the contractor.

561—8.3(8A,455A) Contracts for services.

8.3(1) *Services defined.* The term "services" shall be as defined in 11—118.3(8A), adopted as required by Iowa Code section 8A.311.

8.3(2) *Purchasing standards for service contracts.* The department shall comply with the provisions of 11—Chapters 117 through 121 (as of June 25, 2024).

8.3(3) *Approval of service contracts.* All contracts for services in excess of $50,000 shall be approved by the director and the appropriate commission.

8.3(4) *Service contract amendments and change orders.* All service contract amendments and change orders that increase the amount of the original contract by more than $50,000 or 10 percent of the original contract, whichever is greater, shall also be approved by the appropriate commission.

561—8.4(456A) Contracts for sale of timber. When the total cost of a public sale of timber exceeds the sum of $5,000 as estimated by the department, the department shall advertise by publishing a notice by email or through mail, and by posting on the state of Iowa bid opportunities website. The notices shall be not less than 15 days prior to the date set for receiving bids. The notice to bidders (invitation for bids) shall conform as nearly as possible to the formal competitive process used by the department. All timber buyers and timber sales agreements must comply in all respects with Iowa Code section 456A.36.

These rules are intended to implement Iowa Code sections 455A.4, 456A.20(2), and 573.12(3).