

875—156.2(73A) Reporting of resident status of bidders.

156.2(1) *Reporting to public body.* When a contract for a public improvement is to be awarded to the lowest responsible bidder, the public body shall request a statement from each bidder regarding the bidder's resident status. The statement shall be on the form designated by the commissioner. The statement shall require the bidder to certify whether the bidder is a resident bidder or a nonresident bidder. In the case of a resident bidder, the statement shall require the resident bidder to identify each office at which the resident bidder has conducted business in the state during the previous three years and the dates on which the resident bidder conducted business at each office. In the case of a nonresident bidder, the statement shall require the nonresident bidder to identify the nonresident bidder's home state or foreign country as reported to the Iowa secretary of state, to identify each preference offered by the nonresident bidder's home state or foreign country, and to certify that, except as set forth on the form, there are no other preferences offered by the nonresident bidder's home state or foreign country. The statement shall include such additional information as requested by the commissioner. The statement must be signed by an authorized representative of the bidder. A fully completed statement shall be deemed to be incorporated by reference into all project bid specifications and contract documents with any bidder on a public improvement. Failure to provide the statement with the bid may result in the bid being deemed nonresponsive. This may result in the bid being rejected by the public body.

156.2(2) *Determining residency status.*

- a.* For purposes of the Act, a person or entity is a resident bidder if the person or entity:
- (1) Is authorized to transact business in Iowa; and
 - (2) Has had one or more places of business in Iowa at which it is conducting or has conducted business in this state for at least three years immediately prior to the date of the first advertisement for the public improvement.
- b.* If the person or entity is a resident of a state or foreign country that has a more stringent definition than is set forth in paragraph 156.2(2) "a" for determining whether a person or entity in that state or country is a resident bidder, then the more stringent definition applies.

156.2(3) *Determining authorization to transact business.* A person or entity is authorized to transact business in the state if one or more of the following accurately describes the person or entity:

- a.* In the case of a sole proprietorship, the sole proprietor is an Iowa resident for Iowa income tax purposes;
- b.* In the case of a general partnership or joint venture, more than 50 percent of the general partners or joint venture parties are residents of Iowa for Iowa income tax purposes;
- c.* In the case of a limited liability partnership which has filed a statement of qualification in this state, the statement has not been canceled;
- d.* In the case of a limited liability partnership whose statement of qualification is filed in a state other than Iowa, the limited liability partnership has filed a statement of foreign qualification in Iowa and a statement of cancellation has not been filed pursuant to Iowa Code section 486A.105(4);
- e.* In the case of a limited partnership or limited liability limited partnership whose certificate of limited partnership is filed in this state, the limited partnership or limited liability limited partnership has not filed a statement of termination;
- f.* In the case of a limited partnership or a limited liability limited partnership whose certificate of limited partnership is filed in a state other than Iowa, the limited partnership or limited liability limited partnership has received notification from the Iowa secretary of state that the application for certificate of authority has been approved and no notice of cancellation has been filed by the limited partnership or the limited liability limited partnership;
- g.* In the case of a limited liability company whose certificate of organization is filed in this state, the limited liability company has not filed a statement of termination;
- h.* In the case of a limited liability company whose certificate of organization is filed in a state other than Iowa, the limited liability company has received a certificate of authority to transact business in this state and the certificate has not been revoked or canceled;

i. In the case of a corporation whose articles of incorporation are filed in this state, the corporation (1) has paid all fees required by Iowa Code chapter 490, (2) has filed its most recent biennial report, and (3) has not filed articles of dissolution;

j. In the case of a corporation whose articles of incorporation are filed in a state other than Iowa, the corporation (1) has received a certificate of authority from the Iowa secretary of state, (2) has filed its most recent biennial report with the secretary of state, and (3) has neither received a certificate of withdrawal from the secretary of state nor had its authority revoked; or

k. The person or entity is registered with the Iowa division of labor as a construction contractor pursuant to Iowa Code chapter 91C.

156.2(4) *Determining if bidder has conducted business in state.* In order to determine if a bidder has a place of business for transacting business within Iowa at which it is conducting and has conducted business for at least three years prior to the date of the first advertisement of the public improvement, the bidder shall meet the following criteria for the three-year period prior to the first advertisement for the public improvement:

a. Continuously maintained a place of business for transacting business in Iowa that is suitable for more than receiving mail, telephone calls, and emails; and

b. Conducted business in the state for each of those three years and filed an Iowa income tax return, if applicable, made payments to the Iowa unemployment insurance fund, if applicable, and maintained an Iowa workers' compensation policy, if applicable, in effect for each of those three years.

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