

An Act Relating to Bidding and Contracting for Public Improvement Projects

The Iowa Legislature adopted and Governor Branstad signed into law Senate File 438 on April 13, 2017. The bill was effective for any public improvement contract entered into on or after that date. A link to the legislation is:

<https://www.legis.iowa.gov/legislation/BillBook?ga=%24selectedGa.generalAssemblyID&ba=SF438>.

The new law affects notices to bidders for public improvements, bids awarded for public improvements, and contracts for public improvements. The law limits governmental entities' rights to determine and assess bidders' qualifications and to require or prohibit prospective bidders, offerors, contractors, or subcontractors from entering into or adhering to an agreement with one or more labor organizations dealing with a public improvement project.

Specifically the law prohibits a governmental entity from:

1. Requiring a potential bidder on a public improvement to provide any information which the potential bidder may deem confidential or proprietary as a requirement for being deemed a responsive, responsible bidder; and
2. Imposing a requirement that directly or indirectly restricts potential bidders to any predetermined class of bidders defined by experience on similar projects, size of company, union membership, or any other criteria.

Agencies may still request information from the apparent lowest responsive, responsible bidder but it is restricted to information related to that bidder's experience, number of employees, and ability to finance the cost of the public improvement.

The law also establishes a new subchapter of Iowa Code Chapter 73A, entitled "The Fair and Open Competition in Government Construction Act". That section is also included in the link above. It is also important to note that any public official who fails to perform any of the duties of this new law could be found guilty of a simple misdemeanor and removed from office.

SUDAS currently has sections of Division 1 of the Specifications Manual that include requirements relating to qualifications for potential bidders related to assuring that a bidder is capable of undertaking the project work. Draft changes to those sections have been developed for consideration by the SUDAS Board of Directors at their meeting on May 12, 2017. Because the restrictions related to prequalification of potential bidders are in affect now, agencies need to take steps to potentially modify any requirements they are currently requiring to ensure that they are in compliance with the new laws.

Although the final version may change as further input is gathered, the draft changes that are to be considered by the Board are included below:

Division 1, Section 1020

PROPOSAL REQUIREMENTS AND CONDITIONS

1.01 QUALIFICATION OF THE BIDDERS

- A. ~~The bidder must be qualified by experience, financing, and equipment to do the work described in the contract documents. Whenever required in the special provisions, the bidder shall furnish a statement of its construction experience and its general ability to perform the work contemplated, and shall submit same along with its proposal.~~
- B. ~~The Jurisdiction shall have the right to take such action as it may deem necessary in determining the ability of the bidder to perform the work satisfactorily. The Jurisdiction reserves the right to reject any bid that is not responsive to the proposal form or contract documents, or not submitted by a responsive, responsible bidder.~~
- C. Upon request of the Engineer, the **apparent lowest responsive, responsible** bidder, whose bid is under consideration for award of a contract, shall submit evidence of its financial resources, construction experience, and organization available for performance of the proposed work. A bidder's ~~inability~~ **ability** to promptly secure the required bonds and insurance coverages for the proposed work, as well as the bidder's demonstrated ~~inability~~ **ability** to continuously maintain insurance coverages on past projects, may be considered an indication of financial responsibility and the bidder's qualification as a responsive, responsible bidder.
- D. ~~Alternatively, the Jurisdiction may require the qualification or prequalification of bidders pursuant to a program adopted by the Jurisdiction.~~

Division 1, Section 1030

APPROVAL FOR AWARD AND AWARD OF CONTRACT

1.01 ACCEPTANCE OR REJECTION OF PROPOSALS

- A. The Jurisdiction reserves the right to accept the proposal that, in its judgment, is the lowest responsive, responsible bid; to award the contract by sections, if so specified in special provisions; to reject any or all proposals; to reject irregular or nonresponsive proposals as defined in Section 1020, 1.11 - Irregular and Nonresponsive Proposals; and to waive irregularities and/or technical deficiencies in the proposals to the extent allowed by law.
- B. An individual, firm, partnership, corporation, or any association under the same or different names shall not submit more than one proposal. When reasonable evidence exists that a bidder has submitted more than one proposal at any letting for the same work under the same or different names, said proposals may be rejected.
- C. Any or all proposals may be rejected if there is reason to believe collusion exists among bidders. Proposals received from participants in such collusion may not be considered for the same work if re-advertised.
- D. Proposals may be rejected if the **apparent lowest responsive, responsible** bidder has failed to promptly meet financial obligations undertaken in connection with other work under contract, or is in default on a previous contract with the Jurisdiction, or has an unsatisfactory record of performance and cooperation on any such previous contract with the Jurisdiction, or has failed to maintain satisfactory progress on work already under contract with the Jurisdiction.