

House File 233

HOUSE FILE _____
BY QUIRK and DRAKE

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

A BILL FOR

1 An Act relating to the construction bidding procedures Act by
2 modifying procedures and requirements for letting public
3 improvement contracts, and making corrections.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
5 TLSB 1909HH 82
6 eg/gg/14

PAG LIN

1 1 Section 1. Section 26.3, subsection 1, Code 2007, is
1 2 amended to read as follows:
1 3 1. If the estimated total cost of a public improvement
1 4 exceeds the competitive bid threshold of one hundred thousand
1 5 dollars, or the adjusted competitive bid threshold established
1 6 in section 314.1B, the governmental entity shall advertise for
1 7 sealed bids for the proposed public improvement by publishing
1 8 a notice to bidders ~~as provided in section 362.3.~~ The notice
1 9 to bidders shall be published as provided in section 362.3,
1 10 except that the notice shall be published more than twenty
1 11 days but not more than forty-five days before the date for
1 12 filing bids. Additionally, the governmental entity may
1 13 publish a notice in a relevant contractor organization
1 14 publication and a relevant contractor plan room service with
1 15 statewide circulation, provided that a notice is posted on a
1 16 website sponsored by either a governmental entity or a
1 17 statewide association that represents the governmental entity.
1 18 ~~The notice to bidders shall be published more than twenty days~~
1 19 ~~but not more than forty-five days before the date for filing~~
1 20 ~~bids.~~

1 21 Sec. 2. Section 26.8, subsection 1, Code 2007, is amended
1 22 to read as follows:
1 23 1. Each bidder shall accompany its bid with a bid security
1 24 as security that the successful bidder will enter into a
1 25 contract for the work bid upon and will furnish after the
1 26 award of contract a corporate surety bond, acceptable to the
1 27 governmental entity, for the faithful performance of the
1 28 contract, in an amount equal to one hundred percent of the
1 29 amount of the contract. The bid security shall be in an
1 30 amount fixed by the governmental entity, and shall be in the
1 31 form of a cashier's check or certified check drawn on a
1 32 state-chartered or federally chartered bank, or a certified
1 33 share draft drawn on a state-chartered or federally chartered
1 34 credit union, or the governmental entity may provide for a
1 35 bidder's bond with corporate surety satisfactory to the
2 1 governmental entity. ~~The bid bidder's~~ bidder's bond shall contain no
2 2 conditions except as provided in this section.

2 3 Sec. 3. Section 26.10, unnumbered paragraph 1, Code 2007,
2 4 is amended to read as follows:
2 5 The governmental entity shall open, announce the amount of
2 6 the bids, and file all proposals received, at the time and
2 7 place specified in the notice to bidders. The governmental
2 8 entity may, by resolution, award the contract for the public
2 9 improvement to the bidder submitting the lowest responsive,
2 10 responsible bid, determined as provided in section 26.9, or
2 11 the governmental entity may reject all bids received, fix a
2 12 new date for receiving bids, and order publication of a new
2 13 notice to bidders. The governmental entity shall retain the
2 14 bid security furnished by the successful bidder until the
2 15 approved contract form has been executed, ~~and~~ has been
2 16 filed by the bidder guaranteeing the performance of the
2 17 contract, and the contract and bond, ~~have~~ has been approved by the
2 18 governmental entity. The provisions of chapter 573, where
2 19 applicable, apply to contracts awarded under this chapter.

2 20 Sec. 4. Section 26.11, Code 2007, is amended to read as
2 21 follows:

2 22 26.11 DELEGATION OF AUTHORITY.

2 23 When bids are required for any public improvement, the
2 24 governmental entity may delegate, by motion, resolution, or
2 25 policy to the city manager, clerk, engineer, or other public
2 26 officer, as applicable, the duty of receiving and opening bids
2 27 and announcing the results. The officer shall report the
2 28 results of the bidding with the officer's recommendations to
2 29 the next regular meeting of the governmental entity's
2 30 governing body or at a special meeting called for that
2 31 purpose.

2 32 Sec. 5. Section 26.13, subsection 3, Code 2007, is amended
2 33 to read as follows:

2 34 3. If labor and materials are yet to be provided at the
2 35 time of the request for the release of the retained funds
3 1 labor or materials are yet to be provided is made, an amount
3 2 equal to two hundred percent of the value of the labor or
3 3 materials yet to be provided, as determined by the
3 4 governmental entity's or the department's authorized contract
3 5 representative, may be withheld until such labor or materials
3 6 are provided. For purposes of this section, "authorized
3 7 contract representative" means the person chosen by the
3 8 governmental entity or the department to represent its
3 9 interests or the person designated in the contract as the
3 10 party representing the governmental entity's or the
3 11 department's interest regarding administration and oversight
3 12 of the project.

3 13 Sec. 6. Section 26.14, Code 2007, is amended to read as
3 14 follows:

3 15 26.14 COMPETITIVE QUOTATIONS FOR PUBLIC IMPROVEMENT
3 16 CONTRACTS.

3 17 1. Competitive quotations shall be required for a public
3 18 improvement having an estimated total cost that exceeds the
3 19 applicable threshold amount provided in this section, but is
3 20 less than the competitive bid threshold established in section
3 21 26.3.

3 22 2. Unless the threshold ~~amount is~~ amounts are adjusted
3 23 pursuant to section 314.1B, the ~~competitive quotation~~
3 24 following threshold amounts shall be as follows apply:

3 25 a. Sixty-seven thousand dollars for a county, including a
3 26 county hospital.

3 27 b. Fifty-one thousand dollars for a city having a
3 28 population of fifty thousand or more.

3 29 c. Fifty-one thousand dollars for a school district having
3 30 a population of fifty thousand or more.

3 31 d. Fifty-one thousand dollars for an aviation authority
3 32 created within a city having a population of fifty thousand or
3 33 more.

3 34 e. Thirty-six thousand dollars for a city having a
3 35 population of less than fifty thousand, for a school district
4 1 having a population of less than fifty thousand, and for any
4 2 other governmental entity.

4 3 f. The threshold amount applied to a city applies to a
4 4 city hospital.

4 5 3. a. When a competitive quotation is required, the
4 6 governmental entity shall make a good faith effort to obtain
4 7 quotations for the work from at least two contractors
4 8 regularly engaged in such work prior to letting a contract.
4 9 Quotations may be obtained from contractors after the
4 10 governmental entity provides a description of the work to be
4 11 performed, including the plans and specifications prepared by
4 12 an architect or engineer, if required under chapter 542B or
4 13 544A, and an opportunity to inspect the work site. The
4 14 contractor shall include in the quotation the price for labor,
4 15 materials, equipment, and supplies required to perform the
4 16 work. If the work can be performed by an employee or
4 17 employees of the governmental entity, the governmental entity
4 18 may file a quotation for the work to be performed in the same
4 19 manner as a contractor. If the governmental entity receives
4 20 no quotations after making a good faith effort to obtain
4 21 quotations from at least two contractors regularly engaged in
4 22 such work, the governmental entity may negotiate a contract
4 23 with a contractor regularly engaged in such work.

4 24 b. The governmental entity shall designate the time,
4 25 place, and manner for filing quotations, which may be received
4 26 by mail, facsimile, or electronic mail. The governmental
4 27 entity shall award the contract to the contractor submitting
4 28 the lowest responsive, responsible quotation subject to
4 29 section 26.9, or the governmental entity may reject all of the
4 30 quotations. The unconditional acceptance and approval of the

4 31 lowest responsive, responsible quotation shall constitute the
4 32 award of a contract. The governmental entity shall record the
4 33 approved quotation in its meeting minutes. ~~Quotations~~ The
4 34 ~~contractor awarded the contract shall not commence work until~~
4 35 ~~the contractor's performance and payment bond has been~~
5 1 ~~approved by the governmental entity. A governmental entity~~
5 2 ~~may delegate the authority to award a contract, to execute a~~
5 3 ~~contract, to authorize work to proceed under a contract, or to~~
5 4 ~~approve the contractor's performance and payment bond to an~~
5 5 ~~officer or employee of the governmental entity. A quotation~~
5 6 ~~approved outside a meeting of the governing body of a~~
5 7 ~~governmental entity shall be included in the minutes of the~~
5 8 ~~next regular or special meeting of the governing body. The~~
5 9 ~~governmental entity shall award the contract to the contractor~~
5 10 ~~submitting the lowest responsive, responsible quotation~~
5 11 ~~subject to section 26.9, or the governmental entity may reject~~
5 12 ~~all of the quotations.~~

5 13 c. If a public improvement may be performed by an employee
5 14 of the governmental entity, the amount of estimated sales and
5 15 fuel tax and the premium cost for the performance and payment
5 16 bond which a contractor identifies in its quotation shall be
5 17 deducted from the contractor's price for determining the
5 18 lowest responsive ~~bidder~~ quotation. If no quotations are
5 19 received to perform the work, or if the governmental entity's
5 20 estimated cost to do the work with its employee is less than
5 21 the lowest responsive, responsible quotation received, the
5 22 governmental entity may authorize its employee or employees to
5 23 perform the work.

5 24 Sec. 7. NEW SECTION. 26.14A ALTERNATIVE PROCEDURES.

5 25 1. When competitive quotations are required under section
5 26 26.14 for a public improvement, the governmental entity may
5 27 proceed, in lieu of competitive quotations, as if the
5 28 estimated total cost of the public improvement exceeds the
5 29 competitive bid threshold under section 26.3.

5 30 2. If the total estimated cost of the public improvement
5 31 does not warrant either competitive quotations under section
5 32 26.14 or competitive bidding under section 26.3, the
5 33 governmental entity may nevertheless proceed with competitive
5 34 quotations or competitive bidding for the public improvement.

5 35 Sec. 8. Section 380.4, unnumbered paragraph 1, Code 2007,
6 1 is amended to read as follows:

6 2 Passage of an ordinance, amendment, or resolution requires
6 3 a majority vote of all of the members of the council, except
6 4 when the mayor may vote to break a tie vote in a city with an
6 5 even number of council members, as provided in section 372.4.
6 6 Passage of a motion requires a majority vote of a quorum of
6 7 the council. A resolution must be passed to spend public
6 8 funds in excess of ~~twenty-five~~ one hundred thousand dollars on
6 9 ~~any one a public improvement~~ project, or to accept public
6 10 improvements and facilities upon their completion. Each
6 11 council member's vote on a measure must be recorded. A
6 12 measure which fails to receive sufficient votes for passage
6 13 shall be considered defeated.

6 14 Sec. 9. Section 384.20, unnumbered paragraph 3, Code 2007,
6 15 is amended to read as follows:

6 16 "Continuing appropriation" means the unexpended portion of
6 17 the cost of public improvements, as defined in section ~~26.3~~
6 18 26.2, which cost was adopted through a public hearing pursuant
6 19 to section 26.12 and was included in an adopted or amended
6 20 budget of a city. A continuing appropriation does not expire
6 21 at the conclusion of a fiscal year. A continuing
6 22 appropriation continues until the public improvement is
6 23 completed, but expenditures under the continuing appropriation
6 24 shall not exceed the resources available for paying for the
6 25 public improvement.

6 26 Sec. 10. Section 384.23, Code 2007, is amended to read as
6 27 follows:

6 28 384.23 CONSTRUCTION OF WORDS "AND" AND "OR."

6 29 As used in divisions III to ~~V~~ V of this chapter, the use
6 30 of the conjunctive "and" includes the disjunctive "or" and the
6 31 use of the disjunctive "or" includes the conjunctive "and,"
6 32 unless the context clearly indicates otherwise.

6 33 Sec. 11. Section 384.37, subsection 17, Code 2007, is
6 34 amended to read as follows:

6 35 17. "Proposal" means a legal bid on work advertised for a
7 1 public improvement under ~~division VI of this chapter~~ 26.

7 2 Sec. 12. Section 384.53, Code 2007, is amended to read as
7 3 follows:

7 4 384.53 PROCEDURES TO LET CONTRACT.

7 5 Contract letting procedures shall be as provided in
7 6 ~~division VI of this chapter~~ 26. The council may award any

7 7 number of contracts for construction of any public
7 8 improvement.
7 9 Sec. 13. Section 386.6, subsection 6, Code 2007, is
7 10 amended to read as follows:
7 11 6. If the council orders the construction of the
7 12 improvement, it shall proceed to let contracts therefor in
7 13 accordance with chapter ~~384, division VI~~ 26.
7 14 Sec. 14. Section 386.7, subsection 3, Code 2007, is
7 15 amended to read as follows:
7 16 3. If the council orders the construction of the
7 17 self-liquidating improvement, contracts for it shall be let in
7 18 accordance with ~~division VI of chapter 384~~ 26.
7 19 EXPLANATION
7 20 This bill amends Code chapter 26 to:
7 21 1. Correct wording and organization of sentences in
7 22 several sections of the bill.
7 23 2. Allow the results of competitive bidding and approved
7 24 competitive quotations to be reported, in addition to regular
7 25 meetings, at a special meeting of the governing body.
7 26 3. Determine the lowest responsible quotation for a public
7 27 improvement to be performed by an employee of the governmental
7 28 entity, by requiring a contractor to deduct the premium cost
7 29 for a performance and payment bond from the contractor's
7 30 price.
7 31 4. Provide some additional procedures that a governmental
7 32 entity may follow. Pursuant to Code section 26.14, as
7 33 amended, if a governmental entity receives no quotations after
7 34 having made a good faith effort to obtain quotations from at
7 35 least two contractors, the governmental entity may negotiate a
8 1 contract with an appropriate contractor. Also, a new Code
8 2 section 26.14A provides that a governmental entity may proceed
8 3 with a competitive quotation or competitive bidding procedure
8 4 even when the total estimated cost of the public improvement
8 5 does not warrant such additional procedures.
8 6 The bill also amends Code section 380.4 to provide that a
8 7 city council must pass a resolution to spend public funds in
8 8 excess of \$100,000 on a public improvement project.
8 9 The bill corrects references for contract=letting
8 10 procedures, formerly under Code chapter 384, to the new Code
8 11 chapter 26.
8 12 LSB 1909HH 82
8 13 eg:rj/gg/14