

Iowa Construction Bidding Procedures Act – Section by Section Analysis

Section 1. Title of the Chapter. Creates new chapter 38 in Code – Iowa Construction Bidding Procedures Act. Purpose is to move all governmental entities to this chapter. The bill includes many sections of conforming amendments.

Sec. 2. Definitions.

- Estimated Total Cost of Public Improvement – cost of labor, materials, equipment and supplies – excludes cost of architectural or engineering design services and inspections.
- Governmental Entity – Chapter applies to all political subdivisions of state, plus schools, excluding Board of Regents.
- Public Improvement – building or structure constructed under control of governmental entity and paid for in whole or in part with funds of governmental entity. Excludes urban renewal demolition and low-rent housing projects, industrial aid projects authorized under chapter 419, emergency work or repair or maintenance work performed by employees, highway bridge and culvert projects, and construction or repair or maintenance work performed for a city utility or rural water district by its employees.
- Repair or maintenance work – preservation of road, street, bridge, culvert, storm sewer, sanitary sewer, or other public facility so that it remains in sound or proper condition, including minor replacements and additions as necessary to restore facility to its original condition with the same design.

Sec. 3. Competitive Bids – must bid if estimated cost is above \$100,000 or after 2012 the amount as established by the vertical infrastructure subcommittee. Requirements:

- Public notice to bidders as required in section 362.3 OR publish a notice in a relevant contractor organization publication and relevant contractor plan room service with statewide circulation as long as the notice is also posted on a website sponsored by either the governmental entity or a statewide association representing the governmental entity.
- Notice must be published between 20 and 45 days prior to the date for filing bids.
- Must have engineer or architect prepare plans and specs and calculate estimated cost.

Sec. 4. Architect and engineer services do not have to be competitively bid and are not included in estimated total cost.

Sec. 5. Governmental entity cannot divide public improvement into parts regardless of intent unless each part is competitively bid.

Sec. 6. Competitive bid does not apply if private funds are used for construction of a public improvement if funds are conditioned upon private construction as long as governmental entity doesn't contribute any funds.

Sec. 7. Notice to bidders must include

- Time and place for filing sealed proposals.
- Time and place sealed proposals will be opened and considered.
- General nature of public improvement.
- General terms when work must be commenced and completed.
- Each bid must be accompanied by bid security.

Sec. 8. Bid Security. Each bid must have bid security that contractor will enter into contract and if awarded will furnish corporate surety bond equal to 100% of contract. Bid security is determined by governmental entity, must be determined prior to publication and be between 5% and 10% of the estimated total contract cost.

Sec. 9. Award of Contract. Contract must be awarded to lowest, responsive, responsible bidder. Public utilities, extensions or improvements may be awarded by the city as it deems to be in the best interests of the city. Allows for enhancement payments.

Sec. 10. Opening and Considering Bids.

- Governmental entity must open, announce amount of bid, and file all proposals received at the time and place specified in notice to bidders.
- Bid can go to lowest, responsive, responsible bid or all bids can be rejected and re-bid.
- Bid security is retained until contract has been executed and bond approved. Bid security for unsuccessful bidders returned within 30 days.

Sec. 11. Delegation of Authority. Allows public officer to be delegated authority to receive and open bids and make recommendations to next meeting of governmental entity's governing body.

Sec. 12. Hearing. Must hold public hearing and approve proposed plans, specifications, form of contract, and estimated total cost of public improvement. Notice must be published as required in section 362.3. Any interested person can file objection. Decision on project made by resolution. Hearing requirement doesn't apply to state projects.

Sec. 13. Retained Funds.

- Public entity must release retained funds to contractor if project is "substantially complete" means:
 - Substantial completion of the project or in general accordance with the contract terms.
 - Governmental entity can occupy or utilize the public improvement for its intended purpose – does not apply to highway, bridge and culvert.
 - Project is certified to be complete by architect or engineer or contracting authority authorized to make the certification.
 - Owner is occupying or utilizing the public improvement for its intended purpose – does not apply to highway, bridge and culvert.

- 200% of value of uncompleted portion can be retained until completion. Completion to be determined by governmental entity's authorized contract representative.
- Contractor must request release of retained funds and must provide sworn statement that all known subcontractors and sub-subcontractors have been notified 10 days prior to filing request.
- Includes highways, bridges, and culverts.
- Release of retained funds must be paid at time of next monthly payment or within 30 days, whichever is sooner. If funds not released interest accrues – prime rate plus 1%.

Sec. 14. Competitive Quotations. Requires governmental entity obtain two competitive quotations if cost of public improvement is less than \$100,000 and more than the following:

- Counties - \$67,000
- Cities with population of 50,000 or more – \$51,000
- Cities with population less than 50,000 – \$36,000
- School districts with populations of 50,000 or more - \$51,000
- School districts with populations less than 50,000 - \$36,000
- City hospitals – size of city determines - \$36,000/\$51,000
- County hospitals - \$67,000
- Airports – size of biggest city member determines - \$36,000/\$51,000
- Rural Water Districts - \$36,000
- All other entities - \$36,000

Requirements for competitive quotations include:

- Good faith effort to get quotes from minimum of two contractors regularly engaged in such work.
- Public entity must provide description of work to be performed, plans and specification, if any and an opportunity for a site visit.
- Contractor must include the price for labor, materials, equipment and supplies required to perform the work.
- If work can be performed by governmental entity - must file quotation for work same as contractor.
- Public entity designates the time, place, and manner for filing quotes, may be by mail, fax, or email.
- Must record approved quotation in meeting minutes.
- Must be awarded to lowest responsive responsible bidder OR governmental entity may reject all quotes.
- If no quotes received to perform work or if governmental entity submits lowest quote, governmental entity may self-perform work.
- Architectural and Engineering plans and specifications not required unless required elsewhere in Code.

Sec. 15. Structure Demolition Projects. Allows a public entity to enter multiple annual contracts for structure demolition projects having a total estimated cost of \$100,000 or less. Must publish notice required in section 362.3.

Sec. 16 – 23. Technical changes to conform other provisions of code to new sections.

Sec. 24. Conforms retained fund language that was passed last year for the Board of Regents.

Sec. 25 - 27. Technical amendments.

Sec. 28. Requires DOT to adopt rules for competitive quotation process.

Sec. 29. Bid Threshold Subcommittees.

- Creates a vertical infrastructure subcommittee that works the same as the existing subcommittee to determine competitive bidding threshold increases for roads, bridges and culverts.
- Subcommittee is under direction of DOT, meets a minimum of every two years and consists of three vertical infrastructure contractors and three public entities and the Director of DOT.
- Future threshold revisions above \$100,000 are eligible to go into effect after January 1, 2012 if determined by subcommittee
- Future increase based upon changes in construction price index, building costs index and material costs index.
- Notice of future increases to be published in Iowa Administrative Bulletin AND in a newspaper of general circulation in state.

Sec. 30 – 41. Technical amendments.

Sec. 42. Repeals current competitive bid sections.

Sec. 43. Effective Dates. Sec. 24, 28 and 29 effective immediately – Regents conforming language and allows subcommittees/DOT to begin writing rules. Changes to bid threshold go into effect on January 1, 2007.

Sec. 44. Applicability Date. Applies to public improvement contracts entered into after January 1, 2007.