

CHAPTER 8
CONTRACTS FOR PUBLIC IMPROVEMENTS AND PROFESSIONAL SERVICES

561—8.1(17A,455B,456A,461A,473) Contract policy.

8.1(1) All public improvements and professional services contracts with the department shall be awarded on a competitive basis to the maximum practical extent. All contracts shall be in written form and receive approval of the director and the appropriate commission where required by statute or rule of department.

8.1(2) Exceptions for compliance with federal rules and guidelines. Whenever adherence to these contracting procedures would result in the loss of federal aid for any public improvement project or professional services project, the applicable rules or guidelines shall be followed to the extent necessary to qualify for the federal funds.

561—8.2(17A,455B,456A,461A,473) Contracts for public improvements.

8.2(1) Definition. As used in these rules, “public improvement” means any building or construction work, including road or bridge construction, reconstruction and maintenance, to be paid for in whole or in part by the use of state funds. Iowa Code section 23.21, relating to reciprocal resident bidder preference, shall apply to department contracts for public improvements.

8.2(2) Invitation for bids. When the total cost of a public improvement project exceeds the sum of \$25,000 as estimated by the department or the construction services bureau of the administrative services division, the department shall advertise for sealed bids by publishing a notice in at least one newspaper of statewide circulation, one newspaper published in the county seat of the county in which the work is to be done and such other means as may be appropriate in sufficient time to enable prospective bidders to prepare and submit bids, provided that one of said notices shall be not less than 15 days prior to the date set for receiving bids. Where work is to be done under the contract in more than three counties, the requirement of publication in the county seat shall not be required so long as other means of notice to bidders is given, as in trade journals or other such means. Plans, specifications and the contract form shall be provided to all prospective bidders as provided in the invitation for bids.

8.2(3) Invitation for bids. The invitation for bids must state 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 department.
- c. The general nature of the public improvement on which bids are requested.
- d. The general terms when the work must be commenced and when it must be completed.
- e. Any further information or requirements which the department deems pertinent or advisable.

All sealed bids shall be publicly opened as specified in the notice to bidders. The bids shall be tabulated and made available in a written form to any interested party.

8.2(4) Solicitation of quotations. Competitive quotations may be solicited on public improvement projects estimated by the department to cost less than \$25,000. At least three quotations shall be solicited unless there are an insufficient number of local, qualified contractors interested in the project.

8.2(5) Failure to receive a qualified bid or quotation. In the event that no qualified sealed bids or quotations are received, the department may negotiate a contract with a qualified contractor.

8.2(6) Exceptions to the requirement for bids or quotations. The director may authorize the negotiation of a contract for a public improvement project without first soliciting quotations or advertising for bids under the following circumstances:

- a. If the contemplated project involves the provision of utility services or the construction of a utility system and it would not be practicable to allow someone other than the utility company to perform the work.
- b. Where competition is precluded because of patent rights, secret processes, or control of basic raw materials.
- c. Where the project involves work of such a specialized nature that only one firm or person can reasonably be expected to accomplish it.

d. Where the service or product is provided by a nonprofit private corporation, a governmental body or an educational institution.

e. When emergency repair of a public improvement is necessary and delay for advertising or solicitation of quotations might cause serious loss or injury to the state.

561—8.3(17A,455B,456A,461A,473) Contracts for professional services.

8.3(1) Professional services defined. The term “professional services” shall include planning, design, architectural, engineering, landscape architecture, land surveying, land appraising, consulting, legal and management review services.

8.3(2) Notification of professional firms or individuals. The department shall keep a record of professional firms and individuals desirous of providing services and shall encourage from time to time the submission of letters detailing a firm’s or individual’s capabilities.

If a contract is estimated to cost more than \$25,000, firms or individuals shall be invited to notify the department of their interest in and capabilities for providing the service. Such firms or individuals shall be informed by an advertisement in at least one newspaper of statewide circulation, one newspaper published in the county seat of the county in which the work is to be done, and such other means as may be appropriate. Where work is to be done under the contract in more than three counties, the requirement of publication in the county seat shall not be required so long as other means of notice to bidders is given, as in trade journals or other such means. At least one of said advertisements shall be not less than 15 days prior to the date set by the department for the preliminary review of said documents. Based upon this information, the department may select a group of at least five firms or individuals, unless fewer than that number have indicated interest, who shall be invited to submit proposals for the performance of the desired service.

In explaining their capabilities, firms or individuals are encouraged to provide information relative to the number, qualifications, and experience of their professional and technical staff; their performance records for timeliness, quality, and project management; their geographical location; and any specialized expertise which may be appropriate.

8.3(3) Selection of firm or individual.

a. For any contract for professional services estimated to cost less than \$5,000, the department may select a firm or individual and negotiate a professional services contract. The bureau chief or division administrator shall prepare a memorandum for the project file stating the reasons why that particular firm or individual was selected. However, quotations may be solicited if it is in the best interest of the state.

b. For contracts estimated to cost from \$5,000 to \$25,000 at least three firms or individuals who appear to be qualified shall be invited to submit proposals for the performance of the desired service unless fewer than that number have indicated the availability, capability or willingness to perform the desired service.

c. When a project requiring professional services is divided into several phases, the selection of a professional firm or individual for the first project phase may be accomplished in the manner prescribed for the cost estimate relating to the entire project. The contract cost for subsequent phases may be established by negotiation.

The proposals shall also contain an hourly estimate of professional services. These fees and associated costs shall be submitted as directed by the department.

d. Upon the acceptance of a proposal by the director and the appropriate commission, if required by statute, the total estimated cost shall become the maximum contract cost which shall not be increased, except to the extent that a contract amendment increases the objectives and scope of services or projects that are unrelated but identical in nature. The proposals submitted for those contracts over \$10,000 shall be reviewed, and members of the firms or individuals may be interviewed by a department selection committee established by the director. At least one-third of the selection committee shall be composed of individuals not responsible for the contract administration. This committee shall evaluate each proposal relative to the following criteria:

(1) Sufficiency of professional and technical staff to meet the project schedule and work requirements.

- (2) Performance records for timeliness, quality and project management.
- (3) Geographical location.
- (4) Specialized expertise.
- (5) Proposed method of accomplishing the desired service.
- (6) Total estimated cost.
- (7) Total estimated life cycle costs, if appropriate.

After evaluating the proposals, the committee shall submit a written recommendation to the director.

e. The director may authorize the negotiation of a contract without solicitation of quotations or advertising for proposals if the service is to be provided by another governmental entity or educational institution or nonprofit corporation, or if the service is of a specialized nature where only one firm or individual can reasonably provide the service, or where delay for solicitation of quotations or advertising for proposals might reasonably be expected to result in serious loss or injury to the state.

561—8.4(17A,455B,456A,461A,473) Approval and award of contracts.

8.4(1) *Contract approval.* All contracts for public improvement or professional services in excess of \$25,000 shall be approved by the director and the appropriate commission if required by statute. Contracts less than \$25,000 shall be approved by the director and the appropriate commission only if required by statute or rule of the commission.

8.4(2) *Contract award.* The contract shall be awarded to the firm or individual whose bid or proposal is believed to be the most advantageous to the state. Bids or proposals may be rejected if they do not appear to be reasonable or if there is reason to believe that the firm or individual is not sufficiently qualified to accomplish the desired work or service.

8.4(3) *Change orders and extra work orders.* All change orders and extra work orders shall be approved by the director before the work or service is performed, except in emergency situations, or where such approval would result in unreasonable delay. In addition, any order or accumulation of orders which increases the amount of the original contract by more than \$25,000 or 10 percent of the original contract, whichever is greater, shall also be approved by the appropriate commission, if required by statute.

561—8.5(17A,456A,461A) Contract for sale of timber.

8.5(1) *Invitation for bids.* When the total cost of a public sale of timber exceeds the sum of \$5,000 as estimated by the state forests and management bureau of the forests and forestry division, the department shall advertise for sealed bids by publishing a notice in at least one newspaper of statewide circulation, one newspaper published in the county seat of the county in which the timber is situated and such other means as may be appropriate in sufficient time to enable prospective bidders to prepare and submit bids, provided that one of said 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 provisions of 8.2(3).

8.5(2) *Failure to receive a bid or quotation.* In the event that no sealed bids or quotations are received, the state forests and management bureau of the forests and forestry division may negotiate a contract with a qualified timber buyer.

8.5(3) *Exceptions to the requirement for bids or quotations.* The director may authorize the negotiation of a contract for a timber sale project without first soliciting quotations or advertising for bids under the following circumstances:

- a.* If the contemplated timber sale is an addition to an existing timber sale.
- b.* If no bidders are available.

8.5(4) *Bonds.* All timber buyers and timber sales agreements must comply in all respects with Iowa Code section 456A.36. For purposes of bond requirements, a timber buyer is the logger who cuts down the tree or who deals with the owner of the tree and is required to have a bond. If the timber buyer exhibits a copy of a contract for lumber sale with a sawmill or other third party who is bonded and responsible for payment to the timber owner, the bonding requirements for the timber buyer are satisfied.

561—8.6(455B) Emergency response. The emergency response officials of the department shall have the authority under the director's supervision to contract with firms and individuals without advertising for bids or solicitation of quotations to clean up hazardous conditions, toxic or polluting substances on public or private property in situations where time is insufficient to allow for advertising for bids or solicitation of quotations in order to prevent further injury to the environment.

561—8.7(573) Interest on retained funds.

8.7(1) Scope. This rule implements Iowa Code subsection 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.

8.7(2) General requirements.

a. Interest shall be paid pursuant to Iowa Code section 573.12 only on state contracts awarded on or after June 19, 1991.

b. 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.

c. Interest shall not be paid on retained funds of a contract declared in default.

8.7(3) Procedures.

a. 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.

b. 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.

c. Notwithstanding paragraph "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.

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

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