

# PUBLIC CONSTRUCTION BIDDING

## Footnotes

See also chapter 573

Chapter is effective January 1, 2007, and applies to public improvement contracts entered into on or after that date; 2006 Acts, ch 1017, §42, 43

### 26.1 Short title.

This chapter shall be known and may be cited as the "*Iowa Construction Bidding Procedures Act*".

2006 Acts, ch 1017, §1, 42, 43

### 26.2 Definitions.

As used in this chapter, unless the context clearly indicates otherwise:

1. "*Estimated total cost of a public improvement*" or "*estimated total cost*" means the estimated total cost to the governmental entity to construct a public improvement, including cost of labor, materials, equipment, and supplies, but excluding the cost of architectural or engineering design services and inspection.
2. "*Governmental entity*" means the state, political subdivisions of the state, public school corporations, and all officers, boards, or commissions empowered by law to enter into contracts for the construction of public improvements, excluding the state board of regents and the state department of transportation.
3. "*Public improvement*" means a building or construction work which is constructed under the control of a governmental entity and is paid for in whole or in part with funds of the governmental entity, including a building or improvement constructed or operated jointly with any other public or private agency, but excluding urban renewal demolition and low-rent housing projects, industrial aid projects authorized under chapter 419, emergency work or repair or maintenance work performed by employees of a governmental entity, and excluding a highway, bridge, or culvert project, and excluding construction or repair or maintenance work performed for a city utility under chapter 388 by its employees or performed for a rural water district under chapter 357A by its employees.
4. "*Repair or maintenance work*" means the preservation of a road, street, bridge, culvert, storm sewer, sanitary sewer, or other public facility so that it remains in sound or proper condition, including minor replacements and additions as necessary to restore the public facility to its original condition with the same design.

2006 Acts, ch 1017, §2, 42, 43

### 26.3 Competitive bids for public improvement contracts.

1. If the estimated total cost of a public improvement exceeds the competitive bid threshold of one hundred thousand dollars, or the adjusted competitive bid threshold established in section 314.1B, the governmental entity shall advertise for sealed bids for the proposed public improvement by publishing a notice to bidders as provided in section 362.3. Additionally, the governmental entity may publish a notice in a relevant contractor organization publication and a relevant contractor plan room service with statewide circulation, provided that

a notice is posted on a website sponsored by either a governmental entity or a statewide association that represents the governmental entity. The notice to bidders shall be published more than twenty days but not more than forty-five days before the date for filing bids.

2. A governmental entity shall have an engineer licensed under chapter 542B or an architect registered under chapter 544A prepare plans and specifications, and calculate the estimated total cost of a proposed public improvement.

3. Sections 26.4 through 26.13 apply to all competitive bidding pursuant to this section.

2006 Acts, ch 1017, §3, 42, 43

#### **26.4 Exemptions from competitive bids and quotations.**

Architectural or engineering design services procured for a public improvement are not subject to sections 26.3 and 26.14.

2006 Acts, ch 1017, §4, 42, 43

#### **26.5 Prohibited contracts.**

If the estimated total cost of a public improvement exceeds the competitive bid threshold of one hundred thousand dollars, or as established in section 314.1B, a governmental entity shall not divide the public improvement project into separate parts, regardless of intent, if a resulting part of the public improvement project is not let in accordance with section 26.3.

2006 Acts, ch 1017, §5, 42, 43

#### **26.6 Donated funds.**

If private funds are offered to a governmental entity for a building or an improvement to be used by the public and such funds are conditioned upon private construction of the building or improvement, this chapter shall not apply to the project if the governmental entity does not contribute any funds to such construction.

2006 Acts, ch 1017, §6, 42, 43

#### **26.7 Notice to bidders.**

1. The notice to bidders shall adequately notify a potential bidder of a proposed bid and shall include the following items:

- a.* The time and place for filing sealed proposals.
- b.* The time and place sealed proposals will be opened and considered on behalf of the governmental entity.
- c.* The general nature of the public improvement on which bids are requested.
- d.* In general terms, when the work must be commenced and completed.
- e.* That each bidder shall accompany the bid with a bid security as defined in section 26.8 and as specified by the governmental entity.
- f.* Any further information which the governmental entity deems pertinent.

2. The notice to bidders may provide that bids will be received for the furnishing of all labor and materials and furnishing or installing equipment under one contract, or for parts thereof in separate sections.

3. On public improvements to be financed wholly or partially by special assessments against benefited property, the governmental entity, in the notice to bidders, may request aggregate bids for all projects included in any resolution of necessity, notwithstanding variations in the sizes of the improvements and notwithstanding that some parts of the improvements are assessable and some nonassessable, and may award the contract to the lowest responsive, responsible bidder submitting the lowest aggregate bid.

2006 Acts, ch 1017, §7, 42, 43

### **26.8 Bid security.**

1. Each bidder shall accompany its bid with a bid security as security that the successful bidder will enter into a contract for the work bid upon and will furnish after the award of contract a corporate surety bond, acceptable to the governmental entity, for the faithful performance of the contract, in an amount equal to one hundred percent of the amount of the contract. The bid security shall be in an amount fixed by the governmental entity, and shall be in the form of a cashier's check or certified check drawn on a state-chartered or federally chartered bank, or a certified share draft drawn on a state-chartered or federally chartered credit union, or the governmental entity may provide for a bidder's bond with corporate surety satisfactory to the governmental entity. The bid bond shall contain no conditions except as provided in this section.

2. The governmental entity shall fix the amount of bid security prior to ordering publication of the notice to bidders and such amount must equal at least five percent, but shall not exceed ten percent, of either the estimated total contract cost of the public improvement or the amount of each bid.

2006 Acts, ch 1017, §8, 42, 43

### **26.9 Award of contract.**

The contract for the public improvement must be awarded to the lowest responsive, responsible bidder. However, contracts relating to public utilities or extensions or improvements thereof, as described in sections 384.80 through 384.94, may be awarded by the city as it deems to be in the best interests of the city. This section shall not be construed to prohibit a governmental entity in the award of a contract for a public improvement or a governing body of a city utility from providing, in the award of a contract for a public improvement, an enhancement of payments upon early completion of the public improvement if the availability of the enhancement payments is included in the notice to bidders, the enhancement payments are competitively neutral to potential bidders, the enhancement payments are considered as a separate item in the public hearing on the award of contract, and the total value of the enhancement payments does not exceed ten percent of the value of the contract.

2006 Acts, ch 1017, §9, 42, 43

### **26.10 Opening and considering bids.**

The governmental entity shall open, announce the amount of the bids, and file all proposals received, at the time and place specified in the notice to bidders. The governmental entity may, by resolution, award the contract for the public improvement to the bidder submitting the lowest responsive, responsible bid, determined as provided in section 26.9, or the governmental entity may reject all bids received, fix a new date for receiving bids, and order publication of a new notice to bidders. The governmental entity shall retain the bid security furnished by the successful bidder until the approved contract form has been executed, and a bond filed by the bidder guaranteeing the performance of the contract, and the contract and bond, have been

approved by the governmental entity. The provisions of chapter 573, where applicable, apply to contracts awarded under this chapter.

The governmental entity shall promptly return the checks or bidder's bonds of unsuccessful bidders to the bidders as soon as the successful bidder is determined or within thirty days, whichever is sooner.

2006 Acts, ch 1017, §10, 42, 43

### **26.11 Delegation of authority.**

When bids are required for any public improvement, the governmental entity may delegate, by motion, resolution, or policy to the city manager, clerk, engineer, or other public officer, as applicable, the duty of receiving and opening bids and announcing the results. The officer shall report the results of the bidding with the officer's recommendations to the next meeting of the governmental entity's governing body.

2006 Acts, ch 1017, §11, 42, 43

### **26.12 When hearing necessary.**

If the estimated total cost of a public improvement exceeds the competitive bid threshold in section 26.3, or as adjusted in section 314.1B, the governmental entity shall not enter into a contract for the public improvement until the governmental entity has held a public hearing and has approved the proposed plans, specifications, and form of contract, and estimated total cost of the public improvement. Notice of the hearing must be published as provided in section 362.3. At the hearing, any interested person may appear and file objections to the proposed plans, specifications, contract, or estimated cost of the public improvement. After hearing objections, the governmental entity shall by resolution enter its decision on the plans, specifications, contract, and estimated cost. This section does not apply to the state.

2006 Acts, ch 1017, §12, 42, 43

### **26.13 Early release of retained funds.**

Payments made by a governmental entity or the state department of transportation for the construction of public improvements and highway, bridge, or culvert projects shall be made in accordance with the provisions of chapter 573, except as provided in this section. For purposes of this section, "*department*" means the state department of transportation.

1. At any time after all or any part of the work on the public improvement or highway, bridge, or culvert project is substantially completed, the contractor may request the release of all or part of the retained funds owed. The request shall be accompanied by a sworn statement of the contractor that, ten calendar days prior to filing the request, notice was given as required by subsection 7 to all known subcontractors, sub-subcontractors, and suppliers.
2. Except as provided under subsection 3, upon receipt of the request, the governmental entity or the department shall release all or part of the retained funds. Retained funds that are approved as payable shall be paid at the time of the next monthly payment or within thirty days, whichever is sooner. If partial retained funds are released pursuant to a contractor's request, no retained funds shall be subsequently held based on that portion of the work. If within thirty days of when payment becomes due the governmental entity or the department does not release the retained funds due, interest shall accrue on the amount of retained funds at the rate of interest that is calculated as the prime rate plus one percent per year as of the day interest begins to accrue until the amount is paid.
3. If at the time of the request for the release of the retained funds labor or materials are yet to be provided,

an amount equal to two hundred percent of the value of the labor or materials yet to be provided, as determined by the governmental entity's or the department's authorized contract representative, may be withheld until such labor or materials are provided. For purposes of this section, "*authorized contract representative*" means the person chosen by the governmental entity or the department to represent its interests or the person designated in the contract as the party representing the governmental entity's or the department's interest regarding administration and oversight of the project.

4. An itemization of the labor or materials yet to be provided, or the reason that the request for release of retained funds is denied, shall be provided to the contractor in writing within thirty calendar days of the receipt of the request for release of retained funds.

5. For purposes of this section, "*substantially completed*" means the first date on which any of the following occurs:

a. Completion of the public improvement project or the highway, bridge, or culvert project or when the work on the public improvement or the highway, bridge, or culvert project has been substantially completed in general accordance with the terms and provisions of the contract.

b. The work on the public improvement or on the designated portion is substantially completed in general accordance with the terms of the contract so that the governmental entity or the department can occupy or utilize the public improvement or designated portion of the public improvement for its intended purpose. This paragraph shall not apply to highway, bridge, or culvert projects.

c. The public improvement project or the highway, bridge, or culvert project is certified as having been substantially completed by either of the following:

(1) The architect or engineer authorized to make such certification.

(2) The authorized contract representative.

d. The governmental entity or the department is occupying or utilizing the public improvement for its intended purpose. This paragraph shall not apply to highway, bridge, or culvert projects.

6. The contractor shall release retained funds to the subcontractor or subcontractors in the same manner as retained funds are released to the contractor by the governmental entity or the department. Each subcontractor shall pass through to each lower tier subcontractor all retained fund payments from the contractor.

7. Prior to applying for release of retained funds, the contractor shall send a notice to all known subcontractors, sub-subcontractors, and suppliers that provided labor or materials for the public improvement project or the highway, bridge, or culvert project. The notice shall be substantially similar to the following: "NOTICE OF CONTRACTOR'S REQUEST FOR EARLY RELEASE OF RETAINED FUNDS

You are hereby notified that [name of contractor] will be requesting an early release of funds on a public improvement project or a highway, bridge, or culvert project designated as [name of project] for which you have or may have provided labor or materials. The request will be made pursuant to Iowa Code section 26.13. The request may be filed with the [name of governmental entity or department] after ten calendar days from the date of this notice. The purpose of the request is to have [name of governmental entity or department] release and pay funds for all work that has been performed and charged to [name of governmental entity or department] as of the date of this notice. This notice is provided in accordance with Iowa Code section 26.13."

## **26.14 Competitive quotations for public improvement contracts.**

1. Competitive quotations shall be required for a public improvement having an estimated total cost that exceeds the amount provided in this section, but is less than the competitive bid threshold established in section 26.3.
2. Unless the threshold amount is adjusted pursuant to section 314.1B, the competitive quotation threshold shall be as follows:
  - a. Sixty-seven thousand dollars for a county, including a county hospital.
  - b. Fifty-one thousand dollars for a city having a population of fifty thousand or more.
  - c. Fifty-one thousand dollars for a school district having a population of fifty thousand or more.
  - d. Fifty-one thousand dollars for an aviation authority created within a city having a population of fifty thousand or more.
  - e. Thirty-six thousand dollars for a city having a population of less than fifty thousand, for a school district having a population of less than fifty thousand, and for any other governmental entity.
  - f. The threshold amount applied to a city applies to a city hospital.
3.
  - a. When a competitive quotation is required, the governmental entity shall 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 may be obtained from contractors after the governmental entity provides a description of the work to be performed, including the plans and specifications prepared by an architect or engineer, if required under chapter 542B or 544A, and an opportunity to inspect the work site. The contractor shall include in the quotation the price for labor, materials, equipment, and supplies required to perform the work. If the work can be performed by an employee or employees of the governmental entity, the governmental entity may file a quotation for the work to be performed in the same manner as a contractor.
  - b. The governmental entity shall designate the time, place, and manner for filing quotations, which may be received by mail, facsimile, or electronic mail. The governmental entity shall record the approved quotation in meeting minutes. Quotations approved outside a meeting of the governing body of a governmental entity shall be included in the minutes of the next meeting of the governing body. The governmental entity shall award the contract to the contractor submitting the lowest responsive, responsible quotation subject to section 26.9, or the governmental entity may reject all of the quotations.
  - c. If a public improvement may be performed by an employee of the governmental entity, the amount of estimated sales and fuel tax which a contractor identifies in its quotation shall be deducted from the contractor's price for determining the lowest responsible bidder. If no quotations are received to perform the work, or if the governmental entity's estimated cost to do the work with its employee is less than the lowest responsive, responsible quotation received, the governmental entity may authorize its employee or employees to perform the work.

2006 Acts, ch 1017, §14, 42, 43

## **26.15 Structure demolition project.**

A governmental entity may enter into annual contracts with multiple contractors for structure demolition projects, with each project having a total estimated cost of one hundred thousand dollars or less, or each project having a total estimated cost equal to or less than the competitive bid threshold as established in

section 314.1B. The governmental entity shall solicit contractors by publishing a notice as provided in section 362.3. A contractor is eligible to perform structure demolition work for the governmental entity after the contractor executes an annual demolition contract in a form satisfactory to the governmental entity, including a bond and insurance. For the twelve-month period following execution of the contract or contracts, the governmental entity may obtain competitive proposals from each eligible contractor as necessary for the demolition of structures. The contractor submitting the lowest responsible proposal shall enter into a contract addendum to perform the work.

2006 Acts, ch 1017, §15, 42, 43