

PUBLIC IMPROVEMENT POLICY AND PROCEDURES MANUAL

CITY OF URBANDALE, IOWA Adopted June 30, 2009

INTRODUCTION

The Public Improvement Policy and Procedures Manual was developed to explain the competitive bidding process used by the City of Urbandale for public improvements, as defined by Iowa Code Section 26.2(3). This manual reflects the changes encompassed in HF2713, which was passed into law effective January 1, 2007. This legislation created a new chapter in the Code of Iowa, codified at Chapter 26 and entitled the "Iowa Construction Bidding Procedures Act" (the Act). This manual also reflects the changes encompassed in HF830, effective on July 1, 2007. Threshold adjustments made by the Iowa Department of Transportation Committee in July 2008 (effective January 1, 2009) are also reflected in this policy.

The intent of the Urbandale City Council and city staff is to buy materials, supplies and services of high quality at a reasonable cost. All purchasing actions engaged by the City should be fair, impartial, and free from impropriety. All qualified buyers and sellers shall have access to compete for City business, and no reasonable offer shall be arbitrarily excluded.

This manual is applicable to all operating departments, with the exception of the Library and the Water Department. The respective governing board for each of these departments independently prepares separate public improvement policies and procedures.

POLICIES AND PROCEDURES

1. Definition of Projects

The Act applies to "Public Improvements", which is defined as "a building or construction work which is constructed under the control of a governmental entity and is paid for in whole or in part with funds of the governmental entity, including a building or improvement constructed or operated jointly with any other public or private agency, but excluding 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 of a governmental entity, and excluding a highway, bridge, or culvert project, and excluding construction or repair or maintenance work performed for a city utility under chapter 388 by its employees or performed for a rural water district under chapter 357A by its employees."

Repair or maintenance work is not subject to the requirements of the Act if the work is performed by city employees. "Repair or maintenance work" is defined as "the preservation of a building, storm sewer, sanitary sewer, or other public facility or structure so that it remains in sound or proper condition, including minor replacements and additions as necessary to restore the public facility or structure to its original condition with the same design."

The Act specifically prohibits the city from avoiding the competitive bidding requirements by dividing a project into separate parts.

2. Estimated Total Cost of the Project

The applicability of many provisions of the Act is determined by the “estimated total cost” of the project, which is to include labor, materials, equipment, and supplies. It does not include the cost of architectural, landscape architectural, or engineering design services or the cost of inspections.

3. Tiers of Requirements

The Act provides three tiers of requirements for projects: (i) formal competitive bidding, (ii) competitive quotations, and (iii) an informal process. The determination of which tier applies to a particular project is guided by the estimated total cost of the project and the type of project. Public improvements (as defined in section 1 above) are differentiated from highway/bridge/culvert projects. The Act does not define “highway, bridge or culvert projects”. However, definitions for each term can be found in Iowa Code sections 309.1, and 314.13.

For cities with less than 50,000 in population – Public Improvement projects:

<u>Estimated Total Project Costs</u>	<u>Requirement</u>
Equal to or less than \$45,000*	Informal Procedures
Greater than \$45,000* and less than \$100,000	Competitive Quotation Procedures
Greater than \$100,000	Competitive Bidding Procedures

Iowa Code Section 314.1(2) provides that, notwithstanding any other provision of law to the contrary, a public improvement that involves the construction, reconstruction, or improvement of a highway, bridge, or culvert and that has a cost in excess of the applicable threshold shall be advertised and let for bid, excluding emergency work. Cities required to competitively bid highway, bridge, or culvert work shall do so in compliance with the contract letting procedures of Iowa Code Sections 26.3 through 26.13.

For cities with less than 50,000 in population – Highway/Bridge/Culvert work:

<u>Cost</u>	<u>Requirement</u>
Equal to or less than \$45,000*	Informal Procedures
Greater than \$45,000*	Competitive Bidding Procedures

For cities with populations greater than 50,000, the \$45,000* threshold adjusts to \$65,000*. The \$100,000 threshold stays the same.

*These amounts are effective as of January 1, 2009. The Code requires these amounts be reviewed not less than biennially, effective January 1 following any such adjustment.

Informal Procedures:

If the estimated total cost of the project is equal to or less than \$45,000 (as may be adjusted from time to time), the city may proceed as deemed in the best interest of the city. The project may be accomplished by city employees or by contract.

For projects within the informal procedures tier, if total costs of a contract plus change orders exceed \$25,000, performance and payment bonds must be provided by the Contractor. In accordance with Iowa Code section 573.6(2)(b), for contracts greater than \$25,000 and equal to or less than \$45,000, change orders that exceed twenty percent (20%) of the contract price shall be approved by the City Council.

In lieu of informal procedures, the City may utilize competitive quotation procedures or competitive bidding procedures.

Competitive Quotation Procedures:

If the estimated total cost of the project is greater than \$45,000 (as may be adjusted from time to time) but less than \$100,000, the city must utilize the following process:

- a. Provide a description of work to be performed, plans and specifications prepared by an architect, landscape architect, or engineer, if required under chapter 542B, 544B, or 544A, and an opportunity for a site visit,
- b. Make a good faith effort to get quotes from a minimum of two contractors regularly engaged in the prescribed work, such good faith effort to include advising all contractors who have filed with the City a request for notice of projects, with the notice to be provided in a timely manner so that the contractor has a reasonable opportunity to submit a quote,
- c. Require quote to detail the amount for labor, materials, equipment and supplies,
- d. Designate the time, place, and manner for filing quotes (the city may elect to have quotes submitted by mail, fax or email),
- e. Award contract to lowest responsive responsible quoter subject to Iowa Code Section 26.9 (contracts relating to public utilities may be awarded as the city deems in the best interest of the city, which is generally to the low bidder), or the city may reject all quotes (the unconditional acceptance and approval of the lowest responsive responsible quote constitutes the award of contract),
- f. Document the approved quotation in City Council meeting minutes,
- g. The contractor awarded the contract shall not commence work until the contractor's performance and payment bond is approved by the City.

If no quotes are received to perform the work, the City may negotiate a contract with a contractor regularly engaged in such work.

For projects within the competitive quotation tier, change orders that exceed the greater of \$10,000 or 10% of the contracted project cost shall be approved by the City Council.

In lieu of competitive quotation procedures, the City may utilize competitive bidding procedures.

Competitive Bidding Procedures:

If the estimated total cost of the project exceeds the competitive bid threshold of \$100,000, the city must follow the formal competitive bidding process as dictated in the Iowa Code, Chapter 26, which includes: (i) public hearing on the plans, specifications, form of contract and estimate of costs (with published notice thereof not less than four nor more than twenty days prior thereto), (ii) sealed bidding (with publication of notice thereof to bidders not less than four, nor more than forty-five days prior to the date set for receipt of bids), (iii) bid security, (iv) performance and payment bonds. The notice to bidders must include: (a) the time and place for filing sealed bids, (b) the time and place sealed bids will be opened and considered by the

Council (which may be different times, provided such is enumerated in the notice), (c) the general nature of the work, (d) generally when the work must be commenced and completed, (e) the amount of bid security (at least 5%, but not more than 10% of the contract price), and (f) any other information the Council deems pertinent.

At the hearing, any interested person may appear to file objections to the proposed plans, specifications, contract or estimated cost. After the hearing, the Council must by resolution enter its decision on the plans, specifications, contract and estimate of cost.

The date and time each bid is received by the City and the name of the person receiving the bid shall be recorded on the envelope containing the bid. All late bids will be returned to the bidder unopened. The City may by resolution award the contract to the lowest responsive responsible bidder determined as provided in Iowa Code section 26.9, or it may reject all bids. The City shall retain the bid security of the successful bidder until the City approves the contract and performance bond.

Prior to opening bids, the city may inquire as to whether all bidders have received and/or noted all addendums to the plans and specifications, and document responses thereto in the record.

It is required by Iowa Code Section 380.4 that the City Council pass a resolution approving any expenditure over \$100,000 for a public improvement project.

Utilization of a State bid satisfies the competitive bidding requirements. Architectural, landscape architectural, or engineering design services procured for a public improvement are not subject to competitive bid or competitive quote procedures.

For projects in excess of \$100,000 up to \$1,000,000, change orders that exceed 10% of the contracted project cost shall be approved by the City Council. For projects in excess of \$1,000,000, change orders that exceed 5% of the contracted project cost shall be approved by the City Council.

4. Use of City Employees

If the city is following the competitive quotation process, a quote can be considered in which the work is to be provided by city employees. The quote must contain the same detail as required for quotes from contractors. The amount of estimated sales and fuel tax and the premium cost for the performance and payment bond identified in a contractor quote is to be deducted from the contractor's price for determining the lowest responsible quote. If no quotes are received to perform work, or if the city quote is the lowest, the city may self-perform the work. Cities can use city employees to perform repair or maintenance work without having to obtain competitive bids or quotations. If the project must be competitively bid, city employees cannot perform the work.

5. Iowa Preference Given

By virtue of statutory authority, preference will be given to products and provisions grown and coal produced within the State of Iowa and to Iowa domestic labor in the constructing or building of any public improvement or works.

Iowa Code, Section 73.1, Preference -- Conditions:

“Every commission, board, committee, officer or other governing body of the state, or of any county, township, school district or city, and every person acting as contracting or purchasing agent for any such commission, board, committee, officer or other governing body shall use only those products and provision grown and coal produced within the state of Iowa, when they are found in marketable quantities in the state and are of a quality reasonably suited to the purpose intended, and can be secured without additional cost over foreign products or products of other states...”

Iowa Code, Section 73.3, Iowa Labor:

“Every commission, board, committee, officer or other governing body of the state, or of any county, township, school district or city, and every person acting as contracting agent for any such commission, board, committee, officer or other governing body of the state, or of any county, township, school district or city, shall give preference to Iowa labor in the constructing or building of any public improvement or works, and every contract entered into by any such commission, board, committee, officer or other governing body of the state for the construction or building of any public improvement or works shall contain a provision requiring that preference shall be given to Iowa domestic labor in the constructing or building of such public improvement or works.”

6. Cooperative Purchasing

The City Manager may initiate or participate with other governmental bodies, including the State of Iowa, in cooperative purchasing. This may take place either through the use of Iowa Code Chapter 28E for intergovernmental agreements or utilization of a contract clause. This would allow a legal purchase at the cost designated in another entity’s contract, in the best interest of the City, notwithstanding any provisions of this manual to the contrary.

7. Sales Tax Exemptions

Under Iowa Code Section 423.3(31), the City of Urbandale is exempt from tax in the case of sales of articles purchased for the City’s exclusive use. Additionally, the City agrees to pay tax, including interest, on such articles to the vendor or will reimburse the vendor for any tax, including interest, assessed by the State government.

8. Early Release of Retained Funds

Iowa Code section 26.13 provides payments under contracts for public improvements or highway, bridge, or culvert projects shall be made in accordance with the provisions of chapter 573, except as follows:

- a. Upon “substantial completion of all or part of the work” of the public improvement or highway, bridge, or culvert project, the contractor may request release of all or part of funds retained by the City. Included with such request shall be contractor’s sworn statement that notice in the form provided by the Act was provided not less than ten calendar days prior to the request to all subcontractors and suppliers that provided labor or materials.
- b. If labor or materials are yet to be provided, the city shall retain an amount equal to 200% of the value of the labor or materials to be provided, until so provided.

- c. Retained funds approved as payable shall be released the sooner of the next monthly payment or within thirty days.
- d. An itemization of labor or materials yet to be provided, or the reason for a request for release was denied, shall be provided to the contractor in writing within thirty days of receipt of a request for release.
- e. The contractor shall release retained funds to subcontractors in the same manner as released to contractors.
- f. For purposes of this provision, “substantial completion” means the first date on which any of the following occur:
 - i. Work on the project has been substantially completed in accordance with the terms and provisions of the contract;
 - ii. Work on the public improvement has been substantially completed so that the City can occupy or utilize the project for its intended purpose (not applicable to highway, bridge or culvert projects);
 - iii. The architect or engineer, or authorized contract representative has certified the project as substantially complete; or
 - iv. The City is actually occupying or utilizing the public improvement for its intended purpose (not applicable to bridge, highway or culvert projects).

9. Effective Date

Pursuant to Section 43 of HF2713, this policy shall be effective for contracts the city entered into on or after January 1, 2007. HF830 is effective on July 1, 2007. IDOT Committee thresholds noted above are effective as of January 1, 2009.