

PUBLIC IMPROVEMENT POLICY AND PROCEDURES MANUAL

CITY OF URBANDALE, IOWA

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(Last Reviewed October, 2018)

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 outlined in Iowa Code Chapter 26. 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.

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.

POLICIES AND PROCEDURES

1. Definition of Projects

A "Public Improvement" project for purposes of this Policy 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." A public improvement project may involve new construction, reconstruction, or an improvement that results in betterment to a facility by improving either the original design of the facility or the function of the facility.

"Vertical infrastructure" means buildings, all appurtenant structures, utilities, incidental street improvements including sidewalks, site development features, recreational trails, and parking facilities. Vertical infrastructure does not include any work constructed in conjunction with or ancillary to highway, street, bridge or culvert projects, including but not limited to utilities and sidewalks.

Repair or maintenance work is not subject to the requirements of this Policy 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."

This Policy 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 this Policy 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

This Policy 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/Vertical Infrastructure (as defined in section 1 above) are differentiated from projects involving highway/bridge/culvert work, which are defined in Sections 309.1 and 314.13 of the Iowa Code. It should be noted that some of these projects may be combined and include portions that fall within both definitions (horizontal and vertical infrastructure). In that case, the more stringent bidding requirements should be used. For example, if utilities are constructed in conjunction with a street project, the street bidding tiers will be used. If the utilities are constructed independently, the lower tiers can be used.

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

<u>Estimated Total Project Costs</u>	<u>Requirement</u>
Equal to or less than \$57,000*	Informal Procedures
Greater than \$57,000* and less than \$139,000	Competitive Quotation Procedures
Greater than \$139,000	Competitive Bidding Procedures

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

<u>Estimated Total Project Costs</u>	<u>Requirement</u>
Equal to or less than \$48,000*	Informal Procedures
Greater than \$48,000*	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. If the City is required to competitively bid highway, bridge, or culvert work it shall do so in compliance with the contract letting procedures of Iowa Code Chapter 26.

*These amounts are effective as of January 1, 2019. The law requires these amounts be reviewed not less than biennially, effective January 1 following any such adjustment. This Policy shall automatically incorporate and the City shall properly follow any threshold

adjustments which may occur subsequent to January 1, 2018. A listing of bid thresholds is available at: http://www.iowadot.gov/local_systems/publications/bid_limits.htm

Informal Procedures:

If the estimated total cost of the project is equal to or less than the minimum threshold amount as defined by type of project above, the City may proceed as deemed in the best interest of the City. The project may be accomplished by City employees or by outside contractors. If an external contractor is used, City staff should use procedures for bidding outlined in the purchasing policy and procedures manual

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 the minimum threshold as define by type of project above, 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 the minimum threshold amount for competitive quotations as defined by law for public improvement projects but less than the competitive bid threshold as defined by law, 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 by law, 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, and certificate of insurance, 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.

The City Council shall pass a resolution approving any expenditure over \$100,000 for a public improvement project.

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 applicable competitive bid threshold as defined by law for public improvement projects or highway, bridge or culvert projects, the City must follow the formal competitive bidding process as dictated in Iowa Code Chapter 26, which includes: (i) plans and specifications prepared by and the estimated total cost of a proposed public improvement calculated by an engineer licensed under chapter 542B, a landscape architect licensed under chapter 544B, or an architect registered under chapter 544A; (ii) 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), (iii) 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), (iv) bid security, (v) 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) a description of 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 before a contract can be awarded.

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 by law, or it may reject all bids. The City shall retain the bid security of the successful bidder until the City approves the contract, performance bond, and certificate of insurance.

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.

The City Council shall pass a resolution approving any expenditure over \$100,000 for a public improvement project.

The City may use a State bid (ie: project through IDOT) to satisfy the competitive bidding requirements to the extent allowed by law. Architectural, landscape architectural, or engineering design services procured for a public improvement are not subject to competitive bid or competitive quote procedures under this policy, but should instead refer to the City's normal purchasing policy for guidelines. Once accepted by council, professional service contracts for public improvements with change orders that exceed 10% of original price require City Council approval for the change order

For projects in excess of \$135,000 up to \$1,000,000, change orders that exceed 10% of the contracted project cost require City Council approval. For projects in excess of \$1,000,000, change orders that exceed 5% of the contracted project cost require City Council approval. All other requested change orders shall be reviewed and approved by the City's designated project representative.

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

Domestic Products. By virtue of statutory authority, a preference will be given to products and provisions grown and coal produced within the State of Iowa. *Reciprocal Resident Bidder and Labor Force Preference.* When a contract for a public improvement is to be awarded to the lowest responsible bidder, a resident bidder shall be allowed a preference as against a nonresident bidder from a state or foreign country if that state or foreign country gives or requires any preference to bidders from that state or foreign country, including but not limited to any preference to bidders, the imposition of any type of labor force preference, or any other form of preferential treatment to bidders or laborers from that state or foreign country. The preference allowed shall be equal to the preference given or required by the state or foreign country in which the nonresident bidder is a resident. In the instance of a resident labor force preference, a nonresident bidder shall apply the same resident labor force preference to a public improvement in this state as would be required in the construction of a public improvement by the state or foreign country in which the nonresident bidder is a resident.

If it is determined that this may cause denial of federal funds which would otherwise be available, or would otherwise be inconsistent with requirements of any federal law or regulation, the reciprocal resident bidder and labor force preference requirements shall be suspended, but only to the extent necessary to prevent denial of the funds or to eliminate the inconsistency with federal requirements.

The City Council shall require a nonresident bidder to specify on all project bid specifications and contract documents whether any preference is in effect in the nonresident bidder's state or country of domicile at the time of a bid submittal.

When a contract for a public improvement is to be awarded to the lowest responsible bidder, the public body shall request a statement from each bidder regarding the bidder's resident status. The

statement shall be on the form designated by the labor commissioner.¹ The statement shall require the bidder to certify whether the bidder is a resident bidder or a nonresident bidder. In the case of a resident bidder², the statement shall require the resident bidder to identify each office at which the resident bidder has conducted business in the state during the previous three years and the dates on which the resident bidder conducted business at each office. In the case of a nonresident bidder, the statement shall require the nonresident bidder to identify the nonresident bidder's home state or foreign country as reported to the Iowa secretary of state, to identify each preference offered by the nonresident bidder's home state or foreign country, and to certify that, except as set forth on the form, there are no other preferences offered by the nonresident bidder's home state or foreign country. The statement shall include such additional information as requested by the commissioner. The statement must be signed by an authorized representative of the bidder. A fully completed statement shall be deemed to be incorporated by reference into all project bid specifications and contract documents with any bidder on a public improvement. Failure to provide the statement with the bid may result in the bid being deemed nonresponsive. This may result in the bid being rejected by the public body.

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

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. Payments for Projects

Payments under contracts for public improvements or highway, bridge, or culvert projects shall be made in accordance with the provisions of Iowa Code Chapters 26 and 573.

¹ A copy of the Bidder Status Form is attached and can also be found at <http://www.iowaworkforce.org/labor/bidderstatusform.pdf>

² "Resident bidder" shall mean a person or entity authorized to transact business in the state of Iowa, and having a place of business for transacting business in Iowa at which it is conducting and has conducted business for at least three years prior to the date of the first advertisement for the public improvement. If another state or foreign country has a more stringent definition of a resident bidder, the more stringent definition is applicable to bidders from that state or foreign country. See Iowa Administrative Code 875-156.2 for more details on determining a bidder's residency status.