

Senate Study Bill 1178

SENATE FILE _____
BY (PROPOSED COMMITTEE ON
LOCAL GOVERNMENT BILL BY
CO=CHAIRPERSON SHULL)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to certain bid threshold requirements and the use
2 of construction management services for construction of
3 certain public works projects.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
5 TLSB 2053XC 81
6 eg/cf/24

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1 1 Section 1. Section 8A.311, subsection 9, paragraph a, Code
1 2 2005, is amended to read as follows:
1 3 a. When the estimated total cost of construction,
1 4 erection, demolition, alteration, or repair of a public
1 5 improvement exceeds ~~twenty-five~~ one hundred thousand dollars,
1 6 the department shall solicit bids on the proposed improvement
1 7 by publishing an advertisement in a print format. The
1 8 advertisement shall appear in two publications in a newspaper
1 9 published in the county in which the work is to be done. The
1 10 first advertisement for bids appearing in a newspaper shall be
1 11 not less than fifteen days prior to the date set for receiving
1 12 bids. The department may publish an advertisement in an
1 13 electronic format as an additional method of soliciting bids
1 14 under this paragraph.
1 15 Sec. 2. Section 8A.311, subsection 16, Code 2005, is
1 16 amended to read as follows:
1 17 16. The department shall not award a contract to a bidder
1 18 for a construction, reconstruction, demolition, or repair
1 19 project or improvement with an estimated cost that exceeds
1 20 ~~twenty-five~~ one hundred thousand dollars in which the bid
1 21 requires the use of inmate labor supplied by the department of
1 22 corrections, but not employed by private industry pursuant to
1 23 section 904.809, to perform the project or improvement.
1 24 Sec. 3. Section 35A.10, subsection 2, Code 2005, is
1 25 amended to read as follows:
1 26 2. The commandant and the commission shall have plans and
1 27 specifications prepared by the department of administrative
1 28 services for authorized construction, repair, or improvement
1 29 projects in excess of ~~twenty-five~~ one hundred thousand
1 30 dollars. An appropriation for a project shall not be expended
1 31 until the department of administrative services has adopted
1 32 plans and specifications and has completed a detailed estimate
1 33 of the cost of the project, prepared under the supervision of
1 34 a registered architect or registered professional engineer.
1 35 Sec. 4. Section 35A.10, subsection 3, Code 2005, is
2 1 amended to read as follows:
2 2 3. The director of the department of administrative
2 3 services shall, in writing, let all contracts for authorized
2 4 improvements in excess of ~~twenty-five~~ one hundred thousand
2 5 dollars in accordance with chapter 8A, subchapter III. The
2 6 director of the department of administrative services shall
2 7 not authorize payment for construction purposes until
2 8 satisfactory proof has been furnished by the proper officer or
2 9 supervising architect that the parties have complied with the
2 10 contract.
2 11 Sec. 5. NEW SECTION. 72.6 CONSTRUCTION MANAGEMENT
2 12 SERVICES.
2 13 1. DEFINITIONS. As used in this section, unless the
2 14 context otherwise provides:
2 15 a. "Construction management services" means comprehensive

2 16 professional services provided by a single entity in the
2 17 planning, design, and construction phases of a public works
2 18 project.

2 19 "Construction management services" does not include
2 20 architectural services provided within the practice of
2 21 architecture as defined in section 544A.16, engineering
2 22 services provided within the practice of engineering as
2 23 defined in section 542B.2, or landscape architectural services
2 24 provided within the practice of landscape architecture as
2 25 defined in section 544B.1.

2 26 b. "Construction manager" means any person, firm, or
2 27 corporation that provides construction management services to
2 28 a public owner.

2 29 c. "Public owner" means a public body including this
2 30 state, an officer, official, agency, authority, board, or
2 31 commission of this state or of a political subdivision of this
2 32 state, or an institution supported in whole or in part by
2 33 public funds.

2 34 d. "Public works" means a building or other construction
2 35 work which is constructed under the control of a public owner
3 1 and is paid for in whole or in part with funds of a public
3 2 owner. "Public works" does not include any work done by or on
3 3 behalf of a drainage or levee district or any work funded by
3 4 federal funds where federal procurement policy applicable to
3 5 the use of the federal funds is inconsistent with the
3 6 requirements of this section.

3 7 e. "Public works project" or "project" means the
3 8 construction, maintenance, or repair of public works.

3 9 2. ADVERTISEMENT FOR CONSTRUCTION MANAGEMENT SERVICES. A
3 10 public owner is not required to engage a construction manager.
3 11 If a public owner makes an initial determination to engage a
3 12 construction manager, the public owner shall advertise for
3 13 construction management services by publishing an
3 14 advertisement in a newspaper published at least once weekly
3 15 and having general circulation in the city or county where the
3 16 public works project is located. The notice must be published
3 17 at least once, not less than twenty nor more than forty-five
3 18 days before the date set by the public owner. The notice
3 19 shall contain a statement that the public owner reserves the
3 20 right to terminate its efforts to engage a construction
3 21 manager at any time and to proceed with the public works
3 22 project without engaging a construction manager.

3 23 3. CONSTRUCTION MANAGEMENT SERVICES CONTRACT. A
3 24 construction management services contract for a public works
3 25 project shall provide that the construction manager shall do
3 26 all of the following:

3 27 a. Furnish skill and judgment in cooperation with, and in
3 28 reliance on, the services of the public works project
3 29 architect, engineer, and contractors.

3 30 b. Refrain from entering into an arrangement that violates
3 31 subsection 4 and refrain from bidding on or performing actual
3 32 construction work on a public works project on which the
3 33 construction manager is performing construction management
3 34 services.

3 35 c. Recommend contracts or change orders to a public owner
4 1 but a construction manager shall not authorize contracts or
4 2 change orders. A construction manager shall not alter an
4 3 engineering document as defined in section 542B.2 or alter a
4 4 technical submission as identified in section 544A.28.

4 5 d. At the public owner's request, obtain professional
4 6 liability insurance.

4 7 A contract for construction management services shall be a
4 8 public document and shall be made available to the public for
4 9 the reasonable cost of reproduction of the contract.

4 10 4. CONFLICTS PROHIBITED. A construction management
4 11 services contract for a public works project shall not be
4 12 awarded by a public owner to a construction manager that does
4 13 any of the following:

4 14 a. Guarantees a maximum price for the public works
4 15 project.

4 16 b. Is controlled by or shares common ownership, or is
4 17 affiliated with, a company that guarantees a maximum price for
4 18 the public works project.

4 19 c. Assumes financial responsibility for the work of others
4 20 on the public works project.

4 21 d. Guarantees a maximum price for the work of others on
4 22 the public works project.

4 23 e. Furnishes or guarantees a performance or payment bond
4 24 for the construction manager or for another contractor on the
4 25 public works project.

4 26 5. APPLICABILITY. This section does not apply to the

4 27 planning, design, construction, maintenance, repair, or other
4 28 work completed for or on behalf of a public owner by employees
4 29 of the public owner.

4 30 Sec. 6. Section 73A.2, Code 2005, is amended to read as
4 31 follows:

4 32 73A.2 NOTICE OF HEARING.

4 33 Before any municipality shall enter into any contract for
4 34 any public improvement to cost ~~twenty-five~~ one hundred
4 35 thousand dollars or more, the governing body proposing to make
5 1 the contract shall adopt proposed plans and specifications and
5 2 proposed form of contract, fix a time and place for hearing at
5 3 the municipality affected or other nearby convenient place,
5 4 and give notice by publication in at least one newspaper of
5 5 general circulation in the municipality at least ten days
5 6 before the hearing.

5 7 Sec. 7. Section 73A.18, Code 2005, is amended to read as
5 8 follows:

5 9 73A.18 WHEN BIDS REQUIRED == ADVERTISEMENT == DEPOSIT.

5 10 When the estimated total cost of construction, erection,
5 11 demolition, alteration or repair of a public improvement
5 12 exceeds ~~twenty-five~~ one hundred thousand dollars, the
5 13 municipality shall advertise for bids on the proposed
5 14 improvement by two publications in a newspaper published in
5 15 the county in which the work is to be done. The first
5 16 advertisement for bids shall be not less than fifteen days
5 17 prior to the date set for receiving bids. The municipality
5 18 shall let the work to the lowest responsible bidder submitting
5 19 a sealed proposal. However, if in the judgment of the
5 20 municipality bids received are not acceptable, all bids may be
5 21 rejected and new bids requested. A bid shall be accompanied,
5 22 in a separate envelope, by a deposit of money or a certified
5 23 check or credit union certified share draft in an amount to be
5 24 named in the advertisement for bids as security that the
5 25 bidder will enter into a contract for the doing of the work.
5 26 The municipality shall fix the bid security in an amount equal
5 27 to at least five percent, but not more than ten percent of the
5 28 estimated total cost of the work. The checks, share drafts or
5 29 deposits of money of the unsuccessful bidders shall be
5 30 returned as soon as the successful bidder is determined, and
5 31 the check, share draft or deposit of money of the successful
5 32 bidder shall be returned upon execution of the contract
5 33 documents. This section does not apply to the construction,
5 34 erection, demolition, alteration or repair of a public
5 35 improvement when the contracting procedure for the doing of
6 1 the work is provided for in another provision of law.

6 2 Sec. 8. Section 161C.2, subsection 1, paragraph b, Code
6 3 2005, is amended to read as follows:

6 4 b. Any work project with an estimated cost of ~~twenty-five~~
6 5 one hundred thousand dollars or more, shall be undertaken as a
6 6 public contract as provided in chapters 73A and 573. The
6 7 local contracting organization shall designate a contracting
6 8 officer and shall establish procedures to manage the contract,
6 9 approve bills for payment, and review proposed change orders
6 10 or amendments to the contract.

6 11 Sec. 9. Section 218.58, subsections 2 and 4, Code 2005,
6 12 are amended to read as follows:

6 13 2. The director shall have plans and specifications
6 14 prepared by the department of administrative services for
6 15 authorized construction, repair, or improvement projects
6 16 costing over ~~twenty-five~~ one hundred thousand dollars. An
6 17 appropriation for a project shall not be expended until the
6 18 department of administrative services has adopted plans and
6 19 specifications and has completed a detailed estimate of the
6 20 cost of the project, prepared under the supervision of a
6 21 registered architect or registered professional engineer.
6 22 Plans and specifications shall not be adopted and a project
6 23 shall not proceed if the project would require an expenditure
6 24 of money in excess of the appropriation.

6 25 4. If the director of the department of human services and
6 26 the director of the department of administrative services
6 27 determine that emergency repairs or improvements estimated to
6 28 cost more than ~~twenty-five~~ one hundred thousand dollars are
6 29 necessary to assure the continued operation of a departmental
6 30 institution, the requirements of subsections 2 and 3 for
6 31 preparation of plans and specifications and competitive
6 32 procurement procedures are waived. A determination of
6 33 necessity for waiver by the director of the department of
6 34 human services and the director of the department of
6 35 administrative services shall be in writing and shall be
7 1 entered in the project record for emergency repairs or
7 2 improvements. Emergency repairs or improvements shall be

7 3 accomplished using plans and specifications and competitive
7 4 procurement procedures to the greatest extent possible,
7 5 considering the necessity for rapid completion of the project.
7 6 A waiver of the requirements of subsections 2 and 3 does not
7 7 authorize an expenditure in excess of an amount otherwise
7 8 authorized for the repair or improvement.

7 9 Sec. 10. Section 262.34, unnumbered paragraph 1, Code
7 10 2005, is amended to read as follows:

7 11 When the estimated cost of construction, repairs, or
7 12 improvement of buildings or grounds under charge of the state
7 13 board of regents exceeds ~~twenty-five~~ one hundred thousand
7 14 dollars, the board shall advertise for bids for the
7 15 contemplated improvement or construction and shall let the
7 16 work to the lowest responsible bidder. However, if in the
7 17 judgment of the board bids received are not acceptable, the
7 18 board may reject all bids and proceed with the construction,
7 19 repair, or improvement by a method as the board may determine.
7 20 All plans and specifications for repairs or construction,
7 21 together with bids on the plans or specifications, shall be
7 22 filed by the board and be open for public inspection. All
7 23 bids submitted under this section shall be accompanied by a
7 24 deposit of money, a certified check or a credit union
7 25 certified share draft in an amount as the board may prescribe.

7 26 Sec. 11. Section 297.8, Code 2005, is amended to read as
7 27 follows:

7 28 297.8 EMERGENCY REPAIRS.

7 29 When emergency repairs costing more than ~~twenty-five~~ one
7 30 hundred thousand dollars are necessary in order to prevent the
7 31 closing of any school, the provisions of the law with
7 32 reference to advertising for bids shall not apply, and in that
7 33 event the board may contract for such emergency repairs
7 34 without advertising for bids. However, before such emergency
7 35 repairs can be made to any schoolhouse, it shall be necessary
8 1 to procure a certificate from the area education agency
8 2 administrator that such emergency repairs are necessary to
8 3 prevent the closing of the school.

8 4 Sec. 12. Section 330A.12, Code 2005, is amended to read as
8 5 follows:

8 6 330A.12 AWARD OF CONTRACT.

8 7 All contracts entered into by an authority for the
8 8 construction, reconstruction, and improvement of aviation
8 9 facilities shall be entered into pursuant to and shall comply
8 10 with chapter 73A. However, where an authority determines an
8 11 emergency exists, it may enter into contracts obligating the
8 12 authority for not in excess of ~~twenty-five~~ one hundred
8 13 thousand dollars per emergency without regard to the
8 14 requirements of chapter 73A and the authority may proceed with
8 15 the necessary action as expeditiously as possible to the
8 16 extent necessary to resolve such emergency.

8 17 Sec. 13. Section 331.341, subsection 1, Code 2005, is
8 18 amended to read as follows:

8 19 1. When the estimated cost of a public improvement, other
8 20 than improvements which may be paid for from the secondary
8 21 road fund, exceeds ~~the amount specified in section 309.40~~ one
8 22 hundred thousand dollars, the board shall follow the contract
8 23 letting procedures provided for cities in sections 384.95 to
8 24 384.103. However, in following those sections the board shall
8 25 substitute the word "county" for the word "city"; and section
8 26 331.305 for section 362.3, shall consider "governing body" to
8 27 mean the board, and shall exclude references to a city
8 28 utility, utility board of trustees, or public utilities. As
8 29 used in this section, "public improvement" means the same as
8 30 defined in section 384.95 as modified by this subsection.

8 31 Sec. 14. Section 380.4, unnumbered paragraph 1, Code 2005,
8 32 is amended to read as follows:

8 33 Passage of an ordinance, amendment, or resolution requires
8 34 a majority vote of all of the members of the council, except
8 35 when the mayor may vote to break a tie vote in a city with an
9 1 even number of council members, as provided in section 372.4.
9 2 Passage of a motion requires a majority vote of a quorum of
9 3 the council. A resolution must be passed to spend public
9 4 funds in excess of ~~twenty-five~~ one hundred thousand dollars on
9 5 any one project, or to accept public improvements and
9 6 facilities upon their completion. Each council member's vote
9 7 on a measure must be recorded. A measure which fails to
9 8 receive sufficient votes for passage shall be considered
9 9 defeated.

9 10 Sec. 15. Section 384.96, Code 2005, is amended to read as
9 11 follows:

9 12 384.96 SEALED BIDS.

9 13 When the estimated total cost to a city of a public

9 14 improvement exceeds the sum of ~~twenty-five~~ one hundred
9 15 thousand dollars, the governing body shall advertise for
9 16 sealed bids for the proposed improvement by publishing a
9 17 notice to bidders as provided in section 362.3, except that
9 18 the notice to bidders may be published more than twenty days
9 19 but not more than forty=~~five~~ days before the date for filing
9 20 bids.

9 21 Sec. 16. Section 384.102, Code 2005, is amended to read as
9 22 follows:
9 23 384.102 WHEN HEARING NECESSARY.
9 24 When the estimated total cost of a public improvement
9 25 exceeds the sum of ~~twenty-five~~ one hundred thousand dollars,
9 26 the governing body shall not enter into a contract for the
9 27 improvement until it has held a public hearing on the proposed
9 28 plans, specifications, and form of contract, and estimated
9 29 cost for the improvement. Notice of the hearing must be
9 30 published as provided in section 362.3. At the hearing any
9 31 interested person may appear and file objections to the
9 32 proposed plans, specifications, contract, or estimated cost of
9 33 the improvement. After hearing objections, the governing body
9 34 shall by resolution enter its decision on the plans,
9 35 specifications, contract, and estimated cost.

10 1 Sec. 17. Section 390.3, unnumbered paragraph 2, Code 2005,
10 2 is amended to read as follows:
10 3 However, in the performance of a joint agreement, the
10 4 governing body is not subject to statutes generally applicable
10 5 to public contracts, including hearings on plans,
10 6 specifications, form of contracts, costs, notice, ~~and~~
10 7 competitive bidding required under sections 384.95 through
10 8 384.103, and construction management services as provided in
10 9 section 72.6, unless all parties to the joint agreement are
10 10 cities located within the state of Iowa.

10 11 Sec. 18. Section 573.2, unnumbered paragraph 1, Code 2005,
10 12 is amended to read as follows:
10 13 Contracts for the construction of a public improvement
10 14 shall, when the contract price equals or exceeds ~~twenty-five~~
10 15 one hundred thousand dollars, be accompanied by a bond, with
10 16 surety, conditioned for the faithful performance of the
10 17 contract, and for the fulfillment of other requirements as
10 18 provided by law. The bond may also be required when the
10 19 contract price does not equal that amount. However, if a
10 20 contractor provides a performance or maintenance bond as
10 21 required by a public improvement contract governed by this
10 22 chapter and subsequently the surety company becomes insolvent
10 23 and the contractor is required to purchase a new bond, the
10 24 contractor may apply for reimbursement from the governmental
10 25 agency that required a second bond and the claims shall be
10 26 reimbursed from funds allocated for road construction
10 27 purposes.

10 28 Sec. 19. Section 904.314, unnumbered paragraph 1, Code
10 29 2005, is amended to read as follows:
10 30 The director shall cause plans and specifications to be
10 31 prepared by the department of administrative services for all
10 32 improvements authorized and costing over ~~twenty-five~~ one
10 33 hundred thousand dollars. An appropriation for any
10 34 improvement costing over ~~twenty-five~~ one hundred thousand
10 35 dollars shall not be expended until the adoption of suitable
11 1 plans and specifications, prepared by a competent architect
11 2 and accompanied by a detailed statement of the amount,
11 3 quality, and description of all material and labor required
11 4 for the completion of the improvement.

11 5 Sec. 20. Section 904.315, Code 2005, is amended to read as
11 6 follows:
11 7 904.315 CONTRACTS FOR IMPROVEMENTS.
11 8 The director of the department of administrative services
11 9 shall, in writing, let all contracts for authorized
11 10 improvements costing in excess of ~~twenty-five~~ one hundred
11 11 thousand dollars under chapter 8A, subchapter III. Upon prior
11 12 authorization by the director, improvements costing five
11 13 thousand dollars or less may be made by the superintendent of
11 14 any institution.

11 15 A contract is not required for improvements at a state
11 16 institution where the labor of inmates is to be used if the
11 17 contract is not for a construction, reconstruction,
11 18 demolition, or repair project or improvement with an estimated
11 19 cost in excess of ~~twenty-five~~ one hundred thousand dollars.

11 20 Sec. 21. APPLICABILITY. This Act does not apply to
11 21 construction management services contracts entered into prior
11 22 to the effective date of this Act.

11 23 Sec. 22. IMPLEMENTATION OF ACT. Section 25B.2, subsection
11 24 3, shall not apply to this Act.

EXPLANATION

11 25
11 26 This bill relates to certain bid requirements and to the
11 27 use of construction management services for construction of
11 28 certain public improvements.
11 29 The bill changes the threshold requirement for advertising
11 30 for bids for a contract for the construction of a public
11 31 improvement from a cost of \$25,000 to a minimum cost of
11 32 \$100,000. This increase in the threshold applies to contracts
11 33 entered into by the state department of administrative
11 34 services; the department of human services; the veterans
11 35 affairs commission; municipalities, including townships;
12 1 school corporations; the state fair board; the state board of
12 2 regents; soil and water conservation districts; aviation
12 3 authorities; counties; cities; and the state department of
12 4 corrections. The bill applies the threshold amount
12 5 requirement to the bond requirement for construction of public
12 6 improvements by the state and major political subdivisions
12 7 pursuant to Code section 573.2.
12 8 The bill also regulates contracts for construction
12 9 management services with public owners for public works
12 10 projects. "Construction management services" means
12 11 comprehensive professional services provided by a single
12 12 entity in the planning, design, and construction phases of a
12 13 public works project. "Construction management services" does
12 14 not include services provided within the practice of
12 15 architecture, engineering, or landscape architecture.
12 16 The bill requires a public owner that desires to engage a
12 17 construction manager to advertise for construction management
12 18 services.
12 19 The bill specifies that a construction management services
12 20 contract for a public works project shall require the
12 21 construction manager to furnish skill and judgment in
12 22 cooperation with the project's architect, engineer, and
12 23 contractors; refrain from bidding on or performing actual
12 24 construction work on the project on which the construction
12 25 manager is performing construction management services;
12 26 recommend contracts or change orders but not authorize
12 27 contracts or change orders or alter an engineering document or
12 28 technical submission; and at a public owner's request, obtain
12 29 professional liability insurance.
12 30 The bill also requires that a construction management
12 31 services contract shall not be awarded to a construction
12 32 manager that guarantees a maximum price for the project; is
12 33 controlled by or shares common ownership, or is affiliated
12 34 with, a company that guarantees a maximum price for the
12 35 project; assumes financial responsibility for the work of
13 1 others on the project; guarantees a maximum price for the work
13 2 of others on the project; or furnishes or guarantees a
13 3 performance or payment bond for the construction manager or
13 4 for another contractor on the project.
13 5 The provisions of the bill relating to construction
13 6 management services do not apply to planning, design,
13 7 construction, maintenance, repair, or other work done for or
13 8 on behalf of a public owner by employees of the public owner.
13 9 The bill does not apply to construction management services
13 10 contracts entered into prior to the effective date of the
13 11 bill. The bill may include a state mandate, but Code section
13 12 25B.2, subsection 3, relating to the appropriation of funds
13 13 for state mandates, is made inapplicable to the bill.
13 14 LSB 2053XC 81
13 15 eg:rj/cf/24.1