

House File 473 - Reprinted

HOUSE FILE 473
BY COMMITTEE ON LABOR

(SUCCESSOR TO HSB 91)

(As Amended and Passed by the House March 23, 2011)

A BILL FOR

1 An Act relating to bidding and contracting for public
2 improvement, public works, and public road projects 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 8A.311, subsection 15, Code 2011, is
2 amended to read as follows:

3 15. *a.* A bidder ~~awarded~~, to be considered for an award
4 of a state construction contract, shall disclose to the state
5 agency awarding the contract the names of all subcontractors
6 and suppliers, who will work on the project being bid, within
7 forty-eight hours after the ~~award of the contract~~ published
8 date and time by which bids must be submitted.

9 *b.* A bidder shall not replace a subcontractor or supplier
10 disclosed under paragraph "a" without the written approval of
11 the state agency awarding the contract.

12 *c.* A bidder, prior to award or who is awarded a state
13 construction contract, shall disclose all of the following, as
14 applicable:

15 (1) If a subcontractor named or supplier disclosed under
16 paragraph "a" by a bidder awarded a state construction contract
17 is replaced, or if the reason for the replacement and the name
18 of the new subcontractor or supplier.

19 (2) If the cost of work to be done by a subcontractor or
20 supplier is reduced, the bidder shall disclose the name of
21 the new subcontractor or changed or if the replacement of a
22 subcontractor or supplier results in a change in the cost, the
23 amount of the reduced change in cost.

24 Sec. 2. Section 26.7, Code 2011, is amended by adding the
25 following new subsection:

26 NEW SUBSECTION. 4. A governmental entity shall not in
27 either the notice to bidders or the contract documents require
28 proof of satisfaction of any bidder qualification standards
29 for the bidder or its proposed subcontractors if the bidder is
30 required and able to meet all bond requirements relating to
31 payments and performance in accordance with state law. This
32 section does not prohibit a public owner from exercising its
33 authority under this chapter to determine whether the lowest
34 responsive bidder is a responsible bidder in accordance with
35 state law.

1 Sec. 3. NEW SECTION. **72.6 Public works — contractor**
2 **qualifications.**

3 1. *Definitions.* As used in this section, unless the context
4 otherwise provides:

5 *a. "Public owner"* means a public body including the state
6 or a political subdivision of the state, an officer, official,
7 agency, authority, board, or commission of the state or of a
8 political subdivision of the state, or an institution supported
9 in whole or in part by public funds.

10 *b. "Public road project"* means a project under the control
11 of a public owner for the construction, maintenance, or repair
12 of a road or street that is funded, in whole or in part, by
13 moneys from the road use tax fund.

14 *c. "Public works"* means a building or other construction
15 project which is constructed under the control of a public
16 owner and is paid for in whole or in part with funds of a public
17 owner, including funds directed to the public owner from any
18 federal government source, including grants. *"Public works"*
19 does not include any work done by or on behalf of a drainage
20 or levee district or any work financed by federal funds where
21 federal procurement policy applicable to the use of the federal
22 funds is inconsistent with the requirements of this section.

23 *d. "Public works project"* means the construction,
24 maintenance, or repair of public works. *"Public works project"*
25 does not mean a public road project.

26 2. *Prohibited criteria.* In determining which bidder is the
27 lowest responsible bidder for purposes of awarding a contract
28 to perform a public works project or public road project, a
29 public owner shall not do any of the following:

30 *a.* Select a bidder based in whole or in part on a
31 consideration of whether the bidder's employees belong to or
32 are represented by a labor union or labor organization.

33 *b.* Require that the bidder selected enter into an agreement
34 that directly or indirectly requires the bidder to recruit,
35 train, or hire employees from a particular source to perform

1 work on the public works project or public road project.

2 *c.* Require the bidder or the bidder's subcontractors
3 or their agents to enter into any agreement or arrangement
4 relating to the public works project or public road project
5 which imposes requirements, controls, or limitations on
6 staffing; sources of employee referrals; assignment of work;
7 sources of insurance and benefits including health, life, and
8 disability insurance and retirement pensions; training; or
9 wages. This paragraph does not apply to requirements imposed
10 by federal law.

11 3. *Bidding documents.* Criteria described in this section
12 that cannot be considered by a public owner in determining
13 who is the lowest responsible bidder shall be included in any
14 document requesting or inviting bids on public works projects
15 or public road projects subject to this section.

16 Sec. 4. Section 73A.21, Code 2011, is amended to read as
17 follows:

18 **73A.21 Reciprocal resident bidder and resident labor force**
19 **preference by state, its agencies, and political subdivisions —**
20 **penalties.**

21 1. For purposes of this section:

22 *a.* "Commissioner" means the labor commissioner appointed
23 pursuant to section 91.2, or the labor commissioner's designee.

24 *b.* "Division" means the division of labor of the department
25 of workforce development.

26 *c.* "Nonresident bidder" means a person or entity who does
27 not meet the definition of a resident bidder.

28 *d.* "Public body" means the state and any of its political
29 subdivisions, including a school district, public utility, or
30 the state board of regents.

31 ~~*e.*~~ *e.* "Public improvement" means ~~public improvements as~~
32 ~~defined in section 73A.1~~ a building or other construction work
33 to be paid for in whole or in part by the use of funds of the
34 state, its agencies, and any of its political subdivisions and
35 includes road construction, reconstruction, and maintenance

1 projects.

2 f. "Public utility" includes municipally owned utilities and
3 municipally owned waterworks.

4 ~~b-~~ g. "Resident bidder" means a person or entity authorized
5 to transact business in this state and having a place of
6 business for transacting business within the state at which
7 it is conducting and has conducted business for at least six
8 ~~months~~ three years prior to the date of the first advertisement
9 for the public improvement and in the case of a corporation,
10 having at least fifty percent of its common stock owned by
11 residents of this state. If another state or foreign country
12 has a more stringent definition of a resident bidder, the more
13 stringent definition is applicable as to bidders from that
14 state or foreign country.

15 h. "Resident labor force preference" means a requirement in
16 which all or a portion of a labor force working on a public
17 improvement is a resident of a particular state or country.

18 2. Notwithstanding this chapter, chapter 73, chapter 309,
19 chapter 310, chapter 331, or chapter 384, when a contract for a
20 public improvement is to be awarded to the lowest responsible
21 bidder, a resident bidder shall be allowed a preference as
22 against a nonresident bidder from a state or foreign country
23 which if that state or foreign country gives or requires a
24 any preference to bidders from that state or foreign country,
25 including but not limited to any preference to bidders, the
26 imposition of any type of labor force preference, or any other
27 form of preferential treatment to bidders or laborers from that
28 state or foreign country. The preference is allowed shall
29 be equal to the preference given or required by the state or
30 foreign country in which the nonresident bidder is a resident.
31 In the instance of a resident labor force preference, a
32 nonresident bidder shall apply the same resident labor force
33 preference to a public improvement in this state as would be
34 required in the construction of a public improvement by the
35 state or foreign country in which the nonresident bidder is a

1 resident.

2 ~~3. This section applies to the state, its agencies, and any~~
3 ~~political subdivisions of the state.~~

4 ~~4.~~ 3. If it is determined that this may cause denial of
5 federal funds which would otherwise be available, or would
6 otherwise be inconsistent with requirements of any federal law
7 or regulation, this section shall be suspended, but only to the
8 extent necessary to prevent denial of the funds or to eliminate
9 the inconsistency with federal requirements.

10 4. The public body involved in a public improvement shall
11 require a nonresident bidder to specify on all project bid
12 specifications and contract documents whether any preference
13 as described in subsection 2 is in effect in the nonresident
14 bidder's state or country of domicile at the time of a bid
15 submittal.

16 5. The commissioner and the division shall administer and
17 enforce this section, and the commissioner shall adopt rules
18 for the administration and enforcement of this section as
19 provided in section 91.6.

20 6. The commissioner shall have the following powers and
21 duties for the purposes of this section:

22 a. The commissioner may hold hearings and investigate
23 charges of violations of this section.

24 b. The commissioner may, consistent with due process of law,
25 enter any place of employment to inspect records concerning
26 labor force residency, to question an employer or employee, and
27 to investigate such facts, conditions, or matters as are deemed
28 appropriate in determining whether any person has violated the
29 provisions of this section. The commissioner shall only make
30 such an entry in response to a written complaint.

31 c. The commissioner shall develop a written complaint form
32 applicable to this section and make it available in division
33 offices and on the department of workforce development's
34 internet site.

35 d. The commissioner may sue for injunctive relief against

1 the awarding of a contract, the undertaking of a public
2 improvement, or the continuation of a public improvement in
3 response to a violation of this section.

4 e. The commissioner may investigate and ascertain the
5 residency of a worker engaged in any public improvement in this
6 state.

7 f. The commissioner may administer oaths, take or cause to
8 be taken deposition of witnesses, and require by subpoena the
9 attendance and testimony of witnesses and the production of all
10 books, registers, payrolls, and other evidence relevant to a
11 matter under investigation or hearing.

12 g. The commissioner may employ qualified personnel as are
13 necessary for the enforcement of this section. Such personnel
14 shall be employed pursuant to the merit system provisions of
15 chapter 8A, subchapter IV.

16 h. The commissioner shall require a contractor or
17 subcontractor to file, within ten days of receipt of a request,
18 any records enumerated in subsection 7. If the contractor or
19 subcontractor fails to provide the requested records within ten
20 days, the commissioner may direct, within fifteen days after
21 the end of the ten-day period, that the fiscal or financial
22 office charged with the custody and disbursement of funds of
23 the public body that contracted for construction of the public
24 improvement or undertook the public improvement, to immediately
25 withhold from payment to the contractor or subcontractor
26 up to twenty-five percent of the amount to be paid to the
27 contractor or subcontractor under the terms of the contract
28 or written instrument under which the public improvement is
29 being performed. The amount withheld shall be immediately
30 released upon receipt by the public body of a notice from
31 the commissioner indicating that the request for records as
32 required by this section has been satisfied.

33 7. While participating in a public improvement, a
34 nonresident bidder domiciled in a state or country that
35 has established a resident labor force preference shall

1 make and keep, for a period of not less than three years,
2 accurate records of all workers employed by the contractor or
3 subcontractor on the public improvement. The records shall
4 include each worker's name, address, telephone number when
5 available, social security number, trade classification, and
6 the starting and ending time of employment.

7 8. Any person or entity that violates the provisions of
8 this section is subject to a civil penalty in an amount not to
9 exceed one thousand dollars for each violation found in a first
10 investigation by the division, not to exceed five thousand
11 dollars for each violation found in a second investigation
12 by the division, and not to exceed fifteen thousand dollars
13 for a third or subsequent violation found in any subsequent
14 investigation by the division. Each violation of this section
15 for each worker and for each day the violation continues
16 constitutes a separate and distinct violation. In determining
17 the amount of the penalty, the division shall consider the
18 appropriateness of the penalty to the person or entity charged,
19 upon determination of the gravity of the violations. The
20 collection of these penalties shall be enforced in a civil
21 action brought by the attorney general on behalf of the
22 division.

23 9. A party seeking review of the division's determination
24 pursuant to this section may file a written request for an
25 informal conference. The request must be received by the
26 division within fifteen days after the date of issuance of
27 the division's determination. During the conference, the
28 party seeking review may present written or oral information
29 and arguments as to why the division's determination should
30 be amended or vacated. The division shall consider the
31 information and arguments presented and issue a written
32 decision advising all parties of the outcome of the conference.

33 Sec. 5. Section 331.341, subsection 2, Code 2011, is amended
34 to read as follows:

35 2. The board shall give preference to Iowa products and

1 ~~labor~~ in accordance with chapter 73 and shall comply with bid
2 and contract requirements in chapter 26.

3 Sec. 6. REPEAL. Sections 73.3 and 73.4, Code 2011, are
4 repealed.

5 Sec. 7. EFFECTIVE UPON ENACTMENT. This Act, being deemed of
6 immediate importance, takes effect upon enactment.

7 Sec. 8. APPLICABILITY. This Act applies to all public
8 improvement, public works, and public road projects, and to
9 public improvement, public works, and public road contracts
10 entered into on or after July 1, 2011.