

CHAPTER 73

PREFERENCES

Referred to in §73A.21, 84A.1B, 331.341, 455B.484

[P]
See also §8A.311, §73A.21

IOWA PRODUCTS AND LABOR

73.1	Preference — conditions.
73.2	Advertisements for bids — form.
73.3	and 73.4 Repealed by 2011 Acts, ch 133, § 9 – 11.
73.5	Violations — criminal penalty.
73.6	Iowa coal.
73.7	and 73.8 Repealed by 95 Acts, ch 71, §3.
73.9	Violations — remedy.
73.10	Exceptions.
73.11	Inconsistency with federal law.
73.12	and 73.13 Reserved.

TARGETED SMALL BUSINESS PROCUREMENT

73.15	Title and definitions.
73.16	Procurements from small businesses and targeted small businesses — goals.
73.17	Targeted small business procurement goals — preliminary procedures.
73.18	Notice of solicitation for bids — identification of targeted small businesses.
73.19	Negotiated price or bid contract.
73.20	Determination of ability to perform.
73.21	Other procurement procedures.

MINORITY-OWNED AND FEMALE-OWNED BUSINESSES

73.14	Minority-owned and female-owned businesses — bond issuance services.
-------	--

IOWA PRODUCTS AND LABOR

73.1 Preference — conditions.

1. Every commission, board, committee, officer, or other governing body of the state, or of any county, township, school district or city, and every person acting as contracting or purchasing agent for any such commission, board, committee, officer, or other governing body shall use only those products and provisions grown and coal produced within the state of Iowa, when they are found in marketable quantities in the state and are of a quality reasonably suited to the purpose intended, and can be secured without additional cost over foreign products or products of other states. This section shall apply to horticultural products grown in this state even if the products are not in the stage of processing that the agency usually purchases the product. However, this section does not apply to a school district purchasing food while the school district is participating in the federal school lunch or breakfast program.

2. All requests for proposals for materials, products, supplies, provisions, and other needed articles and services to be purchased at public expense shall not knowingly be written in such a way as to exclude an Iowa-based company capable of filling the needs of the purchasing entity from submitting a responsive proposal.

[C27, 31, 35, §1171-b1; C39, §1171.01; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §73.1]
86 Acts, ch 1096, §10; 2004 Acts, ch 1046, §1; 2010 Acts, ch 1069, §8

73.2 Advertisements for bids — form.

1. a. All requests hereafter made for bids and proposals for materials, products, supplies, provisions, and other needed articles to be purchased at public expense, shall be made in general terms and by general specifications and not by brand, trade name, or other individual mark.

b. All such requests and bids shall contain a paragraph in easily legible print, reading as follows:

By virtue of statutory authority, a preference will be given to products and provisions grown and coal produced within the state of Iowa.

2. In addition to any method of advertisement required by law, any executive branch agency, the general assembly, and the judicial branch shall advertise any request for bids and proposals on the official state internet site operated by the department of administrative services. An electronic link to an internet site maintained by an executive branch agency, the general assembly, or the judicial branch on which requests for bids and proposals for that agency or for the general assembly or judicial branch are posted satisfies the requirements of this subsection.

[C27, 31, 35, §1171-b2; C39, §1171.02; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §73.2]

2002 Acts, ch 1072, §1; 2003 Acts, ch 145, §286; 2008 Acts, ch 1032, §163

Referred to in §8A.311

73.3 and 73.4 Repealed by 2011 Acts, ch 133, § 9 – 11.

2011 repeal of these sections 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

73.5 Violations — criminal penalty.

An officer or person who is connected with, or is a member or agent or representative of a commission, board, committee, officer or other governing body of this state, or of any county, township, school district, city, or contractor, who fails to give preference as required in this chapter is guilty of a simple misdemeanor. Each separate case of failure to give preference is a separate offense.

[C31, 35, §1171-d3; C39, §1171.05; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §73.5]

86 Acts, ch 1096, §11

73.6 Iowa coal.

It shall be unlawful for any commission, board, county officer or other governing body of the state, or of any county, township, school district or city, to purchase or use any coal, except that mined or produced within the state by producers who are, at the time such coal is purchased and produced, complying with all the workers' compensation and mining laws of the state. The provisions of this section shall not be applicable if coal produced within the state cannot be procured of a quantity or quality reasonably suited to the needs of such purchaser, nor if the equipment now installed is not reasonably adapted to the use of coal produced within the state, nor if the use of coal produced within the state would materially lessen the efficiency or increase the cost of operating such purchaser's heating or power plant, nor to mines employing miners not now under the provisions of the workers' compensation Act or who permit the miners to work in individual units in their own rooms.

[C39, §1171.06; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §73.6]

Referred to in §73.9, 73.10

73.7 and 73.8 Repealed by 95 Acts, ch 71, § 3.

73.9 Violations — remedy.

Any contract entered into or carried out in whole or in part, in violation of the provisions of section 73.6, shall be void and the contract or any claim growing out of the sale, delivery, or use of the coal specified in the contract, shall be unenforceable in any court. In addition to any other proper party or parties, any unsuccessful bidder at a letting provided for in section 73.6 shall have the right to maintain an action in equity to prevent the violation of the terms of section 73.6.

[C39, §1171.09; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §73.9]

95 Acts, ch 71, §1

Referred to in §73.10

73.10 Exceptions.

The provisions of sections 73.6 and 73.9 shall not apply to municipally owned and operated public utilities.

[C39, §1171.10; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §73.10]
2002 Acts, ch 1050, §8

73.11 Inconsistency with federal law.

If it is determined by the attorney general that any provision of this chapter would cause denial of funds or services from the United States government which would otherwise be available, or would otherwise be inconsistent with requirements of federal law, such provision shall be suspended, but only to the extent necessary to prevent denial of such funds or services or to eliminate the inconsistency with federal requirements.

[C75, 77, 79, 81, §73.11]

73.12 and 73.13 Reserved.

MINORITY-OWNED AND FEMALE-OWNED BUSINESSES

73.14 Minority-owned and female-owned businesses — bond issuance services.

1. The state, board of regents institutions, counties, townships, school districts, community colleges, cities, and other public entities, and every person acting as contracting agent for any such entity, shall, when issuing bonds or other obligations, make a good-faith effort to utilize minority-owned and female-owned businesses for attorneys, accountants, financial advisors, banks, underwriters, insurers, and other occupations necessary to carry out the issuance of bonds or other obligations by the entity.

2. For purposes of this section:

a. “*Female-owned business*” means a business that is fifty-one percent or more owned, operated, and actively managed by one or more women.

b. “*Minority-owned business*” means a business that is fifty-one percent or more owned, operated, and actively managed by one or more minority persons.

2010 Acts, ch 1184, §91

TARGETED SMALL BUSINESS PROCUREMENT

73.15 Title and definitions.

1. This division may be cited as the “*Iowa Targeted Small Business Procurement Act*”.

2. As used in this division, unless the context requires otherwise, “*small business*” and “*targeted small business*” mean as defined in section 15.102.

86 Acts, ch 1245, §831

Referred to in §8A.311, 10A.104, 11.26, 12E.12, 15.108, 97B.7A

73.16 Procurements from small businesses and targeted small businesses — goals.

Notwithstanding any provision of law or rule relating to competitive bidding procedures:

1. Every agency, department, commission, board, committee, officer, or other governing body of the state shall purchase goods and services supplied by small businesses and targeted small businesses in Iowa. In addition to the other provisions of this section relating to procurement contracts for targeted small businesses, all purchasing authorities shall assure that a proportionate share of small businesses and targeted small businesses identified under the uniform small business vendor application program of the economic development authority are given the opportunity to bid on all solicitations issued by agencies and departments of state government.

2. a. Prior to the commencement of a fiscal year, the director of each agency or department of state government having purchasing authority, in cooperation with the

targeted small business marketing and compliance manager of the economic development authority, shall establish for that fiscal year a procurement goal from certified targeted small businesses identified pursuant to section 10A.104, subsection 8.

(1) The procurement goal shall include the procurement of all goods and services, including construction, but not including utility services.

(2) A procurement goal shall be stated in terms of a dollar amount of certified purchases and shall be established at a level that exceeds the procurement levels from certified targeted small businesses during the previous fiscal year.

b. The director of an agency or department of state government that has established a procurement goal as required under this subsection shall provide a report within fifteen business days following the end of each calendar quarter to the targeted small business marketing and compliance manager of the economic development authority, providing the total dollar amount of certified purchases from certified targeted small businesses during the previous calendar quarter. The required report shall be made in a form approved by the targeted small business marketing and compliance manager.

c. (1) The director of each department and agency of state government shall cooperate with the director of the department of inspections and appeals, the director of the economic development authority, and the director of the department of management and do all acts necessary to carry out the provisions of this division.

(2) The director of each agency or department of state government having purchasing authority shall issue electronic bid notices for distribution to the targeted small business web page located at the economic development authority if the director releases a solicitation for bids for procurement of equipment, supplies, or services. The notices shall be provided to the targeted small business marketing manager forty-eight hours prior to the issuance of all bid notices. The notices shall contain a description of the subject of the bid, a point of contact for the bid, and any subcontract goals included in the bid.

(3) A community college, area education agency, or school district shall establish a procurement goal from certified targeted small businesses, identified pursuant to section 10A.104, subsection 8, of at least ten percent of the value of anticipated procurements of goods and services including construction, but not including utility services, each fiscal year.

d. Of the total value of anticipated procurements of goods and services under this subsection, an additional goal shall be established to procure at least forty percent from minority-owned businesses, and forty percent from female-owned businesses.

86 Acts, ch 1245, §832; 88 Acts, ch 1273, §11; 90 Acts, ch 1156, §6; 94 Acts, ch 1076, §5; 2000 Acts, ch 1231, §35; 2007 Acts, ch 207, §10, 18; 2008 Acts, ch 1032, §164; 2009 Acts, ch 133, §19; 2011 Acts, ch 118, §85, 89

Referred to in §8A.111, 8A.311, 10A.104, 11.26, 12E.12, 15.107B, 15.108, 97B.7A, 262.34A

[P] State board of regents' bid procedure, §262.34A

73.17 Targeted small business procurement goals — preliminary procedures.

Quarterly the director of each agency and department of state government shall review the agency's or department's anticipated purchasing requirements. The directors shall notify the director of the economic development authority of their anticipated purchases and recommended procurements with unit quantities and total costs for procurement contracts designated to satisfy the targeted small business procurement goal not later than August 15 of each fiscal year and quarterly thereafter. The directors may divide the procurements so designated into contract award units of economically feasible production runs to facilitate offers or bids from targeted small businesses. In designating procurements intended to satisfy the targeted small business procurement goal, the directors may vary the included procurements so that a variety of goods and services produced by different targeted small businesses may be procured each year. The director of the economic development authority, in conjunction with the director of the department of management, shall review the information submitted and may require modifications from the agencies and departments.

A community college or area education agency shall, on a quarterly basis, and a school district shall, on an annual basis, review the community college's, area education agency's, or school district's anticipated purchasing requirements. A community college, area education

agency, or school district shall notify the department of education, which shall report to the economic development authority, of their anticipated purchases and recommended procurements with unit quantities and total costs for procurement contracts designated to satisfy the targeted small business procurement goal not later than August 15 of each fiscal year and quarterly thereafter, except that school districts shall report annually.

86 Acts, ch 1245, §833; 90 Acts, ch 1156, §7; 91 Acts, ch 267, §223; 2011 Acts, ch 118, §85, 89

Referred to in §8A.311, 10A.104, 11.26, 12E.12, 15.108, 97B.7A, 262.34A

[P] Purchases by regents institutions, §262.34A

73.18 Notice of solicitation for bids — identification of targeted small businesses.

The director of each agency or department, the administrator of each area education agency, the president of each community college, and the superintendent of each school district releasing a solicitation for bids or request for proposal under the targeted small business procurement goal program shall consult a directory of certified targeted small businesses produced by the economic development authority that lists all certified targeted small businesses by category of goods or services provided prior to or upon release of the solicitation and shall send a copy of the request for proposal or solicitation to any appropriate targeted small business listed in the directory. The economic development authority may charge the department, agency, area education agency, community college, or school district a reasonable fee to cover the cost of producing, distributing, and updating the directory.

86 Acts, ch 1245, §834; 88 Acts, ch 1273, §12; 90 Acts, ch 1156, §8; 91 Acts, ch 267, §224; 92 Acts, ch 1244, §36; 2011 Acts, ch 118, §85, 89

Referred to in §8A.311, 10A.104, 11.26, 12E.12, 15.108, 97B.7A

73.19 Negotiated price or bid contract.

In awarding a contract under the targeted small business procurement goal program, a director of an agency or department, or community college, area education agency, or school district, having purchasing authority may use either a negotiated price or bid contract procedure. A director of an agency or department, or community college, area education agency, or school district, using a negotiated contract shall consider any targeted small business engaged in that business. The director of the economic development authority or the director of the department of management may assist in the negotiation of a contract price under this section. Surety bonds guaranteed by the United States small business administration are acceptable security for a construction award under this section.

86 Acts, ch 1245, §835; 90 Acts, ch 1156, §9; 91 Acts, ch 267, §225; 2011 Acts, ch 118, §85, 89

Referred to in §8A.311, 10A.104, 11.26, 12E.12, 15.108, 97B.7A

73.20 Determination of ability to perform.

Before announcing a contract award pursuant to the targeted small business procurement goal program, the purchasing authority shall evaluate whether the targeted small business scheduled to receive the award is able to perform the contract. This determination shall include consideration of production and financial capacity and technical competence. If the purchasing authority determines that the targeted small business may be unable to perform, the director of the economic development authority shall be notified and shall assist the targeted small business pursuant to section 15.108, subsection 7, paragraph “c”, subparagraph (3).

86 Acts, ch 1245, §836; 90 Acts, ch 1156, §10; 2011 Acts, ch 118, §85, 89

Referred to in §8A.311, 10A.104, 11.26, 12E.12, 15.108, 97B.7A

73.21 Other procurement procedures.

All laws and rules pertaining to solicitations, bid evaluations, contract awards, and other procurement matters apply to procurement contracts for targeted small businesses to the extent there is no conflict. If this division conflicts with other laws or rules, then this division governs.

86 Acts, ch 1245, §837; 90 Acts, ch 1156, §11

Referred to in §8A.311, 10A.104, 11.26, 12E.12, 15.108, 97B.7A