

CHAPTER 73A

PUBLIC CONTRACTS AND BONDS

[P]

This chapter not enacted as a part of this title; transferred from chapter 23 in Code 1993

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73A.1 Definitions.

1. “*Appeal board*” as used in this chapter means the state appeal board, composed of the auditor of state, treasurer of state, and the director of the department of management.

2. “*Municipality*” as used in this chapter means township or the state fair board.

3. “*Public improvement*” as used in this chapter means a building or other construction work to be paid for in whole or in part by the use of funds of any municipality.

[C24, 27, 31, 35, 39, §351; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §23.1; 81 Acts, ch 117, §1001]

83 Acts, ch 96, §157, 159; 85 Acts, ch 195, §5; 86 Acts, ch 1245, §311

C93, §73A.1

2005 Acts, ch 179, §148; 2006 Acts, ch 1017, §19, 42, 43

[P] State appeal board, §24.26

73A.2 Notice of hearing.

Before any municipality shall enter into any contract for any public improvement to cost in excess of the competitive bid threshold in section 26.3, or as established in section 314.1B, the governing body proposing to make the contract shall adopt proposed plans and specifications and proposed form of contract, fix a time and place for hearing at the municipality affected or other nearby convenient place, and give notice by publication in at least one newspaper of general circulation in the municipality at least ten days before the hearing.

[C24, 27, 31, 35, 39, §352; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §23.2; 81 Acts, ch 28, §1]

C93, §73A.2

2006 Acts, ch 1017, §20, 42, 43

73A.3 Objections — hearing — decision.

At such hearing, any person interested may appear and file objections to the proposed plans, specifications or contract for, or cost of such improvement. The governing body of the municipality proposing to enter into such contract shall hear said objections and any evidence for or against the same, and forthwith enter of record its decision thereon.

[C24, 27, 31, 35, 39, §353; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §23.3]

C93, §73A.3

73A.4 Appeal.

Interested objectors in any municipality equal in number to one percent of those voting for the office of president of the United States or governor, as the case may be, at the last general election in said municipality, but in no event less than twenty-five, may appeal from

the decision to the appeal board by serving notice thereof on the clerk or secretary of such municipality within ten days after such decision is entered of record.

The notice shall be in writing and shall set forth the objections to such decision and the grounds for such objections; provided that at least three of the persons signing said notice shall have appeared at the hearing and made objection, either general or specific, to the adoption of the proposed plans, specifications or contract for, or cost of such improvement.

[C24, 27, 31, 35, 39, §354; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §23.4]

C93, §73A.4

73A.5 Information certified to appeal board.

In case an appeal is taken, such body shall forthwith certify and submit to the appeal board for examination and review the following:

1. A copy of the plans and specifications for such improvement.
2. A copy of the proposed contract.
3. An estimate of the cost of such improvement.
4. A report of the kind and amount of security proposed to be given for the faithful performance of the contract and the cost of such security.
5. A copy of the objections, if any, which have been urged by any taxpayer against the proposed plans, specifications or contract, or the cost of such improvement.
6. A separate estimate of the architect's or engineer's fees and cost of supervision.
7. A statement of the taxable value of the property within the municipality proposing to make such improvement.
8. A statement of the several rates of levy of taxes in such municipality for each fund.
9. A detailed statement of the bonded and other indebtedness of such municipality.
10. In case of state institutions and state fair board, the last three requirements may be omitted.

[C24, 27, 31, 35, 39, §355; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §23.5]

C93, §73A.5

73A.6 Notice of hearing on appeal.

The appeal board shall forthwith fix a time and place in the municipality or nearby convenient place for hearing said appeal, and notice of such hearing shall be given by certified mail to the executive officer of the municipality, and to the first five persons whose names appear upon the notice of appeal, at least ten days before the date fixed for such hearing.

The hearing on contracts for the state institutions and state fair board shall be at the seat of government.

[C24, 27, 31, 35, 39, §356; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §23.6]

C93, §73A.6

73A.7 Hearing and decision.

At such hearing, the appellants and any other interested person may appear and be heard. The appeal board shall examine, with the aid of competent assistants, the entire record, and if it shall find that the form of contract is suitable for the improvement proposed, that the improvement and the method of providing for payment therefor is for the best interests of the municipality and the taxpayers therein, and that such improvements can be made within the estimates therefor, it shall approve the same. Otherwise, it may reject the same as a whole or, it shall recommend such modifications of the plans, specifications, or contract, as in its judgment shall be for the public benefit, and if such modifications are so made, it shall approve the same.

The appeal board shall certify its decision to the body proposing to enter into such contract unless it shall have rejected the same as a whole, whereupon the municipality shall advertise for bids and let the contract subject to the approval of the appeal board which shall at once render its final decision thereon and transmit the same to the municipality.

[C24, 27, 31, 35, 39, §357; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §23.7]

C93, §73A.7

73A.8 Enforcement of performance.

After any contract for any public improvement has been completed and any five persons interested request it, the appeal board shall examine into the matter as to whether or not the contract has been performed in accordance with its terms, and if on such investigation it finds that said contract has not been so performed, and so reports to the body letting such contract, it shall at once institute proceedings on the contractor's bond for the purpose of compelling compliance with the contract in all of its provisions.

[C24, 27, 31, 35, 39, §358; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §23.8]
C93, §73A.8

73A.9 Nonapproved contracts void.

If an appeal is taken, no contract for public improvements shall be valid unless the same is finally approved by the appeal board. In no case shall any municipality expend for any public improvement any sum in excess of five percent more than the contract price without the approval of the appeal board.

[C24, 27, 31, 35, 39, §359; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §23.9]
C93, §73A.9

73A.10 Witness fees — costs.

Witness fees and mileage for witnesses on hearing appeals shall be the same as in the district court; but objectors or appellants shall not be allowed witness fees or mileage. Costs of hearings and appeals shall be paid by the municipality.

[C24, 27, 31, 35, 39, §361; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §23.10]
C93, §73A.10
[P] Witness fees, §622.69

73A.11 Report on completion.

Upon the completion of the improvement the executive officer or governing board of the municipality shall file with the appeal board a verified report showing:

1. The location and character of the improvement.
2. The total contract price for the completed improvement.
3. The total actual cost of the completed improvement.
4. By whom, if anyone, the construction was supervised.
5. By whom final inspection was made.
6. Whether or not the improvement complies with its contract, plans, and specifications.
7. Any failure of the contractor to comply with the plans and specifications.

[C24, 27, 31, 35, 39, §362; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §23.11]
C93, §73A.11

73A.12 Issuance of bonds — notice.

Before any municipality shall institute proceedings for the issuance of any bonds or other evidence of indebtedness payable from taxation, excepting such bonds or other evidence of indebtedness as have been authorized by a vote of the people of such municipality, and except such bonds or obligations as it may be by law compelled to issue, a notice of such action, including a statement of the amount and purpose of said bonds or other evidence of indebtedness shall be published at least once in a newspaper of general circulation within such municipality at least ten days before the meeting at which it is proposed to issue such bonds.

[C24, 27, 31, 35, 39, §363; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §23.12]
C93, §73A.12

[P] Sixty percent vote required, §75.1

73A.13 Objections.

At any time before the date fixed for the issuance of such bonds or other evidence of indebtedness, interested objectors in any municipality equal in number to one percent of those voting for the office of president of the United States or governor, as the case may be, at the last general election in said municipality, but in no event less than twenty-five, may

file a petition in the office of the clerk or secretary of the municipality setting forth their objections thereto.

[C24, 27, 31, 35, 39, §364; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §23.13]
C93, §73A.13

73A.14 Notice of hearing.

Upon the filing of any such petition, the clerk or secretary of such municipality shall immediately certify a copy thereof, together with such other data as may be necessary in order to present the questions involved, to the appeal board, and upon receipt of such certificate, petition, and information, it shall fix a time and place for the hearing of such matter, which shall be not less than ten nor more than thirty days thereafter. Said hearing shall be held in the municipality in which it is proposed to issue such bonds or other evidence of indebtedness, or in some other nearby convenient place fixed by the appeal board. Notice of such hearing shall be given by certified mail to the executive officer of the municipality and to the five persons whose names first appear on the petition at least ten days before the date of such hearing.

[C24, 27, 31, 35, 39, §365; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §23.14]
C93, §73A.14

73A.15 Decision.

The appeal board shall determine the matters involved in such appeal. Its decision shall be certified to the executive officer of the municipality affected. Judicial review of the action of the appeal board may be sought in accordance with the terms of the Iowa administrative procedure Act, chapter 17A.

In case there is no appeal, the board of the municipality affected may issue such bonds or other evidence of indebtedness, if legally authorized so to do, in accordance with the proposition published, but in no greater amount.

In case of an appeal, the municipality may issue such bonds or other evidence of indebtedness in accordance with the decision of the appeal board.

[C24, 27, 31, 35, 39, §366; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §23.15]
C93, §73A.15
2003 Acts, ch 44, §114

73A.16 Bonds and taxes void.

Any bonds or other evidence of indebtedness issued contrary to the provisions of this chapter, and any tax levied or attempted to be levied for the payment of any such bonds or interest thereon, shall be null and void.

[C24, 27, 31, 35, 39, §367; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §23.16]
C93, §73A.16

73A.17 Unpaid revenue bonds — effect.

It shall be lawful for any municipality to issue revenue bonds, the principal and interest of which are to be paid solely from revenue derived from the operations of the project for which such bonds are issued, notwithstanding that there are other revenue bonds remaining unpaid which have not matured, provided payment of principal and interest of such other revenue bonds is not impaired thereby.

[C62, 66, 71, 73, 75, 77, 79, 81, §23.17]
C93, §73A.17

73A.18 When bids required — advertisement — deposit.

When the estimated total cost of construction, erection, demolition, alteration or repair of a public improvement exceeds the competitive bid threshold in section 26.3, or as established in section 314.1B, the municipality shall advertise for bids on the proposed improvement by two publications in a newspaper published in the county in which the work is to be done. The first advertisement for bids shall be not less than fifteen days prior to the date set for receiving bids. The municipality shall let the work to the lowest responsible bidder submitting a sealed

proposal. However, if in the judgment of the municipality bids received are not acceptable, all bids may be rejected and new bids requested. A bid shall be accompanied, in a separate envelope, by a deposit of money or a certified check or credit union certified share draft in an amount to be named in the advertisement for bids as security that the bidder will enter into a contract for the doing of the work. The municipality shall fix the bid security in an amount equal to at least five percent, but not more than ten percent of the estimated total cost of the work. The checks, share drafts or deposits of money of the unsuccessful bidders shall be returned as soon as the successful bidder is determined, and the check, share draft or deposit of money of the successful bidder shall be returned upon execution of the contract documents.

[C62, 66, 71, 73, 75, 77, 79, 81, S81, §23.18; 81 Acts, ch 28, §2]

84 Acts, ch 1055, §3

C93, §73A.18

2006 Acts, ch 1017, §21, 42, 43

73A.19 Sale of municipal bonds without hearing or contract.

Any other law to the contrary notwithstanding, any municipality may authorize, sell, issue and deliver its bonds without regard to whether or not notice and hearing on the plans, specifications and form of contract for the public improvement to be paid for in whole or in part from the proceeds of said bonds has theretofore been given, and without regard to whether or not any contract has theretofore been awarded for the construction of said improvement. The foregoing provision shall not apply to bonds which are payable solely from special assessment levied against benefited property.

[C66, 71, 73, 75, 77, 79, 81, §23.19]

C93, §73A.19

73A.20 Bid bonds.

Notwithstanding any other provisions of the Code, any contracting authority may authorize the use of bid bonds executed by corporations authorized to contract as surety in Iowa and on a form prescribed by the contracting authority, in lieu of certified or cashiers checks or any other form of security otherwise required of a bidder to accompany a bid on a public improvement project. The full amount of the bid bond shall be forfeited to the contracting authority in liquidation of damages sustained in the event that the bidder fails to execute the contract as provided in the specifications or by law in the same manner and amount as other forms of authorized security.

[C73, 75, 77, 79, 81, §23.20]

C93, §73A.20

73A.21 Reciprocal resident bidder and resident labor force preference by state, its agencies, and political subdivisions — penalties.

1. For purposes of this section:

a. “*Commissioner*” means the labor commissioner appointed pursuant to section 91.2, or the labor commissioner’s designee.

b. “*Division*” means the division of labor of the department of workforce development.

c. “*Nonresident bidder*” means a person or entity who does not meet the definition of a resident bidder.

d. “*Public body*” means the state and any of its political subdivisions, including a school district, public utility, or the state board of regents.

e. “*Public improvement*” means a building or other construction work to be paid for in whole or in part by the use of funds of the state, its agencies, and any of its political subdivisions and includes road construction, reconstruction, and maintenance projects.

f. “*Public utility*” includes municipally owned utilities and municipally owned waterworks.

g. “*Resident bidder*” means a person or entity authorized to transact business in this state and having a place of business for transacting business within the state at which it is conducting and has conducted business for at least three years prior to the date of the first advertisement for the public improvement. If another state or foreign country has a more

stringent definition of a resident bidder, the more stringent definition is applicable as to bidders from that state or foreign country.

h. "Resident labor force preference" means a requirement in which all or a portion of a labor force working on a public improvement is a resident of a particular state or country.

2. Notwithstanding this chapter, chapter 73, chapter 309, chapter 310, chapter 331, or chapter 384, when a contract for a public improvement is to be awarded to the lowest responsible bidder, a resident bidder shall be allowed a preference as against a nonresident bidder from a state or foreign country if that state or foreign country gives or requires any preference to bidders from that state or foreign country, including but not limited to any preference to bidders, the imposition of any type of labor force preference, or any other form of preferential treatment to bidders or laborers from that state or foreign country. The preference allowed shall be equal to the preference given or required by the state or foreign country in which the nonresident bidder is a resident. In the instance of a resident labor force preference, a nonresident bidder shall apply the same resident labor force preference to a public improvement in this state as would be required in the construction of a public improvement by the state or foreign country in which the nonresident bidder is a resident.

3. If it is determined that this may cause denial of federal funds which would otherwise be available, or would otherwise be inconsistent with requirements of any federal law or regulation, this section shall be suspended, but only to the extent necessary to prevent denial of the funds or to eliminate the inconsistency with federal requirements.

4. The public body involved in a public improvement shall require a nonresident bidder to specify on all project bid specifications and contract documents whether any preference as described in subsection 2 is in effect in the nonresident bidder's state or country of domicile at the time of a bid submittal.

5. The commissioner and the division shall administer and enforce this section, and the commissioner shall adopt rules for the administration and enforcement of this section as provided in section 91.6.

6. The commissioner shall have the following powers and duties for the purposes of this section:

a. The commissioner may hold hearings and investigate charges of violations of this section.

b. The commissioner may, consistent with due process of law, enter any place of employment to inspect records concerning labor force residency, to question an employer or employee, and to investigate such facts, conditions, or matters as are deemed appropriate in determining whether any person has violated the provisions of this section. The commissioner shall only make such an entry in response to a written complaint.

c. The commissioner shall develop a written complaint form applicable to this section and make it available in division offices and on the department of workforce development's internet site.

d. The commissioner may sue for injunctive relief against the awarding of a contract, the undertaking of a public improvement, or the continuation of a public improvement in response to a violation of this section.

e. The commissioner may investigate and ascertain the residency of a worker engaged in any public improvement in this state.

f. The commissioner may administer oaths, take or cause to be taken deposition of witnesses, and require by subpoena the attendance and testimony of witnesses and the production of all books, registers, payrolls, and other evidence relevant to a matter under investigation or hearing.

g. The commissioner may employ qualified personnel as are necessary for the enforcement of this section. Such personnel shall be employed pursuant to the merit system provisions of chapter 8A, subchapter IV.

h. The commissioner shall require a contractor or subcontractor to file, within ten days of receipt of a request, any records enumerated in subsection 7. If the contractor or subcontractor fails to provide the requested records within ten days, the commissioner may direct, within fifteen days after the end of the ten-day period, that the fiscal or financial office charged with the custody and disbursement of funds of the public body that contracted

for construction of the public improvement or undertook the public improvement, to immediately withhold from payment to the contractor or subcontractor up to twenty-five percent of the amount to be paid to the contractor or subcontractor under the terms of the contract or written instrument under which the public improvement is being performed. The amount withheld shall be immediately released upon receipt by the public body of a notice from the commissioner indicating that the request for records as required by this section has been satisfied.

7. While participating in a public improvement, a nonresident bidder domiciled in a state or country that has established a resident labor force preference shall make and keep, for a period of not less than three years, accurate records of all workers employed by the contractor or subcontractor on the public improvement. The records shall include each worker's name, address, telephone number when available, social security number, trade classification, and the starting and ending time of employment.

8. Any person or entity that violates the provisions of this section is subject to a civil penalty in an amount not to exceed one thousand dollars for each violation found in a first investigation by the division, not to exceed five thousand dollars for each violation found in a second investigation by the division, and not to exceed fifteen thousand dollars for a third or subsequent violation found in any subsequent investigation by the division. Each violation of this section for each worker and for each day the violation continues constitutes a separate and distinct violation. In determining the amount of the penalty, the division shall consider the appropriateness of the penalty to the person or entity charged, upon determination of the gravity of the violations. The collection of these penalties shall be enforced in a civil action brought by the attorney general on behalf of the division.

9. A party seeking review of the division's determination pursuant to this section may file a written request for an informal conference. The request must be received by the division within fifteen days after the date of issuance of the division's determination. During the conference, the party seeking review may present written or oral information and arguments as to why the division's determination should be amended or vacated. The division shall consider the information and arguments presented and issue a written decision advising all parties of the outcome of the conference.

84 Acts, ch 1045, §1; 85 Acts, ch 67, §5

C85, §23.21

C93, §73A.21

2008 Acts, ch 1031, §86; 2011 Acts, ch 133, §7, 10, 11

[P] See also §8A.311

[SP] 2011 amendment to this section takes effect September 1, 2011, and applies to all public improvement, public works, and public road projects, and to contracts for public improvement, public works, and public road projects entered into on or after that date; 2011 Acts, ch 133, §10, 11

[T] Partial item veto applied

[T] Section amended