

House File 2531

H-8546

1 Amend House File 2531 as follows:

2 1. Page 38, after line 1 by inserting:

3 <DIVISION
4 RESPONSIBLE BIDDER

5 Section 1. Section 8A.311, subsection 11, paragraph
6 b, Code 2009, is amended to read as follows:

7 b. (1) In awarding a contract under this
8 subsection, the department shall let the work to the
9 lowest responsive, responsible bidder, as defined in
10 section 26.2, submitting a sealed proposal. However,
11 if the department considers the bids received not to
12 be acceptable, all bids may be rejected and new bids
13 requested.

14 (2) A bid shall be accompanied by a certified or
15 cashier's check or bid bond in an amount designated in
16 the advertisement for bids as security that the bidder
17 will enter into a contract for the work requested.
18 The department shall establish the bid security in an
19 amount equal to at least five percent, but not more
20 than ten percent of the estimated total cost of the
21 work. The certified or cashier's checks or bid bonds
22 of unsuccessful bidders shall be returned as soon as
23 the successful bidder is determined. The certified or
24 cashier's check or bid bond of the successful bidder
25 shall be returned upon execution of the contract.

26 c. This subsection does not apply to the
27 construction, erection, demolition, alteration, or
28 repair of a public improvement when the contracting
29 procedure for the work requested is otherwise provided
30 for in law.

31 Sec. 2. Section 26.2, Code 2009, is amended by
32 adding the following new subsections:

33 NEW SUBSECTION. 5. "Responsible bidder" means a
34 bidder who meets the following requirements in addition
35 to any requirements that are part of the bidding
36 process for a public improvement contract:

37 a. The bidder uses the federal e-verify program to
38 ensure the employment eligibility of all workers who
39 will perform work on the public improvement. "*E-verify*
40 *program*" means one of the following:

41 (1) The electronic verification of work
42 authorization status program created under the federal
43 Illegal Immigration Reform and Immigrant Responsibility
44 Act of 1996, 8 U.S.C. § 1324a, and operated by the
45 United States department of homeland security.

46 (2) Any federal work authorization status program
47 equivalent to the program described in subparagraph
48 (1) and operated by the United States department of
49 homeland security or any other designated federal
50 agency authorized to verify the work authorization

1 status of newly hired employees, pursuant to the
2 federal Immigration Reform and Control Act of 1986,
3 Pub. L. No. 99-603.

4 *b.* (1) The bidder shall ensure that each
5 individual who performs labor or service on the public
6 improvement project is a worker. "Worker" means an
7 employee of a contractor or subcontractor unless
8 an independent contractor relationship between the
9 individual and the contractor or subcontractor is
10 intended and all of the following conditions apply:

11 (a) The contractor or subcontractor does not
12 control or direct the performance of services by the
13 individual.

14 (b) The contractor or subcontractor is not
15 responsible for the payment of the individual's wages.

16 (c) The contractor or subcontractor does not have
17 the right to discharge the individual or to terminate
18 the working relationship with the individual.

19 (d) The contractor or subcontractor is not the
20 authority in charge of the work or for whose benefit
21 the individual is providing services.

22 (2) An individual classified as an employee under
23 this paragraph "b" shall also be classified as an
24 employee pursuant to chapters 85, 85A, 85B, 88, 91A,
25 and 96.

26 *c.* (1) The bidder requires all workers who perform
27 any labor or service for a contractor or subcontractor
28 on a public improvement project to complete every three
29 years a minimum ten-hour construction safety program
30 approved by the United States occupational safety and
31 health administration. A newly hired worker must be
32 required to complete the safety program within ninety
33 days of hire but may perform labor or service on a
34 public improvement during the ninety days.

35 (2) The bidder requires each primary contractor
36 working on a public improvement project to require at
37 least one worker who performs any labor or service on
38 the public improvement project to complete every five
39 years a minimum thirty-hour construction safety program
40 approved by the United States occupational safety and
41 health administration.

42 (3) The bidder requires a quarterly consultation at
43 the site of the public improvement project by the state
44 occupational safety and health administration on public
45 improvement projects that cost five million dollars or
46 more.

47 *d.* The bidder who participates in a public
48 improvement project participates in an apprenticeship
49 program approved by, and registered with, the United
50 States department of labor's office of apprenticeship.

1 e. (1) The bidder does not have a record of
2 violations of specific laws over a period of time that
3 tend to show a consistent pattern and provides evidence
4 of compliance with specific laws. Such specific laws
5 include but are not limited to the following:

6 (a) State contractor registration and licensing
7 laws.

8 (b) Federal and state unemployment insurance laws.

9 (c) Federal and state tax laws.

10 (d) Federal and state workers' compensation laws.

11 (e) Federal and state environmental laws.

12 (f) State employment rules and regulations.

13 (2) Such a pattern may allow the governmental
14 entity to deny the bidder the award of a public
15 improvement contract, unless the governmental entity
16 finds that the violations did not seriously affect
17 public health or safety, or the environment, or violate
18 employment laws, or if the bidder did, that there were
19 mitigating circumstances. In making the findings
20 and determinations regarding violations, mitigating
21 circumstances, and whether the bidder is disqualified
22 to be awarded a public improvement contract, the
23 governmental entity is exempt from the requirements of
24 chapter 17A.

25 NEW SUBSECTION. 6. "*Responsive bidder*" means a
26 bidder who satisfies the material specifications of a
27 public improvement bid without significant change, but
28 whose bid may contain irregularities in the bid form.

29 Sec. 3. Section 28J.9, subsection 18, paragraph b,
30 Code 2009, is amended to read as follows:

31 b. Except as provided in paragraph "c", when
32 the cost of a contract for the construction of a
33 building, structure, or other improvement undertaken
34 by a port authority involves an expenditure exceeding
35 the competitive bid threshold in section 26.3, or as
36 established in section 314.1B, and the port authority
37 is the contracting entity, the port authority shall
38 make a written contract after notice calling for
39 bids for the award of the contract has been given by
40 publication twice, with at least seven days between
41 publications, in a newspaper of general circulation in
42 the area of the port authority. Each such contract
43 shall be let to the lowest responsive, ~~and~~ responsible
44 bidder, as defined in section 26.2. Every contract
45 shall be accompanied by or shall refer to plans and
46 specifications for the work to be done, prepared for
47 and approved by the port authority, and signed by an
48 authorized officer of the port authority and by the
49 contractor.

50 Sec. 4. Section 73A.18, Code 2009, is amended to

1 read as follows:

2 **73A.18 When bids required — advertisement —**
3 **deposit.**

4 1. When the estimated total cost of construction,
5 erection, demolition, alteration, or repair of a public
6 improvement exceeds the competitive bid threshold in
7 section 26.3, or as established in section 314.1B,
8 the municipality shall advertise for bids on the
9 proposed improvement by two publications in a newspaper
10 published in the county in which the work is to be
11 done. The first advertisement for bids shall be
12 not less than fifteen days prior to the date set for
13 receiving bids.

14 2. The municipality shall let the work to the
15 lowest responsive, responsible bidder, as defined in
16 section 26.2, submitting a sealed proposal. However,
17 if in the judgment of the municipality bids received
18 are not acceptable, all bids may be rejected and new
19 bids requested. A bid shall be accompanied, in a
20 separate envelope, by a deposit of money or a certified
21 check or credit union certified share draft in an
22 amount to be named in the advertisement for bids as
23 security that the bidder will enter into a contract for
24 the doing of the work.

25 3. The municipality shall fix the bid security in
26 an amount equal to at least five percent, but not more
27 than ten percent of the estimated total cost of the
28 work. The checks, share drafts, or deposits of money
29 of the unsuccessful bidders shall be returned as soon
30 as the successful bidder is determined, and the check,
31 share draft, or deposit of money of the successful
32 bidder shall be returned upon execution of the contract
33 documents.

34 Sec. 5. Section 73A.21, subsection 2, Code 2009, is
35 amended to read as follows:

36 2. Notwithstanding this chapter, chapter 73,
37 chapter 309, chapter 310, chapter 331, or chapter 384,
38 when a contract for a public improvement is to be
39 awarded to the lowest responsive, responsible bidder,
40 as defined in section 26.2, a resident bidder shall be
41 allowed a preference as against a nonresident bidder
42 from a state or foreign country which gives or requires
43 a preference to bidders from that state or foreign
44 country. The preference is equal to the preference
45 given or required by the state or foreign country in
46 which the nonresident bidder is a resident.

47 Sec. 6. Section 262.34, subsection 1, Code
48 Supplement 2009, is amended to read as follows:

49 1. When the estimated cost of construction,
50 repairs, or improvement of buildings or grounds

1 under charge of the state board of regents exceeds
2 one hundred thousand dollars, the board shall
3 advertise for bids for the contemplated improvement
4 or construction and shall let the work to the lowest
5 responsive, responsible bidder, as defined in section
6 26.2. However, if in the judgment of the board
7 bids received are not acceptable, the board may
8 reject all bids and proceed with the construction,
9 repair, or improvement by a method as the board may
10 determine. All plans and specifications for repairs
11 or construction, together with bids on the plans or
12 specifications, shall be filed by the board and be open
13 for public inspection. All bids submitted under this
14 section shall be accompanied by a deposit of money,
15 a certified check, or a credit union certified share
16 draft in an amount as the board may prescribe.

17 Sec. 7. Section 314.1, subsection 3, unnumbered
18 paragraph 1, Code 2009, is amended to read as follows:

19 In the award of contracts for the construction,
20 reconstruction, improvement, or repair or maintenance
21 of a highway, bridge, or culvert, the agency having
22 charge of awarding such contracts shall give due
23 consideration not only to the prices bid but also to
24 the mechanical or other equipment and the financial
25 responsibility and experience in the performance of
26 like or similar contracts. The agency may reject any
27 or all bids. The agency may readvertise and relet the
28 project without conducting an additional public hearing
29 if no substantial changes are made to the project's
30 plans or specifications. The agency may let by private
31 contract or build by day labor, at a cost not in excess
32 of the ~~lowest~~ lowest responsive,
33 responsible bidder, as defined in section 26.2.

34 Sec. 8. Section 357.16, Code 2009, is amended to
35 read as follows:

36 **357.16 Second election.**

37 If the majority of the votes cast at said second
38 election be in favor of said improvement, the board of
39 supervisors shall again advertise for bids in the same
40 manner as before. If the bids at the second letting
41 will not necessitate raising the second preliminary
42 assessment more than ten percent, the board may let the
43 contract to the lowest responsive, responsible bidder,
44 as defined in section 26.2.

45 Sec. 9. Section 360.5, Code 2009, is amended to
46 read as follows:

47 **360.5 Construction.**

48 The township trustees or in case of joint ownership,
49 in conjunction with the city authorities shall have
50 charge of the building of such hall, shall receive

1 bids, and shall let the building of the same to the
2 lowest responsive, responsible bidder, as defined in
3 section 26.2, and the township clerk shall pay out of
4 the funds collected, only on the order of the trustees
5 of said township for the township's share of the cost
6 thereof.

7 Sec. 10. Section 468.35, subsection 1, Code 2009,
8 is amended to read as follows:

9 1. The board shall award contract or contracts
10 for each section of the work to the lowest
11 responsive, responsible bidder, as defined in section
12 26.2, or bidders therefor, bids to be submitted,
13 received and acted upon separately as to the main drain
14 and each of the laterals, and each settling basin,
15 if any, exercising their own discretion as to letting
16 such work as to the main drain as a whole, or as to
17 each lateral as a whole, or by sections as to both main
18 drain and laterals, and reserving the right to reject
19 any and all bids and readvertise the letting of the
20 work.>

21 2. By renumbering as necessary.

R. OLSON of Polk