

Senate File 438 - Introduced

SENATE FILE 438
BY COMMITTEE ON LABOR AND
BUSINESS RELATIONS

(SUCCESSOR TO SSB 1145)

A BILL FOR

1 An Act relating to bidding and contracting for public
2 improvement projects, making penalties applicable, and
3 including effective date and applicability provisions.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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

3 **26.9 Award of contract.**

4 1. The contract for the public improvement must be awarded
5 to the lowest responsive, responsible bidder. However,
6 contracts relating to public utilities or extensions or
7 improvements thereof, as described in sections 384.80 through
8 384.94, may be awarded by the city as it deems to be in the best
9 interests of the city. **This section** shall not be construed to
10 prohibit a governmental entity in the award of a contract for a
11 public improvement or a governing body of a city utility from
12 providing, in the award of a contract for a public improvement,
13 an enhancement of payments upon early completion of the public
14 improvement if the availability of the enhancement payments is
15 included in the notice to bidders, the enhancement payments are
16 competitively neutral to potential bidders, the enhancement
17 payments are considered as a separate item in the public
18 hearing on the award of contract, and the total value of the
19 enhancement payments does not exceed ten percent of the value
20 of the contract.

21 2. A governmental entity shall not require a potential
22 bidder on a public improvement to provide any information which
23 the potential bidder may deem to be confidential or proprietary
24 as a requirement for being deemed a responsive, responsible
25 bidder. This subsection shall not be construed to prohibit a
26 governmental entity from obtaining information from the lowest
27 responsive bidder to determine the bidder's responsibility
28 relating to the bidder's experience, number of employees,
29 and ability to finance the cost of the public improvement.
30 However, a governmental entity shall require nonresident
31 bidders to comply with section 73A.21, subsection 4.

32 **Sec. 2. NEW SECTION. 26.16 Prequalification requirements**
33 **prohibited.**

34 A governmental entity shall not by ordinance, rule, or any
35 other action relating to contracts for public improvements

1 for which competitive bids are required by this chapter
2 impose any requirement that directly or indirectly restricts
3 potential bidders to any predetermined class of bidders defined
4 by experience on similar projects, size of company, union
5 membership, or any other criteria. However, a governmental
6 entity shall require nonresident bidders to comply with section
7 73A.21, subsection 4.

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

10 **73A.1 Definitions.**

11 As used in this subchapter:

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

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

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

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

22 **73A.16 Bonds and taxes void.**

23 Any bonds or other evidence of indebtedness issued contrary
24 to the provisions of ~~this chapter~~ subchapter, and any tax
25 levied or attempted to be levied for the payment of any such
26 bonds or interest thereon, shall be null and void.

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

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

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

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

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

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

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

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

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

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

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

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

28 c. Discriminate against a bidder, offeror, contractor, or
29 subcontractor for becoming or remaining or refusing to become
30 or remain a signatory to, or for adhering or refusing to adhere
31 to, an agreement with one or more labor organizations in regard
32 to the public improvement or a related public improvement
33 project.

34 2. A governmental entity shall not award a grant, tax
35 abatement, or tax credit that is conditioned upon a requirement

1 that the awardee include a term described in subsection 1
2 in a contract document for any construction, improvement,
3 maintenance, or renovation to real property or fixtures that is
4 the subject of the grant, tax abatement, or tax credit.

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

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

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

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

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

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

33 Sec. 10. APPLICABILITY. This Act applies to notices to
34 bidders for public improvements, bids awarded for public
35 improvements, and contracts for public improvements entered

1 into on and after the effective date of this Act.

2 EXPLANATION

3 The inclusion of this explanation does not constitute agreement with
4 the explanation's substance by the members of the general assembly.

5 IOWA CONSTRUCTION BIDDING PROCEDURES ACT. This bill
6 prohibits a governmental entity from requiring a potential
7 bidder on a public improvement to provide any information which
8 the potential bidder may deem to be confidential or proprietary
9 as a requirement for being deemed a responsive, responsible
10 bidder. This provision shall not be construed to prohibit a
11 governmental entity from obtaining information from the lowest
12 responsive bidder to determine the bidder's responsibility
13 relating to the bidder's experience, number of employees,
14 and ability to finance the cost of the public improvement.
15 However, the bill provides that a governmental entity must
16 still require nonresident bidders to comply with the preference
17 disclosure requirements of Code section 73A.21, subsection 4.

18 The bill also prohibits a governmental entity from imposing
19 any requirement that directly or indirectly restricts potential
20 bidders to any predetermined class of bidders by ordinance,
21 rule, or any other action relating to contracts for public
22 improvements for which competitive bids are required by Code
23 chapter 26. However, the bill provides that a governmental
24 entity must still require nonresident bidders to comply with
25 the preference disclosure requirements of Code section 73A.21,
26 subsection 4.

27 Current Code chapter 26 defines "governmental entity"
28 as the state, political subdivisions of the state, public
29 school corporations, and all officers, boards, or commissions
30 empowered by law to enter into contracts for the construction
31 of public improvements, excluding the state board of regents
32 and the state department of transportation. Code chapter 26
33 also defines "public improvement" as a building or construction
34 work which is constructed under the control of a governmental
35 entity and is paid for in whole or in part with funds of the

1 governmental entity, including a building or improvement
2 constructed or operated jointly with any other public or
3 private agency, but excluding urban renewal demolition and
4 low-rent housing projects, industrial aid projects authorized
5 under Code chapter 419, emergency work or repair or maintenance
6 work performed by employees of a governmental entity, and
7 excluding a highway, bridge, or culvert project, and excluding
8 construction or repair or maintenance work performed for a city
9 utility under Code chapter 388 by its employees or performed
10 for a rural water district under Code chapter 357A by its
11 employees.

12 FAIR AND OPEN COMPETITION IN GOVERNMENTAL CONSTRUCTION
13 ACT. The bill creates a new subchapter of Code chapter 73A,
14 the fair and open competition in governmental construction
15 Act. The purpose of the Act is to provide for more economical,
16 nondiscriminatory, neutral, and efficient procurement of
17 construction-related goods and services by this state and
18 political subdivisions of this state.

19 The bill prohibits a governmental entity from awarding
20 a contract for the construction, repair, remodeling, or
21 demolition of a public improvement and any construction manager
22 acting on its behalf from engaging in certain activities in any
23 bid specifications, project agreements, or other controlling
24 documents.

25 The governmental entity or construction manager is
26 prohibited from requiring a bidder, offeror, contractor, or
27 subcontractor to enter into or adhere to an agreement with one
28 or more labor organizations in regard to the public improvement
29 or a related public improvement project.

30 The governmental entity or construction manager is
31 prohibited from prohibiting a bidder, offeror, contractor, or
32 subcontractor from entering into or adhering to an agreement
33 with one or more labor organizations in regard to the public
34 improvement or a related public improvement project.

35 The governmental entity or construction manager is

1 prohibited from discriminating against a bidder, offeror,
2 contractor, or subcontractor for becoming or remaining or
3 refusing to become or remain a signatory to, or for adhering
4 or refusing to adhere to, an agreement with one or more labor
5 organizations in regard to the public improvement or a related
6 public improvement project.

7 The bill also prohibits a governmental entity from awarding
8 a grant, tax abatement, or tax credit that is conditioned
9 upon a requirement that the awardee include a term which the
10 governmental entity is prohibited by the bill from imposing
11 in a contract document for any construction, improvement,
12 maintenance, or renovation to real property or fixtures that is
13 the subject of the grant, tax abatement, or tax credit.

14 The bill specifies certain activities which the bill shall
15 not be construed to prohibit.

16 The new subchapter of Code chapter 73A defines "governmental
17 entity" as the state, political subdivisions of the state,
18 public school corporations, and all officers, boards, or
19 commissions empowered by law to enter into contracts for the
20 construction of public improvements, and defines "public
21 improvement" as any building or construction work which is
22 constructed repaired, remodeled, or demolished under the
23 control of a governmental entity and is paid for in whole or
24 in part with funds of the governmental entity, including a
25 building or improvement constructed or operated jointly with
26 any other public or private agency.

27 Under Code section 24.24, failure on the part of a public
28 official to perform any of the duties prescribed in Code
29 chapter 73A constitutes a simple misdemeanor and is sufficient
30 ground for removal from office. A simple misdemeanor is
31 punishable by confinement for no more than 30 days or a fine of
32 at least \$65 but not more than \$625 or by both.

33 GENERAL PROVISIONS. The bill takes effect upon enactment.
34 The bill applies to notices to bidders for public improvements,
35 bids awarded for public improvements, and contracts for public

1 improvements entered into on and after the effective date of
2 the bill.