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AN OVERVIEW OF MUNICIPAL LAW

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November 16, 2023



[Home](#) | [Client Alerts](#)

Client Alerts

HF 718 - NEW BUDGET PROCEDURE

October 10, 2023

By Attorney Elizabeth Burnett House File 718, signed by the Governor on May 4, 2023, ("HF 718") changes the budgeting process and requires cities and counties to include additional steps in their budget approval process. This client alert provides a detailed list and explanation of the new steps imposed by...

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2023	2017	2011
2022	2016	2010
2021	2015	2009
2020	2014	2008
2019	2013	

Presenters



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Disclaimer

Please note that this presentation is intended for informational and educational purposes and to provide general statements from federal law, state law, and agency guidance. Federal and state law may differ on particularized areas and this outline does not include all legal considerations. Each situation varies based on the individualized facts and the law is constantly evolving.

Please consult with your attorney for specific legal information, advice, or individualized inquiries.



Ahlers Attorneys by Subject Area

- Nathan Overberg & Jenna Sabroske – urban renewal (TIF) and urban revitalization
- Maria Brownell – eminent domain
- Kristin Cooper & Eric Boehlert – municipal finance



An Overview of Today's Discussion

The Basics

Liability of
Municipal
Corporations

Open Meetings &
Open Records

Public Bidding
(Ch. 26 & 26A)

The Basics

Home Rule

Public Purpose Doctrine

Procedures

The Role of a City Attorney

What Is Municipal Home Rule?

Local autonomy — home rule empowers local governments to determine their local affairs and government.

Local governments “are the frontline providers of some of the most important services the public relies on every day” and face difficult challenges in that role. “Municipal home rule provides the foundational legal authority for these indispensable responsibilities.”

Municipal Home Rule in Iowa



Iowa's Home Rule Amendment adopted in 1968

- November 5, 1968 Election — Question on Adopting Municipal Home Rule Amendment

Yes	486,749	65.51%
No	256,236	34.49%

With the enactment of Iowa's Home Rule Amendment, cities no longer have to rely on the legislature to specifically authorize the exercise of a particular power or action via statute (i.e., Dillon's Rule).

Municipal Home Rule

Art. III Sec. 38A: Municipal Home Rule

- Cities may determine their local affairs and government, so long as not inconsistent with state law.
- Cities shall not have power to levy any tax unless expressly authorized by the General Assembly.



Municipal Home Rule

Iowa Code sec. 364.1

- A city may, except as expressly limited by the Constitution of the State of Iowa, and if not inconsistent with the laws of the General Assembly, exercise any power and perform any function it deems appropriate to protect and preserve the rights, privileges, and property of the city or of its residents, and to preserve and improve the peace, safety, health, welfare, comfort, and convenience of its residents.

Municipal Home Rule

Iowa Code sec. 364.3

- A city may not set standards and requirements which are lower or less stringent than those imposed by state law, but may set standards and requirements which are higher or more stringent than those imposed by state law, unless a state law provides otherwise.



Public Purpose Doctrine

Art. III, Sec. 31 of the Iowa Constitution prohibits the spending of public funds on “private purposes.”

This is referred to as the public purpose doctrine.

Public Purpose Doctrine

The Iowa Supreme Court has held that “it is vital to the legality of any and every payment or promise of public funds that there shall be a consideration therefor in the nature of a public benefit.”

Love v. City of Des Moines, 230 N.W. 373, 375 (Iowa 1930).



Gifts made by public bodies are, therefore, prohibited.

Public Purpose Doctrine

“The Iowa Supreme Court has stated that the concept of public purpose is to be given flexible and expansive scope in order ‘to meet the challenges of increasingly complex, social, economic, and technological conditions.’”

AG Opinion No. 89-2-6, 1989 WL 264884 (Iowa A.G.) (citing and quoting *John R. Grubb, Inc. v. Iowa Housing Finance Authority*, 255 N.W.2d 89, 93 (Iowa 1977)).

Public Purpose Doctrine

A “public purpose will not be invalidated because it benefits not only the public, but also potentially benefits a private” entity.

McMurray v. City Council of City of West Des Moines, 642 N.W.2d 273, 283 (Iowa 2002).

Instead, the Court reviews the constitutionality of expenditures for a fundamental finding of public benefit.

Love, 230 N.W. at 375-76.

Procedures

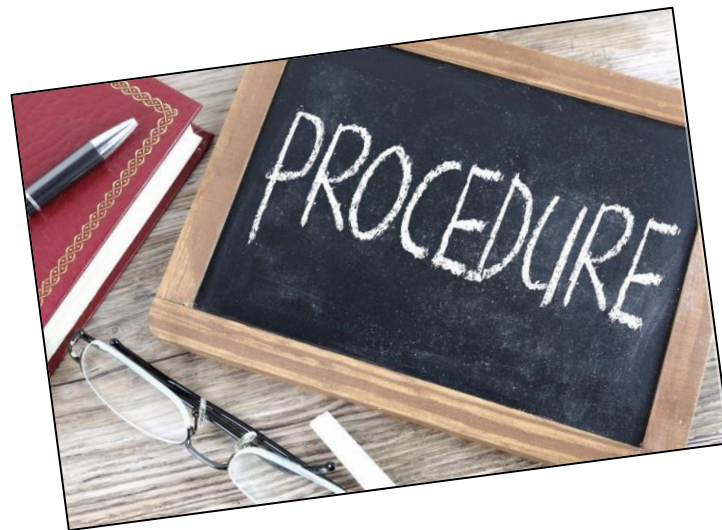
Iowa Code sec. 364.6

- “A city shall substantially comply with a procedure established by a state law for exercising a city power. If a procedure is not established by state law, a city may determine its own procedure for exercising the power.”

Procedures

Iowa Code sec. 364.3

- A city council shall exercise a power only by the passage of a motion, a resolution, an amendment, or an ordinance.



To Act By Motion or By Resolution?

“Resolution” or “motion” means

- a council statement of policy, or
- a council order for action to be taken.

The Iowa Supreme Court has also recognized motions as having the effect of resolutions.

See, e.g., Mill v. City of Denison, 25 N.W.2d 323, 326 (1946);
see also Sawyer v. Lorenzen et al., 127 N.W. 1091 (Iowa 1910).

Resolutions are often helpful to substantiate the record; preambles can be used for explanation or context.

To Act By Resolution or Ordinance?

“Ordinance” means a city law of a general and permanent nature.

- Often a command or a prohibition, regulating continuing conditions
- Ordinances have the force of law within the community

An ordinance is not affected by a resolution; only a subsequent ordinance may amend, repeal, or suspend a previously adopted ordinance.

Resolutions



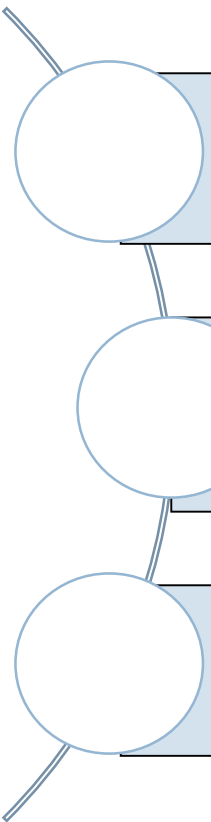
Effective upon signing by the mayor

A resolution must be passed to spend public funds in excess of \$100,000 on a public improvement project

A resolution must be passed to accept public improvements and facilities upon their completion

Property disposals must be approved by resolution

Ordinances



Title of an ordinance must generally describe the subject matter of the ordinance.

An ordinance amendment must specifically identify the provision to be amended, and must set forth the provision as amended.

An amendment will repeal the provision amended.


Vote Counts

Passage of a **motion** requires a majority vote of a quorum of the council


Passage of a **resolution** requires a majority vote of all of the members of the council

Passage of an **ordinance** requires a majority vote of all of the members of the council

An ordinance requires three readings, unless requirement is suspended by a recorded vote of not less than $\frac{3}{4}$ of all of the members of the council.



If the ordinance fails to receive sufficient votes for passage at **any** reading, the ordinance is defeated.



An ordinance is effective upon publication, unless a subsequent effective date is provided within the ordinance.

The Role of City Attorney

Cities have a lot of flexibility to determine their own affairs and operations, as long as “not inconsistent with state [and federal] law,” as long as there is a public purpose, and as long as they are following any required procedures.

Who is responsible for knowing what these laws and procedures are????

THE CITY ATTORNEY



The Role of City Attorney

Issue spotter

Risk identifier/
avoider

Compliance
officer

Parliamentarian

“Bad guy”

Counselor

Whatever the
city code
requires

City Attorneys

May be in-house lawyers employed by the municipality

May be outside counsel (individual or firm)

May specialize in municipal law exclusively

May be local practitioner with a general law practice who also serves as city attorney

Litigation defense counsel are oftentimes engaged by the city's liability carrier

Liability of Municipal Corporations

Historically, the common law doctrine of sovereign immunity protected local governments from liability for their actions

“The King can do no wrong”

This concept was abolished in Iowa in 1967 with the adoption of the Municipal Tort Claims Act (IMTCA)

Codified at Iowa Code ch. 670

IMTCA

Iowa Code sec. 670.2

- “Except as otherwise provided in this chapter, every municipality is subject to liability for its torts and those of its officers and employees, acting within the scope of their employment or duties, whether arising out of a governmental or proprietary function.”

IMTCA

Iowa Code sec. 670.4 lists specific exemptions from liability

- Negligent design or construction of public improvements that were constructed or reconstructed in accordance with a generally recognized engineering or safety standard, criteria, or design theory in existence at the time of the construction or reconstruction
- Acts or omissions related to the granting, suspension, or revocations of a license or permit

IMTCA

Exemptions

- Acts or omissions related to inspections or investigations, if the damage was caused by a third party, event, or property not under the supervision or control of the municipality
- Emergency response
- Swimming pool
- Recreational activities
- Etc.



Duty to Defend

Iowa Code sec. 670.8

- The governing body **shall** defend its officers and employees, whether elected or appointed and shall save harmless and indemnify the officers and employees against any tort claim or demand, whether groundless or otherwise, arising out of an alleged act or omission occurring within the scope of their employment or duties.
- Any independent or autonomous board or commission of a municipality having authority to disburse funds for a particular municipal function without approval of the governing body shall similarly defend, save harmless and indemnify its officers and employees against tort claims or demands.

Duty to Defend

The duties to defend and to save harmless and indemnify shall apply whether or not the municipality is a party to the action.

In the event the officer or employee fails to cooperate in the defense against the claim or demand, the municipality shall have a right of indemnification against that officer or employee.



Duty to Defend

The duty to save harmless and indemnify does not apply and the municipality is entitled to restitution by an officer or employee if, in an action commenced by the municipality against the officer or employee, it is determined that the conduct of the officer or employee upon which the tort claim or demand was based constituted a willful and wanton act or omission.

Personal Liability

Iowa Code sec. 670.12

- All officers and employees of municipalities are not personally liable for claims which are exempted under the IMTCA, except claims for punitive damages.
- An officer or employee of a municipality is not liable for punitive damages as a result of acts in the performance of a duty, unless actual malice or willful, wanton and reckless misconduct is proven.

Open Meetings & Open Records

Iowa Code ch. 21 & 22

Iowa's Sunshine Laws

Open Meetings – Chapter 21

This chapter seeks to assure, through a requirement of open meetings of governmental bodies, that the basis and rationale of governmental decisions, as well as those decisions themselves, are easily accessible to the people. Ambiguity in the construction or application of this chapter should be resolved in favor of openness.

Iowa Code Sec. 21.1



Open Meetings – Chapter 21

“Meeting” means a gathering in person or by electronic means, formal or informal, of a majority of the members of a governmental body where there is deliberation or action upon any matter within the scope of the governmental body’s policy-making duties. Meetings shall not include a gathering of members of a governmental body for purely ministerial or social purposes when there is no discussion of policy or intent to avoid the purposes of this chapter.

Iowa Code Sec. 21.2(2)

Open Meetings – Chapter 21

1. A formal or informal gathering of a governmental body;
2. In such numbers so as to constitute a majority;
3. During which deliberation or actions occur; and
4. Such deliberation or action is within the scope of the governmental body’s “policy-making duties.”

1981 Iowa Op. Atty Gen. 162 (1981)

Open Meetings – Chapter 21

Governmental Body Definition – Iowa Code 21.2(1)

- A board, council, commission, or other governing body of a political subdivision or tax-supported district in this state.
- An advisory board, advisory commission, advisory committee, task force, or other body created by statute or executive order of this state or created by an executive order of a political subdivision of this state to develop and make recommendations on public policy issues.

City councils and city boards and commissions
are subject to the Open Meetings Law.

Preparing for a Meeting



Meetings must –

- Be preceded by a public notice of at least 24 hours giving the date, time, place, and a tentative agenda.
- Held at a place reasonably accessible to the public and at a time reasonably convenient to the public, unless for good cause such a place or time is impossible or impracticable.
- Notice of the meeting must be sent to any news organizations requesting it.
- The notice must be posted in a prominent place accessible to the public at the government office. If no office is available, notice should be prominently placed where the meeting will be held.

During the Meeting

Each governmental body shall keep minutes of all its meetings showing the date, time and place, the members present, and the action taken at each meeting.

The minutes shall show the results of each vote taken and the information sufficient to indicate the vote of each member present.

The minutes are public records.

Minutes

Iowa Code sec. 372.13

- Within fifteen days following a regular or special meeting of the council, the clerk shall cause the minutes of the proceedings of the council, including the total expenditure from each city fund, to be published in a newspaper of general circulation in the city. The publication shall include a list of all claims allowed and a summary of all receipts and shall show the gross amount of the claims.
- Failure by the clerk to make publication is a simple misdemeanor.



Closed Sessions

Meetings of governmental bodies must be held in open session unless closed session is expressly permitted by law.

Iowa Code sec. 21.5 outlines circumstances in which government bodies may conduct a portion of their meeting in private, i.e., not open to the public.

- 21.5(1)(c) “to discuss strategy with counsel in matters that are presently in litigation or where litigation is imminent where its disclosure would be likely to prejudice or disadvantage the position of the governmental body in that litigation.”

Closed Sessions

May hold a closed session only by affirmative public vote of 2/3 of the members of the body, or all of the members present at the meeting.

The reason for holding the closed session by reference to a specific exemption under sec. 21.5 shall be announced publicly at the open session and entered in the minutes.

Final action must be taken in open session unless another provision of the code applies and allows the governmental body to vote in closed session.

Closed Sessions

The closed session must be recorded, but is not considered a public record unless a court orders otherwise.

Exception:

- Real estate – minutes and recording are no longer confidential once transaction completed.



Rules of Conduct

The public may use cameras or recording devices at any open session.

Nothing in the Open Meetings Law prevents a governmental body from making and enforcing reasonable rules for the conduct of its meetings to assure those meetings are orderly, and free from interference or interruption by spectators.



Open Records – Iowa Code Chapter 22

“The purpose of the Open Records Act is to open the doors of government to public scrutiny and to prevent government from secreting its decision-making activities from the public, on whose behalf it is its duty to act.”

Diercks v. Malin, 897 N.W.2d 12, 18 (Iowa App. 2016)

What are “public records”?

Iowa Code sec. 22.1

- “All records, documents, tape, or other information, stored or preserved in any medium, of or belonging to this state or any county, city, township, school corporation, political subdivision, ... or any branch, department, board, bureau, commission, council, or committee of any of the foregoing.”
- Regardless of where they are stored!

What are “public records”?

A government body shall not prevent the examination or copying of a public record by contracting with a nongovernment body to perform any of its duties or functions.

Even if the city is not in physical possession of the record, it is still a public record.

Examples of Public Records

Contracts	Policies
Handbooks	Payments / Invoices
Electronic records – audio/video	Daily Logs
Internal Meeting Agendas	Anything Listed on Website / Social Media
Email correspondence (private/official accounts) – nonconfidential government business	

Right to Examine

Every person shall have the right to examine and copy a public record and to publish or otherwise disseminate a public record or the information contained in a public record.

Purpose of request is generally irrelevant

Identity of the requestor is also irrelevant



Right to Examine

The examination and copying of public records shall be done under the supervision of the lawful custodian of the records or the custodian's authorized designee.

The lawful custodian shall not require the physical presence of a person requesting or receiving a copy of a public record and shall fulfill requests for a copy of a public record received in writing, by telephone, or by electronic means.

Who is the “lawful custodian”?

The government body currently in physical possession of the public record.

The government body owning a record when in the physical possession of persons outside a government body.

Each government body shall delegate to particular officials or employees of that government body the responsibility for implementing the requirements of the Open Records Law.

Records Requests

A request may be verbal
or in writing

May not require the use
of a specific form, but
forms may be helpful in
the process

“Magic words” are not
required

Fees

Although fulfillment of a request for a copy of a public record may be contingent upon receipt of payment of **reasonable** expenses, the lawful custodian shall make every **reasonable** effort to provide the public record requested at no cost other than copying costs for a record which takes **less than thirty minutes to produce**.

In the event expenses are necessary, such expenses shall be **reasonable** and communicated to the requester upon receipt of the request.

A person may contest the reasonableness of the custodian's expenses.

Fees

All **reasonable** expenses of the examination and copying shall be paid by the person desiring to examine or copy.

The lawful custodian may charge a **reasonable** fee for the services of the lawful custodian or the custodian's authorized designee in supervising the examination and copying of the records.



Fees

The fee for the copying service as determined by the lawful custodian shall not exceed the actual cost of providing the service.

Actual costs shall include only those **reasonable** expenses directly attributable to supervising the examination of and making and providing copies of public records.

Costs for legal services should only be utilized for the redaction or review of legally protected confidential information.

Records Policies

Iowa Code sec. 22.3(1)

- “The lawful custodian may adopt and enforce **reasonable** rules regarding the examination and copying of the records and the protection of the records against damage or disorganization.”

Iowa Code sec. 22.4

- The lawful custodian of the records shall post information for making such requests in a manner reasonably calculated to apprise the public of that information.

Time to Respond

No strict deadline to produce records, BUT extensive delay could be considered “silent refusal”

Unreasonable delay = violation of law



Time to Respond

Iowa Code sec. 22.8

- Good-faith, reasonable delay by a lawful custodian in permitting the examination and copying of a government record is not a violation if:
 - Lawful custodian seeking an injunction
 - Lawful custodian seeking to determine whether a confidential record should be available for inspection and copying to the person requesting the right to do so.
 - A reasonable delay for this purpose shall not exceed 20 calendar days and ordinarily should not exceed 10 business days.

Confidential Records

Iowa Code sec. 22.7 lists categories of confidential records

More than 70 categories of confidential records

The lawful custodian may choose to release records that are otherwise confidential under Chapter 22



Confidential Records - Examples



Work Product – 22.7(4)

Peace officers' investigative reports – 22.7(5)

Personnel records – 22.7(11)

Library records – 22.7(13)

Confidential Records

Open Records Act “does not affect other specific statutory privileges recognized by the legislature, such as the attorney-client privilege.”

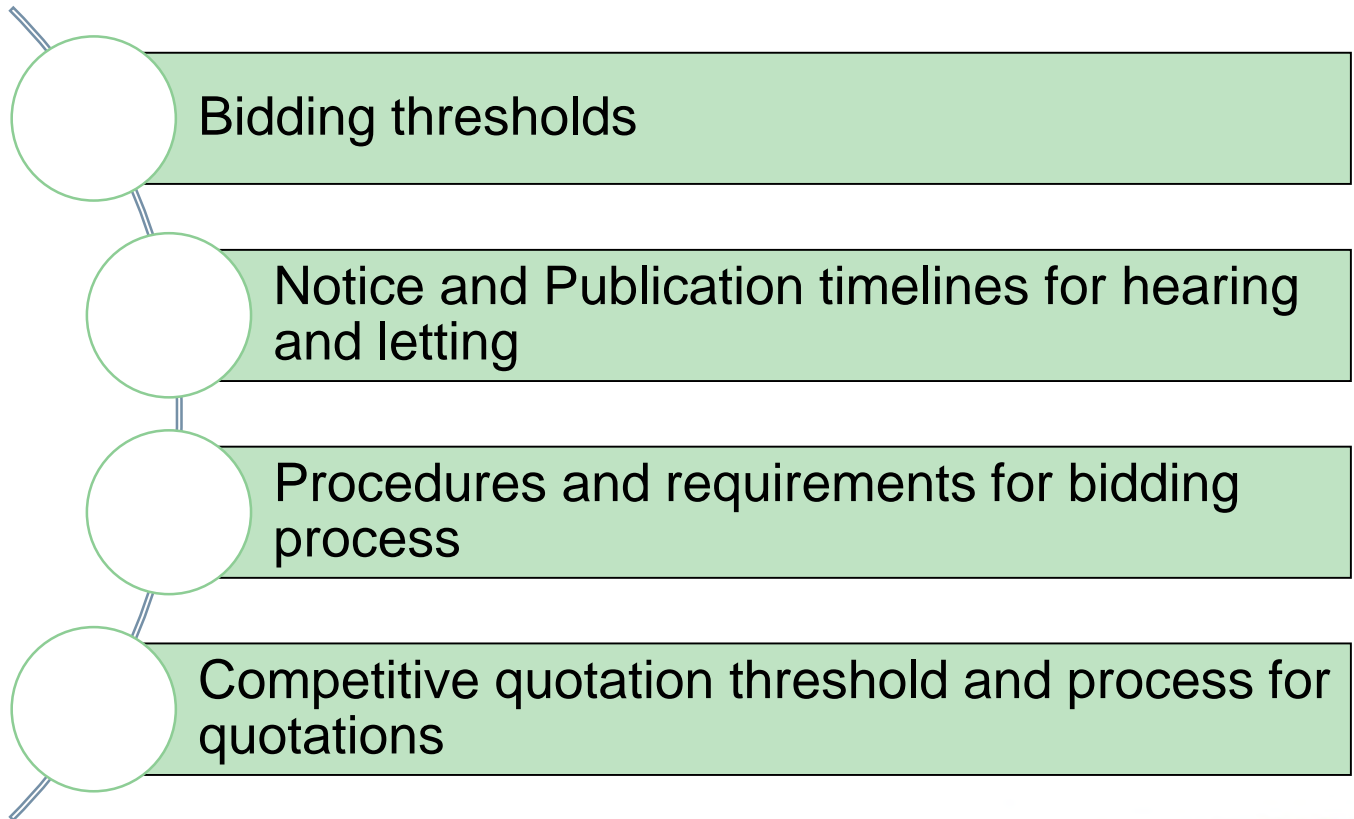
Horsfield Materials, Inc. v. City of Dyersville, 834 N.W.2d 444, 463 (Iowa 2013).

22.7 is not all inclusive or exhaustive...

Public Bidding (Ch. 26 & 26A)

Iowa Construction Bidding Procedures Act – IA Code Ch. 26

Includes:



Purpose of Public Bidding Law

The purpose of the competitive bidding statute is the “protection of the public to secure by competition among bidders, the best results at the lowest price, and to forestall fraud, favoritism, and corruption in the making of contracts.”

Scheckel v. Jackson County, 467 N.W.2d 286, 291 (Iowa App. 1991).

Public Improvement

A public improvement is a “a building or construction work which is constructed under the control of a governmental entity and is paid for in whole or in part with funds of a governmental entity or if a commitment has been made prior to construction by the governmental entity to pay for the building or construction work in whole or in part with funds of the governmental entity.”

“Under the control of a governmental entity,” specifically includes “determining the construction work to be performed or establishing the specifications for a building or construction work to be occupied by the governmental entity.”

A Public Improvement is NOT

- Emergency Work
- Goods or Services
- Repair or Maintenance Work
- City Utility Work
- Privately Funded Work
 - Iowa Code Section 26.6: “If private funds are offered to a governmental entity for a building or an improvement to be used by the public and such funds are conditioned upon private construction of the building or improvement, this chapter shall not apply to the project if the governmental entity does not contribute any funds to such construction.”

Repair or Maintenance Work

Generally: Defined as “Preservation Work” to keep the facility in sound or proper condition.

Specifically: Minor replacements and additions, as necessary, for a building or structure so that it remains in sound or proper condition and is restored to its original condition with same design.

If work is determined to be Repair or Maintenance Work, then:

1. The work is still subject to competitive bid or competitive quotation, if requisite thresholds are met....
2. UNLESS the work will be performed by employees of the governmental entity.

City Utility Work

26.2(3)(b)(5) Public Improvement is NOT

Construction or repair or maintenance work performed for a city utility under chapter 388 when such work is performed by its employees or when such work relates to existing utility infrastructure or establishing connections to existing utility infrastructure. For purposes of this subparagraph, “utility infrastructure” includes facilities used for the storage, collection, disposal, treatment, generation, transmission, or distribution of water, sewage, waste, electricity, gas, or telecommunications service.

Bidding and Quotation Thresholds

- Reviewed in January of each year
- Vary depending on size of community (50,000)
- Vary depending on horizontal or vertical infrastructure
 - Horizontal = RBC (roads, bridges, or culverts)

Competitive Bid Thresholds – Cities

Effective January 1, 2023:

HORIZONTAL: Cities with **population 50,000 or less** must bid projects with estimated total cost **\$65,000 or greater**

HORIZONTAL: Cities with **population greater than 50,000** must bid projects **\$93,000 or greater**

VERTICAL: **More than \$196,000** must be bid

Competitive Quotation Thresholds – Cities

Effective January 1, 2023:

HORIZONTAL:
Not required

VERTICAL: Cities with **population less than 50,000** must obtain competitive quotes for public improvements **between \$81,000 and \$196,000**

VERTICAL: Cities with **population of 50,000 or greater** must obtain competitive quotes for public improvements **between \$109,000 and \$196,000**

Competitive Bid Thresholds – Authority

Iowa Code sec. 314.1B establishes two bid threshold subcommittees.

Appointed by Director of IDOT from infrastructure advisory committees composed of both public and private sector representatives and certified public employee collective bargaining organizations

Horizontal infrastructure committee – reviews competitive bid thresholds applicable to highway, bridge, and culvert projects

Vertical infrastructure committee – reviews competitive bid thresholds applicable to all other types of public improvement projects as defined by Chapter 26 other than improvements considered ancillary to highway, bridge, or culvert projects

Express Prohibition in Statute

“If the estimated total cost of a public improvement exceeds the competitive bid threshold, a governmental entity shall not divide the public improvement into separate parts regardless of intent, if a resulting part of the public improvement is not let in accordance with Chapter 26.”

Competitive Bidding Process

Architect or Engineer prepares proposed plans, specs, form of contract and estimated total cost of construction.

Restrictions on Bid Forms:

- The City may not require a potential bidder on a public improvement to provide any information which the potential bidder may deem to be confidential or proprietary as a requirement for being deemed a responsive, responsible bidder.

Competitive Bidding Process

Restrictions on Bid Forms:

- The City may not impose any requirement that directly or indirectly restricts potential bidders to any predetermined class of bidders defined by experience on similar projects, size of company, union membership, or any other criteria.
- The City may request information from the apparent lowest responsive bidder to assist it in determining that bidder's responsibility. However, the City may only request information related to the apparent low bidder's 1) experience, 2) number of employees, and 3) ability to finance the cost of the public improvement.

Competitive Bidding Process

Notice of Public Hearing on Plans, Specs, Form of Contract and Estimated Total Cost of Construction.

- Description of public improvement and location
- Publish ONCE at least 4 days, but more than 20 days before the date set for the hearing.
 - In a newspaper of general circulation in the city where project is located.
 - Hearing must be held before the governmental body may award the contract and enter into a contract for construction.

Competitive Bidding Process

Notice to Bidders

- Post ONCE not less than 13 days, but not more than 45 days before the date set for receiving bids.
- Post in three* required locations:
 - 1) a relevant contractor plan room service with statewide circulation and
 - 2) a relevant construction lead generating service with statewide circulation and
 - 3) on an internet site sponsored by either the governmental entity or a statewide association that represents governmental entities.

Competitive Bidding Process

Notice to Bidders

- Notice must include:
 - Time and place for filing sealed proposals
 - Time and place sealed proposals will be opened and considered
 - General nature or description of the project
 - In general terms, when the work must be commenced and completed
 - Requirement for bid security (between 5% and 10%)

Competitive Bidding Process

Notice to Bidders

- Notice may include:
 - That bids may be received in an electronic format as determined by the governmental entity
 - That bids will be received under one contract or in parts
 - Any other information the governmental entity deems pertinent

Competitive Bidding Process

Opening Bids

- The date and time each bid is received, and the name of the person opening bid shall be recorded on envelope.
- If bids are received in an electronic format as provided in section 26.7, the governmental entity shall electronically record the date and time each bid is received.
- All bids received after deadline must be returned to bidder unopened.
- The governmental entity shall open, announce the amount of the bids, and file all proposals received, at the time and place specified in the notice to bidders.

Competitive Bidding Process

Award of Contract

- Contract must be awarded to the bidder submitting the lowest responsive, **responsible** bid

OR the city may reject all bids and start over

- Contract must be awarded by resolution

Competitive Bidding Process

Performance bond

- The successful bidder will furnish after the award of contract a corporate surety bond, acceptable to the governmental entity, for the faithful performance of the contract, in an amount equal to 100 percent of the amount of the contract.

Project Completion

Public improvements must be accepted by resolution

Retainage fund must be held for 30 days after the completion and final acceptance of the improvement

Construction Phase

Iowa Code ch. 573

- Retainage
 - The public corporation shall retain from each monthly payment not more than five percent of that amount which is determined to be due according to the estimate of the architect or engineer.
- Prompt payment
 - The public corporation shall pay interest on any progress payment that is approved as payable by the project architect or engineer and remains unpaid for 14 days, or a longer period, not to exceed 30 days, as specified in the contract documents.

Competitive Quotations – Iowa Code Sec. 26.14

Govt. entity shall make good faith effort to obtain quotes from at least two contractors regularly engaged in such work

Must have plans and specs prepared by Iowa licensed engineer, landscape architect, or architect

Must provide contractors an opportunity to inspect work site

Identify time, place, and manner for filing quotations

Must award contract to lowest responsive, responsible quotation

Performance bond still required! (25K or greater)

Iowa Code ch. 26A

- New allowable project delivery method for public improvement contracts
- Adopted during the 2022 legislative session
- Allows Guaranteed Maximum Price Contracts
 - “Guaranteed maximum price contract” means the agreed to fixed or guaranteed maximum price pursuant to a contract entered into by the construction manager-at-risk (CMAR) and the governmental entity.

Iowa Code ch. 26A

- Permitted for vertical construction only (no bridges, highways, or culverts).
- Law specifically prohibits Design-Build project delivery method.
- Project designer cannot also serve as the CMAR or GC.

Solicitation Process

Very specific solicitation process for engaging a CMAR on a public improvement project:

Notice of intent must be posted – Owner must publicly disclose its intent to enter into a GMP contract at least 14 days prior to posting a Request for Statement of Qualifications (“RFQ”) seeking a contractor to serve as a CMAR.

RFQ must be issued – The selection criteria within the RFQ must comply with Iowa Code sec. 26A.3(a)(3). No price proposals are solicited as part of the RFQ process. The RFQ must be posted for not less than 13 days and not more than 45 days.

Solicitation Process

Notice of Intent and RFQ must be posted in the following locations:

- Relevant contractor plan room service with statewide circulation; and
- Relevant construction lead generating service with statewide circulation; and
- On an internet site sponsored by either a governmental entity or a statewide association that represents the governmental entity



Solicitation Process – RFQ

RFQ shall include:

- General information on the project site, project scope, schedule, selection criteria, and the time and place for receipt of statements of qualification
- Experience in both the private and public sector

RFQ may include:

- Contractor's experience undertaking projects of similar size and scope in either public or private sector
- Past performance, safety record, proposed personnel, and proposed methodology

Solicitation Process - RFQ

RFQ shall not include mandatory labor affiliation requirements


Owner must receive, publicly open, and read aloud names of contractors submitting statements of qualifications

Owner must evaluate RFQ submissions within 45 days after date of opening

Owner must determine which respondents are **QUALIFIED** in relation to the criteria in the RFQ

Solicitation Process - RFP

RFP is issued to qualified firms



The RFP must include selection criteria which complies with Iowa Code sec. 26A.3(a)(3).

Each qualified contractor may then submit a proposal which shall include their proposed fee.

The owner must receive, publicly open, and read aloud the names of the contractors submitting proposals.

Proposals must be evaluated within 45 days after date of opening.

Solicitation Process - RFP

Fee proposal is generally a 2-part proposal:

1. Preconstruction services (hourly rates)
2. Construction services (management fee % and hourly rates for construction phase services)

Solicitation Process

Owner determines winning proposal

- The submitted proposals shall be ranked according to selection criteria.
- The owner must select the CMAR that submits the proposal that offers the **best value** for the governmental entity based on the published selection criteria and on its ranking evaluation.

Process for Engaging Subs/Material Suppliers

Once the CMAR is engaged, Iowa Code chapter 26A requires the CMAR to solicit subcontractors and material suppliers through a similar two-step bidding process.

“If the estimated total cost of trade contract work and materials packages is in excess of the adjusted competitive bid threshold established in section 314.1B, the **Construction Manager-at-Risk** shall advertise for competitive bids, receive bids, prepare bid analyses, and award contracts to **QUALIFIED** firms on trade contract work and materials packages...”

Process for Engaging Subs/Material Suppliers

- A. The CMAR must first issue an RFQ with specified project information seeking prequalification information.
- Same posting requirements as RFQ for CMAR
- B. All firms who meet the prequalification criteria may submit a bid for the relevant trade contract work and materials package.
- In general, all firms must be notified whether they met the prequalification criteria no less than 15 days prior to the subcontractor bids being due.
 - Subcontractor and material package bids must be publicly opened and filed on the date and time specified in the notice to bidders.
 - Bids are reviewed and evaluated by both the owner and CMAR.
 - Contracts must be awarded to the lowest responsive, responsible bidder.

Process for Engaging Subs/Material Suppliers

- C. The CMAR may self-perform work for trade and materials packages that do not exceed the competitive bidding threshold established in Iowa Code sec. 314.1B.
- D. The CMAR may also submit a bid proposal to perform work that exceeds the competitive bidding threshold. The owner shall evaluate the bids in which the CMAR is included as a bidder.
- E. If the CMAR is not the apparent low bidder, the owner shall determine whether a recommendation for award to the CMAR is in **the best interest of the project.**

Other Requirements Still Apply

Chapter 573

Performance bond
still required if
project cost exceeds
\$25,000

Retainage fund
still required

Progress payments
must be made within
30 days

Q & A



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