

Senate File 438 - Enrolled

Senate File 438

AN ACT

RELATING TO BIDDING AND CONTRACTING FOR PUBLIC IMPROVEMENT
PROJECTS, MAKING PENALTIES APPLICABLE, AND INCLUDING
EFFECTIVE DATE AND APPLICABILITY PROVISIONS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. Section 26.9, Code 2017, is amended to read as follows:

26.9 Award of contract.

1. The contract for the public improvement must be awarded to the lowest responsive, responsible bidder. However, contracts relating to public utilities or extensions or improvements thereof, as described in sections 384.80 through 384.94, may be awarded by the city as it deems to be in the best interests of the city. [This section](#) shall not be construed to prohibit a governmental entity in the award of a contract for a public improvement or a governing body of a city utility from providing, in the award of a contract for a public improvement, an enhancement of payments upon early completion of the public improvement if the availability of the enhancement payments is included in the notice to bidders, the enhancement payments are competitively neutral to potential bidders, the enhancement payments are considered as a separate item in the public hearing on the award of contract, and the total value of the enhancement payments does not exceed ten percent of the value of the contract.

2. A governmental entity shall 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. This subsection shall not be construed to prohibit a governmental entity from obtaining information from the lowest responsive bidder to determine the bidder's responsibility relating to the bidder's experience, number of employees, and ability to finance the cost of the public improvement. However, a governmental entity shall require nonresident bidders to comply with section 73A.21, subsection 4.

Sec. 2. NEW SECTION. 26.16 Prequalification requirements prohibited.

A governmental entity shall not by ordinance, rule, or any other action relating to contracts for public improvements for which competitive bids are required by this chapter 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. However, a governmental entity shall require nonresident bidders to comply with section 73A.21, subsection 4.

Sec. 3. Section 73A.1, Code 2017, is amended to read as follows:

73A.1 Definitions.

As used in this subchapter:

1. *"Appeal board"* ~~as used in this chapter~~ means the state appeal board, composed of the auditor of state, treasurer of state, and the director of the department of management.

2. *"Municipality"* ~~as used in this chapter~~ means township or the state fair board.

3. *"Public improvement"* ~~as used in this chapter~~ means a building or other construction work to be paid for in whole or in part by the use of funds of any municipality.

Sec. 4. Section 73A.16, Code 2017, is amended to read as follows:

73A.16 Bonds and taxes void.

Any bonds or other evidence of indebtedness issued contrary to the provisions of ~~this chapter~~ subchapter, and any tax

levied or attempted to be levied for the payment of any such bonds or interest thereon, shall be null and void.

Sec. 5. NEW SECTION. 73A.25 Title.

This subchapter shall be known as the "*Fair and Open Competition in Governmental Construction Act*".

Sec. 6. NEW SECTION. 73A.26 Purpose.

The purpose of this chapter is to provide for more economical, nondiscriminatory, neutral, and efficient procurement of construction-related goods and services by this state and political subdivisions of this state.

Sec. 7. NEW SECTION. 73A.27 Definitions.

As used in this subchapter, unless the context clearly indicates otherwise:

1. "*Governmental entity*" means the state, political subdivisions of the state, public school corporations, and all officers, boards, or commissions empowered by law to enter into contracts for the construction of public improvements.

2. "*Public improvement*" means any building or construction work which is constructed, repaired, remodeled, or demolished under the control of a governmental entity and is paid for in whole or in part with funds of the governmental entity, including a building or improvement constructed or operated jointly with any other public or private agency.

Sec. 8. NEW SECTION. 73A.28 Public improvement contracts — prohibited terms and exemptions.

1. A governmental entity awarding a contract for the construction, repair, remodeling, or demolition of a public improvement and any construction manager acting on its behalf shall not, in any bid specifications, project agreements, or other controlling documents do any of the following:

a. Require a bidder, offeror, contractor, or subcontractor to enter into or adhere to an agreement with one or more labor organizations in regard to the public improvement or a related public improvement project.

b. Prohibit a bidder, offeror, contractor, or subcontractor from entering into or adhering to an agreement with one or more labor organizations in regard to the public improvement or a related public improvement project.

c. Discriminate against a bidder, offeror, contractor, or

subcontractor for becoming or remaining or refusing to become or remain a signatory to, or for adhering or refusing to adhere to, an agreement with one or more labor organizations in regard to the public improvement or a related public improvement project.

2. A governmental entity shall not award a grant, tax abatement, or tax credit that is conditioned upon a requirement that the awardee include a term described in subsection 1 in a contract document for any construction, improvement, maintenance, or renovation to real property or fixtures that is the subject of the grant, tax abatement, or tax credit.

3. This section shall not be construed to do any of the following:

a. Prohibit a governmental entity from awarding a contract, grant, tax abatement, or tax credit to a private owner, bidder, contractor, or subcontractor who enters into or who is party to an agreement with a labor organization, if being or becoming a party or adhering to an agreement with a labor organization is not a condition for award of the contract, grant, tax abatement, or tax credit, and if the governmental entity does not discriminate against a private owner, bidder, contractor, or subcontractor in the awarding of that contract, grant, tax abatement, or tax credit based upon the private owner's, bidder's, contractor's, or subcontractor's status as being or becoming, or the willingness or refusal to become, a party to an agreement with a labor organization.

b. Prohibit a contractor or subcontractor from voluntarily entering into or complying with an agreement entered into with one or more labor organizations in regard to a contract with a governmental entity or funded in whole or in part from a grant, tax abatement, or tax credit from the governmental entity.

c. Prohibit employers or other parties from entering into agreements or engaging in any other activity protected by the federal National Labor Relations Act, 29 U.S.C. §151 et seq.

d. Interfere with labor relations of parties that are not regulated under the federal National Labor Relations Act, 29 U.S.C. §151 et seq.

Sec. 9. EFFECTIVE UPON ENACTMENT. This Act, being deemed of immediate importance, takes effect upon enactment.

Sec. 10. APPLICABILITY. This Act applies to notices to bidders for public improvements, bids awarded for public improvements, and contracts for public improvements entered into on and after the effective date of this Act.

JACK WHITVER
President of the Senate

LINDA UPMEYER
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 438, Eighty-seventh General Assembly.

W. CHARLES SMITHSON
Secretary of the Senate

Approved _____, 2017

TERRY E. BRANSTAD
Governor