

MAR 6 1995  
STATE GOVERNMENT

HOUSE FILE 260  
BY MARTIN, HARRISON, and  
VAN FOSSEN

Passed House, Date \_\_\_\_\_ Passed Senate, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

**A BILL FOR**

- 1 An Act relating to competitive bidding for public improvements.
- 2 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
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HF 260

1 Section 1. Section 72.3, Code 1995, is amended to read as  
2 follows:

3 72.3 DIVULGING CONTENTS OF SEALED BIDS OR COMPETITIVE  
4 PROPOSALS.

5 No A public officer or deputy thereof, if any, shall not  
6 directly or indirectly or in any manner whatsoever, at any  
7 other time or in any other manner than as provided by law,  
8 open any sealed bid or competitive proposal, or convey or  
9 divulge to any person any part of the contents of a sealed bid  
10 or competitive proposal, on any proposed contract concerning  
11 which a sealed bid or competitive proposal is required or  
12 permitted by law.

13 Sec. 2. Section 73A.18, Code 1995, is amended by adding  
14 the following new unnumbered paragraph:

15 NEW UNNUMBERED PARAGRAPH. In lieu of receiving sealed  
16 bids pursuant to this section, a municipality may request  
17 competitive proposals in accordance with the procedures  
18 provided in chapter 384, division VI.

19 Sec. 3. Section 384.95, Code 1995, is amended by adding  
20 the following new subsections:

21 NEW SUBSECTION. 3. "Bidder" means a person responding to  
22 a request for sealed bids or competitive proposals.

23 NEW SUBSECTION. 4. "Competitive proposal" means a  
24 response by a bidder to a solicitation for proposals by a  
25 governing body, in the nature of a sealed bid, except that the  
26 proposal includes cost or pricing data and the proposal  
27 remains subject to discussion and negotiation with the  
28 governing body up to the time a contract is awarded.

29 NEW SUBSECTION. 5. "Cost or pricing data" means all  
30 verifiable facts that a prudent buyer or seller would  
31 reasonably expect to significantly affect price negotiations,  
32 including facts forming the basis of the offeror's judgment  
33 about estimated future costs or projections, and facts that  
34 can be reasonably expected to contribute to the soundness of  
35 estimates of future costs and to the validity of

1 determinations of costs already incurred.

2 NEW SUBSECTION. 6. "Responsible" means a bidder that  
3 possesses the ability, including the financial ability, to  
4 adequately comply with and perform the requirements of a  
5 contract and that has a satisfactory record of integrity,  
6 business ethics, and performance. A bidder that has a current  
7 certificate of competency from the United States small  
8 business administration is deemed to be responsible.

9 NEW SUBSECTION. 7. "Responsive" means that a bid or  
10 proposal meets the technical and contractual requirements of  
11 the solicitation by the governing body for sealed bids or  
12 competitive proposals.

13 Sec. 4. Section 384.96, Code 1995, is amended to read as  
14 follows:

15 384.96 SEALED BIDS OR COMPETITIVE PROPOSALS.

16 When the estimated total cost to a city of a public  
17 improvement exceeds the sum of twenty-five thousand dollars,  
18 the governing body shall advertise for sealed bids or  
19 competitive proposals for the proposed improvement by  
20 publishing a notice to bidders as provided in section 362.3,  
21 except that the notice to bidders ~~may~~ must be published more  
22 than twenty days ~~but-not-more-than-forty-five-days~~ before the  
23 date for filing bids or competitive proposals with the  
24 governing body.

25 Sec. 5. Section 384.97, Code 1995, is amended to read as  
26 follows:

27 384.97 NOTICE TO BIDDERS.

28 The notice to bidders must state the following items:

29 1. The time and place for filing sealed bids or  
30 competitive proposals.

31 2. The time and place sealed ~~proposals~~ bids will be opened  
32 and considered on behalf of the governing body.

33 3. The general nature of the public improvement on which  
34 sealed bids or competitive proposals are requested.

35 4. In general terms when the work must be commenced and

1 when it must be completed.

2 5. That each bidder shall accompany the sealed bid or  
3 competitive proposal with a bid security as defined in this  
4 subsection and as specified by the governing body, as security  
5 that the successful bidder will enter into a contract for the  
6 work bid-upon requested and will furnish after the award of  
7 contract a corporate surety bond, acceptable to the governing  
8 body, for the faithful performance of the contract, in an  
9 amount equal to one hundred percent of the amount of the  
10 contract. The bidder's security shall be in an amount fixed  
11 by the governing body, and shall be in the form of a cashier's  
12 or certified check drawn on a bank in Iowa or a bank chartered  
13 under the laws of the United States, or a certified share  
14 draft drawn on a credit union in Iowa or chartered under the  
15 law of the United States, or the governing body may provide  
16 for a bidder's bond with corporate surety satisfactory to the  
17 governing body. The bid bond shall contain no condition  
18 except as provided in this section.

19 6. Any further information which the governing body deems  
20 pertinent.

21 The notice to bidders may provide that sealed bids or  
22 competitive proposals will be received for the furnishing of  
23 all labor and materials and furnishing or installing equipment  
24 under one contract, or for parts thereof in separate sections.

25 On public improvements to be financed wholly or partially  
26 by special assessments against benefited property, the  
27 governing body, in the notice to bidders, may request  
28 aggregate sealed bids or competitive proposals for all  
29 projects included in any resolution of necessity,  
30 notwithstanding variations in the sizes of the improvements  
31 and notwithstanding that some parts of the improvements are  
32 assessable and some nonassessable, and may award the contract  
33 to the lowest evaluated, responsive, responsible bidder  
34 submitting the lowest evaluated aggregate bid or proposal.

35 7. The sealed bid or competitive proposal must provide for

1 a minimum period of time of not less than thirty days, for the  
2 governing body to accept the bid or proposal.

3 Sec. 6. Section 384.98, Code 1995, is amended to read as  
4 follows:

5 384.98 BID SECURITY.

6 The amount of bid security for the sealed bid or  
7 competitive proposal must be fixed by the governing body prior  
8 to ordering publication of the notice to bidders and must  
9 equal at least five percent, but may not exceed ten percent of  
10 either the estimated total contract cost of the public  
11 improvement, or the amount of each bid or proposal.

12 Sec. 7. Section 384.99, Code 1995, is amended to read as  
13 follows:

14 384.99 AWARD OF CONTRACT.

15 The contract for the public improvement must be awarded to  
16 the lowest evaluated, responsive, responsible bidder,  
17 provided, however, that contracts relating to public utilities  
18 or extensions or improvements thereof, as described in  
19 division V of this chapter, may be awarded by the governing  
20 body as it deems to be in the best interests of the city.

21 Sec. 8. Section 384.100, Code 1995, is amended to read as  
22 follows:

23 384.100 ~~OPENING-AND~~ CONSIDERING SEALED BIDS AND  
24 COMPETITIVE PROPOSALS.

25 1. SEALED BIDS. The governing body shall publicly open,  
26 announce the amount of the sealed bids, and file all ~~proposals~~  
27 bids received, at the time and place specified in the notice  
28 to bidders. The governing body may, by resolution, award the  
29 contract for the public improvement to the bidder submitting  
30 the best bid, determined as provided in section 384.99, or it  
31 may reject all bids received, fix a new date for receiving  
32 sealed bids or competitive proposals, and order publication of  
33 a new notice to bidders. The bid security furnished by the  
34 successful bidder must be retained by the governing body until  
35 the approved contract form has been executed, and a bond filed

1 by the bidder guaranteeing the performance of the contract and  
2 payment of all subcontractors, and the contract and bond, have  
3 been approved by the governing body. The provisions of  
4 chapter 573, where applicable, apply to contracts awarded  
5 under this division.

6 The checks or bidder's bonds of the unsuccessful bidder  
7 must be promptly returned to the bidders by the governing body  
8 as soon as the successful bidder is determined or within  
9 thirty days whichever is sooner.

10 2. COMPETITIVE PROPOSALS. The governing body shall open  
11 and negotiate competitive proposals in private. Each proposal  
12 submitted, including cost or pricing data, is to be considered  
13 a confidential record. The designees of the governing body  
14 shall conduct negotiations with all responsive and responsible  
15 bidders prior to recommending an award of the contract to the  
16 bidder making the best proposal as provided in section 384.99.  
17 The governing body may, by resolution, award the contract for  
18 the public improvement to the bidder submitting the best  
19 proposal, determined as provided in section 384.99, or it may  
20 reject all proposals received, fix a new date for receiving  
21 sealed bids or competitive proposals, and order publication of  
22 a new notice to bidders. In awarding the contract, the  
23 governing body shall disclose only the total aggregate cost to  
24 the governing body to enter into the contract and not the cost  
25 or pricing data. All proposals submitted shall remain  
26 confidential and be retained by the governing body for three  
27 years after completion of the project at which time all  
28 unsuccessful proposals shall be destroyed. The bid security  
29 furnished by the successful bidder must be retained by the  
30 governing body until the approved contract form has been  
31 executed, and a bond filed by the bidder guaranteeing the  
32 performance of the contract and payment of all subcontractors,  
33 and the contract and bond have been approved by the governing  
34 body. The provisions of chapter 573, where applicable, apply  
35 to contracts awarded under this division.

1 The checks or bidder's bonds of the unsuccessful bidder  
2 must be promptly returned to the bidders by the governing body  
3 as soon as the successful bidder is determined or within  
4 thirty days, whichever is sooner.

5 Sec. 9. Section 384.101, Code 1995, is amended to read as  
6 follows:

7 384.101 DELEGATION OF AUTHORITY.

8 When sealed bids or competitive proposals are required to  
9 be taken in connection with any public improvement, the  
10 governing body may delegate, by ordinance or resolution, to  
11 the city manager, clerk, engineer, chief of purchasing,  
12 finance officer, or other public officer, the duty duties set  
13 forth in section 384.100 of receiving and opening sealed bids  
14 ~~and-announcing-the-results~~ or opening and negotiating  
15 competitive proposals. The officer shall report the results  
16 ~~of-the-bidding~~ with the officer's recommendations thereon to  
17 the governing body at its next meeting.

18 Sec. 10. Section 384.102, Code 1995, is amended to read as  
19 follows:

20 384.102 WHEN HEARING NECESSARY.

21 When the estimated total cost of a public improvement  
22 ~~exceeds~~ might exceed the sum of twenty-five thousand dollars,  
23 the governing body shall not enter into a contract for the  
24 improvement until it has held a public hearing on the proposed  
25 plans, specifications, and form of contract, ~~and-estimated~~  
26 ~~cost~~ for the improvement. Notice of the hearing must be  
27 published as provided in section 362.3. At the hearing any  
28 interested person may appear and file objections to the  
29 proposed plans, specifications, or contract, or-estimated-cost  
30 ~~of for~~ the improvement. After hearing objections, the  
31 governing body shall by resolution enter its decision on the  
32 plans, specifications, and contract, and-estimated-cost.

33

#### EXPLANATION

34 This bill provides for an alternative procedure for cities  
35 and municipalities, defined as townships, school corporations,

1 the state fair board, and the state board of regents, to award  
2 contracts for public improvements that exceed \$25,000. The  
3 bill permits an award of a contract pursuant to a request for  
4 competitive proposals in addition to the current sealed bids  
5 procedure.

6 The bill defines competitive proposals as a proposal that  
7 includes detailed cost or pricing data outlining the cost for  
8 performing the contract. Proposals requested under this  
9 procedure are subject to discussion and negotiation up until  
10 the time the contract is awarded. The bill also defines what  
11 a responsive bid or proposal is and what constitutes a  
12 responsible bidder. The bill also provides that the cost or  
13 pricing data included in the proposal is confidential and not  
14 disclosable to the public; only the total aggregate cost of  
15 the proposal awarded the contract is disclosed. Most of the  
16 procedures and protections applied to the current sealed bid  
17 procedure also apply to the competitive proposals procedure.

18 The bill also makes some changes to the city contract  
19 letting procedure as it applies to both sealed bids and  
20 competitive proposals by eliminating the consideration of the  
21 estimated cost of a public improvement at the public hearing  
22 prior to solicitation of bids or proposals, by eliminating the  
23 maximum time period for publishing a notice of a request for  
24 bids or proposals, and by requiring at least 30 days for  
25 consideration by the governing body of a bid or proposal.

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